

Water is precious in the American West. California barely even tries to manage it

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OPINION//OPEN FORUM



The Shasta River runs through Lake Shastina in Siskiyou County. Last year, 80 farms and ranches illegally took half the river's flow for eight days during severe drought conditions. Michael Macor/The Chronicle 2009

For eight days last summer, a group of about 80 California ranchers and farmers took [more than half](#) the Shasta River's flow during severe drought conditions, violating state requirements designed to protect salmon. The state's water regulator [couldn't stop the illegal diversion](#) but fined the group the maximum penalty it could — \$4,000. The fine translated to about \$50 per person.

That's not much of a deterrent.

The reality is when water, arguably California's most important resource, is stretched thinnest, the state can't effectively stop people from taking it out of turn. As a result, many communities and individuals struggle to meet basic human needs for water and the ecosystems we all depend on suffer.

Think of it this way: If a city managed traffic the way California manages water allocation during droughts, people wouldn't stand for it. Let's say, hypothetically, each morning traffic jams begin snarling streets across the city, resulting in delays, collisions and injuries. Yet the city has no permanent traffic lights. Instead, it sometimes erects temporary lights in particular neighborhoods, but only after the

mayor declares a traffic emergency, and the lights come down immediately as soon as traffic eases. What's more, the city has no way to stop unsafe driving when it occurs. Writing a ticket takes weeks, and penalties are tiny, regardless of how much harm a driver causes. By the end of each day — after irreparable damage is done — the city's actions have begun to reduce the chaos. But the next day, it starts from scratch again.

Fortunately, no city manages traffic this way. But the scenario does reflect California's current approach to water scarcity.

Theoretically, California has a system for allocating scarce water supplies. Water is supposed to be allocated among different human and environmental uses according to the legal requirements and policy priorities established under state and federal law. When water is not legally available for them, water users are supposed to stop (curtail) their own water diversions. Part of the [State Water Resources Control Board's job](#) is to ensure this happens. Much like how stoplights routinely direct traffic, the Water Board needs to routinely implement water right curtailments — analyzing how much water is available, determining which water users can and cannot divert water, issuing curtailment orders to prevent water users from taking water that's not theirs and carrying out enforcement when violations occur. But despite its best efforts, the [Water Board has never](#) fully accomplished this basic task.

Why? Because numerous bureaucratic, political and policy obstacles stand in the way.

For example, the tool the Water Board uses to lay the groundwork for issuing curtailment orders is often unavailable. Under [current law](#), it cannot adopt emergency curtailment regulations until the third year of a drought or until the governor declares a drought emergency. Therefore, like a city belatedly erecting traffic lights, the board is always playing catch up. And because emergency regulations are temporary, once they expire or are withdrawn, they're gone. When the next drought develops, the whole process must begin anew.

The board's tools for enforcing water use laws are also grossly inadequate. Damage from unlawful use of water happens immediately, but tools like [cease-and-desist orders](#) and [financial penalties](#) take weeks or months to implement, adding to the overall delay in regulating water use. And as the Shasta River violation demonstrated, in many cases, the maximum penalties available are small and easy for water users to ignore — ultimately rendering them ineffective.

California doesn't need to settle for this dysfunctional status quo. Instead, it can begin to manage water scarcity as a routine fact of life, like traffic. Other Western states do this. California can, too.

How? By aligning the Water Board's capabilities with California's needs. As we laid out in a [new report](#) from the Wheeler Water Institute at UC Berkeley School of Law, the board can establish a permanent framework for curtailment. Instead of waiting until the depths of severe drought to adopt temporary emergency regulations, the agency can be proactive by adopting standard regulations that lay the advanced groundwork for more routine curtailments.

The Legislature can also strengthen the Water Board's ability to implement fair and effective curtailments whenever water is scarce. As of this writing, the Legislature is [considering bills](#) that would partially address five of the 10 legislative recommendations we laid out in our report, including raising maximum penalties.

While the bills are promising, our research indicates more comprehensive state action is needed — and soon.

Droughts are becoming more frequent and intense. From 1970 to 2006, California experienced only two [statewide multi-year droughts](#). During the past 16 years, there were three more. Many parts of the state experience seasonal water shortage essentially every year. Unless the state's ability to provide effective oversight of water diversion and use improves quickly, unintentional misuse, flagrant abuse and the impacts of both will grow.

Just as cities don't wait for rush hour to erect traffic lights, the state shouldn't wait until widespread water scarcity strikes again to empower the Water Board to respond effectively.

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