I recently wrote about a then-pending court case in which California grape growers were challenging the State Water Resources Control Board's limits on the growers' diversion of water from California rivers and streams to provide frost protection for their grapes. That litigation is important because it goes to the heart of the Board's authority under Article X, section 2 of the California Constitution to limit or ban "unreasonable" uses, or methods of diversion, of water.

California's Court of Appeal for the First Appellate District has now issued its decision in *Light v. State Water Resources Control Board*. That ruling represents an important, if predictable, win for the Water Board, and an affirmation of the Board's broad authority to exercise its constitutional authority to proscribe unreasonable water practices by all California water users–authority that becomes more important as California suffers through a drought unprecedented in state history.

Briefly, grape growers have for years diverted water from the Russian River system in Northern California to provide frost protection for their grapes. The problem is that federal scientists have attributed huge, recent losses of young salmon protected under the Endangered Species Act to abrupt declines in Russian River water levels due to those same water diversions. At the request of federal regulators, the State Water Resources Control Board adopted a regulation limiting such diversions, relying on its constitutional power to control or ban unreasonable uses or diversions of water under Article X, section 2.

If this all sounds vaguely familiar to water wonks, it should: nearly 40 years ago, a California appellate court upheld the Board's authority to declare diversions of water by grape growers for frost protection to be unreasonable under Article X, section 2, in the famous case of *State Water Resources Control Board v. Forni*. But what makes the just-issued decision in *Light* so important is that it forcefully rejects current water users' efforts to limit the scope of the Board's constitutional authority under Article X, section 2.

Specifically, the water users in *Light* argued that the Board could only apply its constitutional authority to proscribe unreasonable uses of California water under Article X, section 2, to state water rights holders that are subject to the Board's permit system. That system applies only to users claiming appropriative water rights who perfected those rights beginning in 1914, when California's permit system first took effect. In California, neither appropriative water rights holders who perfected those rights before 1914, nor those who rely on riparian water rights (i.e., persons who own property that encompasses or borders lakes and rivers) are

required to obtain permits from the Board under California's counterintuitive water rights system. The *Light* plaintiffs argued that the Board's constitutional authority to proscribe unreasonable uses or diversions of water is inapplicable to riparian and pre-1914 appropriative water rights holders such as themselves.

The Court of Appeal in *Light* forcefully rejected this crabbed interpretation of Article X, section 2, ruling that the Board's constitutional authority applies to *all* California water rights holders. In the words of the unanimous panel, "That the Board cannot require riparian users and pre-1914 appropriators to obtain a permit before making reasonable beneficial use of water does not mean the Board cannot prevent them from making unreasonable use. Any other rule would effectively read Article X, section 2 out of the Constitution."

The recent decision in *Light* should not come as a shock to those who follow water law and policy developments closely. The surprise, at least to this observer, was that a trial court would take seriously the *Light* plaintiffs' atomistic argument, much less embrace it. Now that trial court ruling has been reversed, in favor of a far more logical reading of Article X, section 2, which the appellate court in turn characterized as "the overriding principle governing the use of water in California."

The Court of Appeal's decision in *Light*, while predictable, is most timely. As California suffers through the third year of unprecedented drought conditions, unreasonable diversions and uses of increasingly scarce water supplies must be eliminated. And that situation becomes increasingly dire. In 2009, the California Legislature enacted a law requiring Californians to reduce their residential and commercial water use by 20% over historic levels. That goal was reiterated by Governor Jerry Brown in January, when he formally declared a drought emergency for all of California.

So far, California water users have not stepped up to the plate: State Water Resources Control Board officials reported last week that, on a statewide basis, Californians reduced their aggregate water use over the first five months of 2014 by only 5% compared to the same period over the past three years. (Those figures were drawn from a Board-conducted survey of 443 water agencies in the state, but completed and returned by only 270 of them.) This suggests that California's water districts and their customers are not taking the current drought seriously enough, and that more effective, mandatory conservation measures will likely be necessary.

The *Light* decision at least confirms the Board's legal authority to require the water

use and conservation actions that California’s current drought requires.  And that’s a most welcome development.