

# Drought-Related Emergency Regulation for Informational Orders

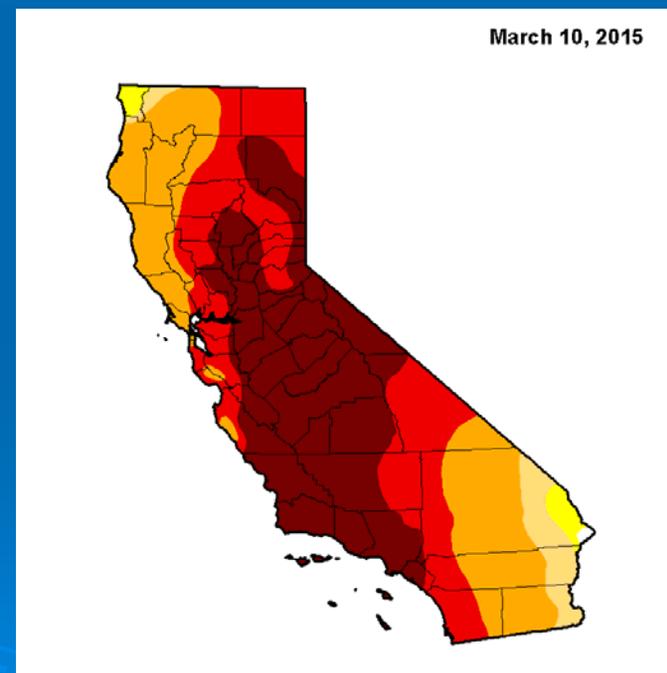
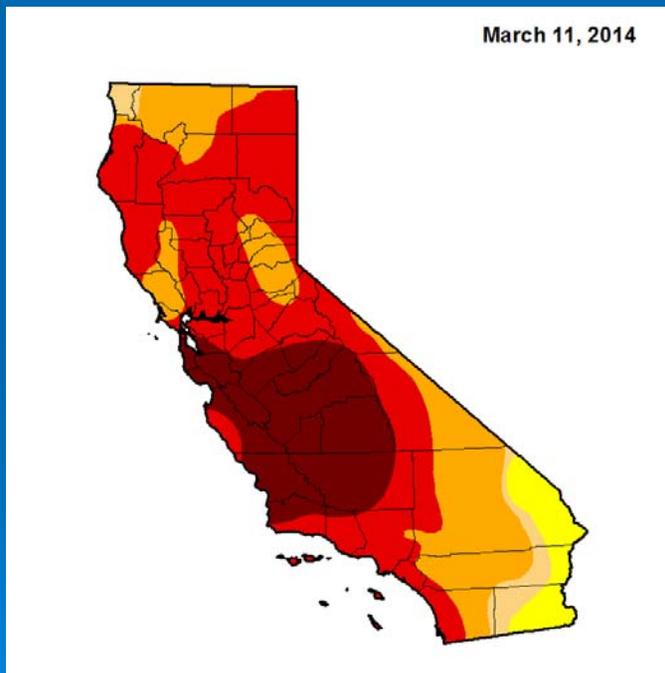
State Water Resources Control Board Meeting  
March 17, 2015

# Introduction and Context

- Finding of Emergency
- State of Emergency Continues
- 2014 Statewide Curtailment Emergency Regulation Goals
- Improved Data Transparency and Stakeholder Confidence
- 2014 Curtailment Orders Not Issued
- 2014 Curtailment Notice & Inspection Results
- Use of Informational Order Section of Regulation
- Proposed 2015 Informational Order Regulation
- Fiscal Effects
- Recommendation/Next Steps
- Comments

# Finding of Emergency

- California is in fourth year of drought. The U.S. Drought Monitor classifies almost the entire state of California as experiencing severe to exceptional drought conditions.

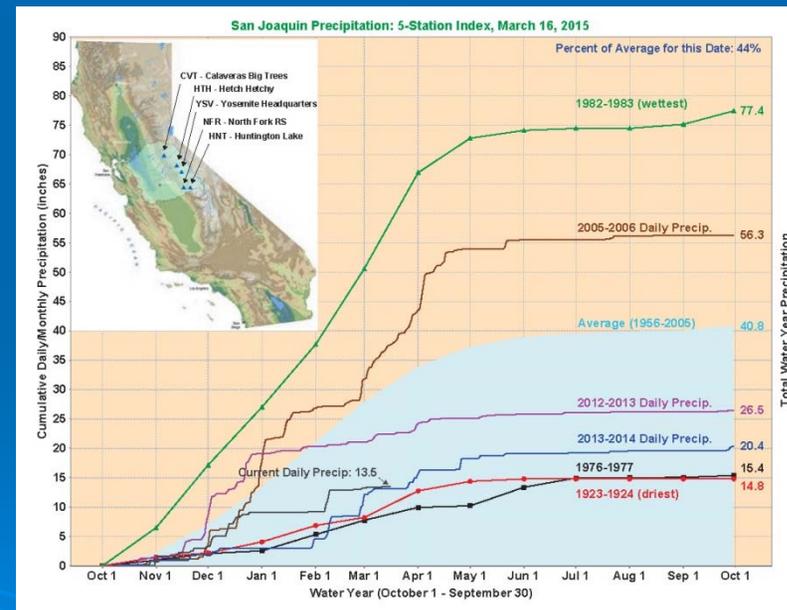
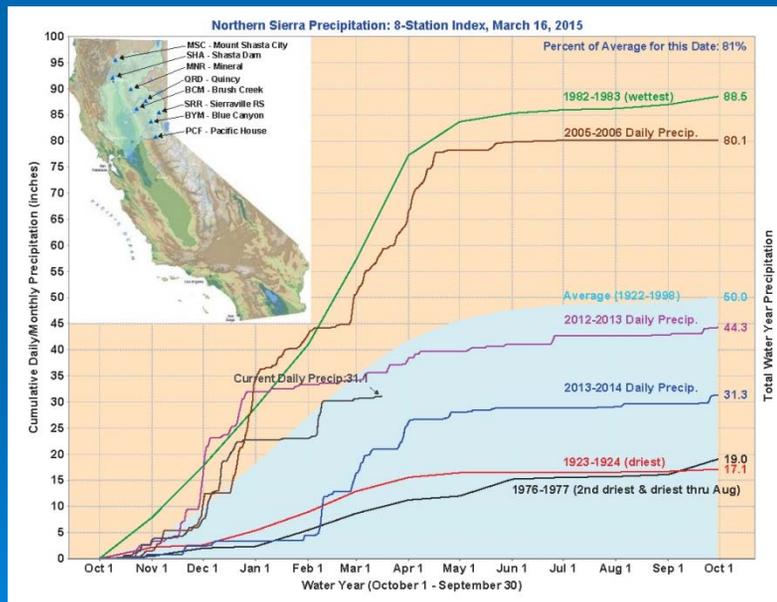


# Finding of Emergency

- Governor Brown's Executive Order B-28-14, issued December 22, 2014, extended the Board's authority to adopt emergency regulations
- Due to continued drought conditions, the State Water Board needs an effective means to acquire information on claimed water rights to better analyze necessity for curtailments, respond to complaints and enforce against unauthorized diversions.
- Standard rulemaking processes cannot timely address impacts of the continued drought.

# State of Emergency Continues

- Sacramento Watershed – 31.1 inches.
  - 2014 Total – 31.3 inches
- San Joaquin Watershed – 13.5 inches.
  - 2014 Total – 20.4 inches.



# State of Emergency Continues

- Statewide Snow Water Content -17 % of Normal for Date
- Sacramento Watershed Supply Forecast
  - <http://cdec.water.ca.gov/cgi-progs/products/SRWSI.pdf>.
- San Joaquin River Watershed Forecast
  - <http://cdec.water.ca.gov/cgi-progs/products/SJWSI.pdf>.
- Bulletin 120 Forecast
  - <http://cdec.water.ca.gov/cgi-progs/products/WSFCastDiscussion.pdf>.

# 2014 Statewide Curtailment Emergency Regulation Goals

- Bolster the existing Enforcement Process with better information
- Provide for more transparent and up-to-date curtailment analysis inputs
- Gain Stakeholder Confidence in Board's Analyses
- Ensure effectiveness through potential to enforce against Failure to Respond to Board Notices or Orders

# Improved Data Transparency and Stakeholder Confidence

- Stakeholder Meetings and sharing of data for curtailment analysis has already improved data quality and Stakeholder confidence.
- Watershed Stakeholder Meetings for defining a process to Lift Curtailments further assisted Stakeholder confidence.
- Early posting of 2015 demand data should further assure transparency.
- Stakeholder Meetings being scheduled to discuss current analyses. Starting with San Joaquin Watershed
- 2014 Diversion Data obtained from recent Informational Order WR2015-0002-DWR is being analyzed.

# 2014 Curtailment Orders Not Issued

- 2014 Emergency Regulation adopted after over 9,000 Curtailment Notices already issued. Issuing Curtailment orders for same diversions would have taken resources away from field investigation activities already in progress.
- Additional Curtailments in other watersheds were a potential, but local voluntary solutions or lack of supporting information limited such implementation.
- Limited to post-1914 water rights.

# 2014 Curtailment Compliance

- Post-1914 holders submitted curtailment compliance form claiming prior rights. Some of these responders did not have a statement of water diversion and use on State Water Board's records.
- Over 950 inspections to confirm compliance with 2014 Curtailment Notices
- For the inspections where diversions were continuing, staff found that diverters were claiming a senior riparian and/or pre-1914 right. The inspections only can make basic finding for riparian status (property served within watershed and contiguous to source). Further investigation of claims, especially for pre-1914 claims and riparian claims serving non-contiguous property require additional information.
- If Order of Curtailment had been issued for these cases, the State Water Board would have no improved resolution of this issue related to exercise of senior rights.

# 2014 Curtailment Notice Results

## 2014 Curtailment Certification Response Summary - Final Update Submissions Through 1/8/2015

Watershed	Number Curtailed	Returned Forms	Percent Forms Returned	Percent Returned By Face Value	Percent Forms Returned & Diversion Curtailed by Face Value
Sacramento	5,435	2,160	40	79	7.3
San Joaquin	3,116	969	31	94	10
Russian	502	321	64	79	35
Eel	198	71	36	96	69
Scott River	212	67	32	-	-
<b>TOTAL</b>	<b>9,463</b>	<b>3,588</b>	<b>38</b>	<b>84*</b>	<b>8.3*</b>

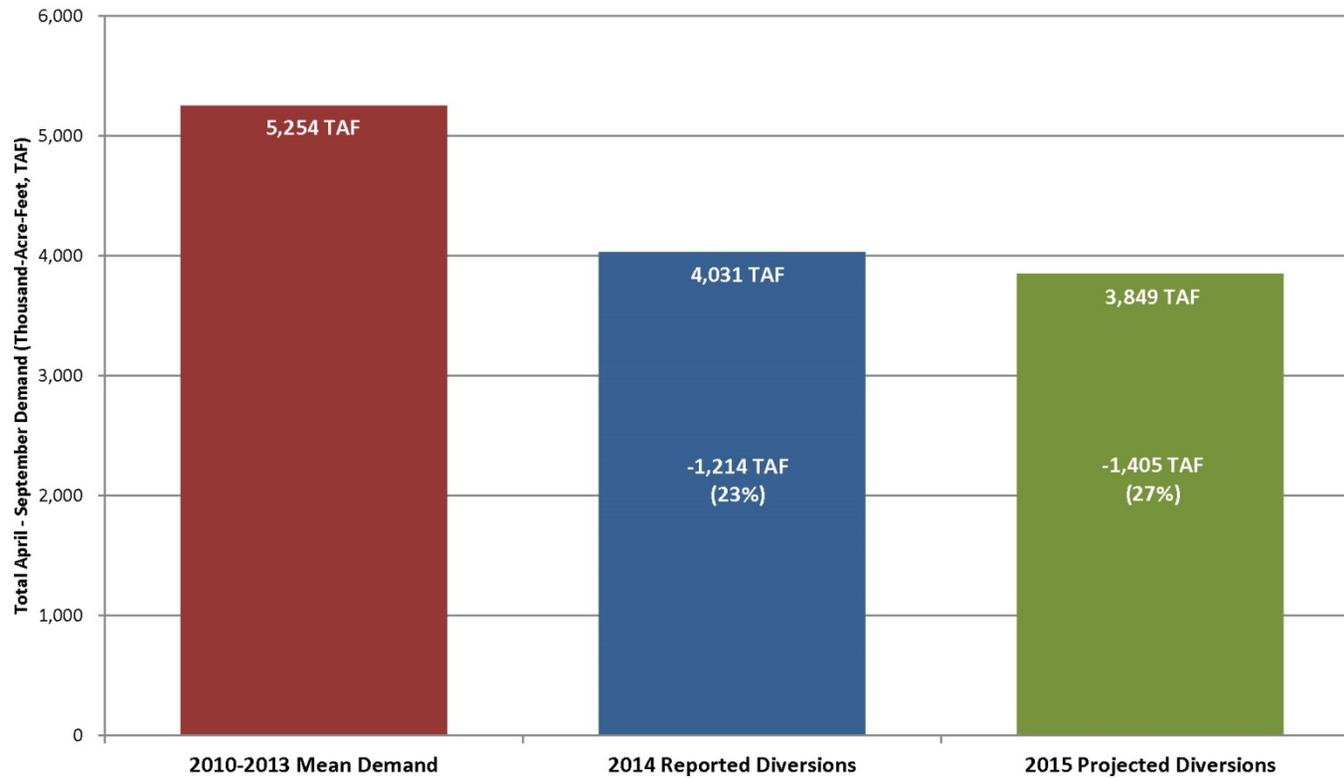
-: Not Available

\*: Does not include Scott River

# Use of Informational Order Section 879(c) of the 2014 Regulation

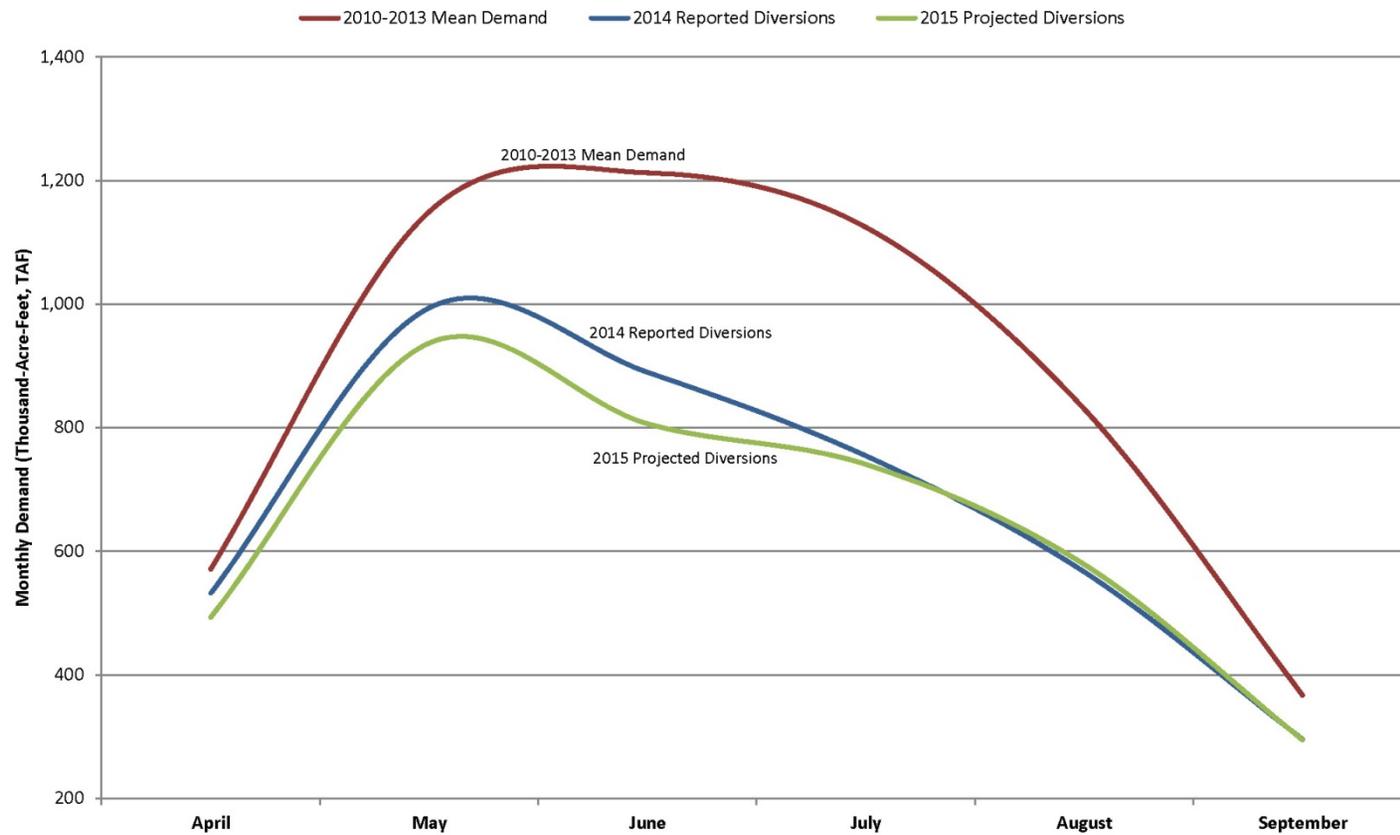
- Informational Order WR 2014-031-DWR issued to 23 riparian and pre-1914 claimants diverting water from San Joaquin River between Friant Dam and Gravelly Ford.
  - Enforcement Action taken for Failure to Respond. Additional FTR pending.
  - Additional Enforcement being considered for threatened or actual unauthorized diversions.
- Informational Order WR 2015-0002-DWR issued to over 440 diverters holding over 1000 statements to Sacramento-San Joaquin Watersheds and Delta.
- Response rate of 94%.

### Comparison of 2010-2013 Mean Demand To Sacramento-San Joaquin-Delta Informational Order Responses - 94% Reporting as of 3/12/15



3/16/2015

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3/16/2015

# Proposed Emergency Regulation

- Enforceable tool to investigate:
  - Complaints alleging interference with a water right by a water right holder, diverter or user (not just pre-1914 or riparian claimants)
  - Parties claiming previously unasserted senior rights in response to an investigation or curtailment
  - Parties claiming unverified and previously unnoticed transfers or contract purchase
  - Threats of waste, unreasonable use, unreasonable method of diversion, unlawful diversion of water by any water right holder, diverter or user

# Proposed Emergency Regulation

- Orders may require information regarding:
  - Claim of right;
  - Property patent date;
  - Date of initial appropriation;
  - Diversions made or anticipated during current year;
  - Compliance with transfer law if diversion not subject to approval of Board or Dept of Water Resources;
  - Any other information relevant to authenticating the right or forecasting use and supplies in the current drought year

# Proposed Emergency Regulation

- Focuses on Information Gathering to improve State Water Board's Decision-Making for:
  - Investigations and enforcement in response to complaints, curtailment notices, and waste and unreasonable use allegations.
  - Curtailments (Using of diversion data and priority date to better identify prior right demand and priorities.)
- Can Apply to Post-1914 Water Rights
- Can require reporting on water use and compliance

# Proposed Emergency Regulation

- Get better information faster
  - Immediately enforceable orders
  - Can enforce based on violation of regulation
  - Additional penalties:
    - ACL up to \$1,000/day plus up to \$2,500 for each acre-foot of water diverted in excess of diverter's right, or CDO
    - Up to \$10,000/day for violation of CDO
- Better information aids enforcement and helps the Board to more quickly and accurately refine curtailments

# Fiscal Impacts – For Emergency Regulations

- Analysis required by OAL (Form STD. 399)
  - Fiscal effect on State and local government
  - Federal funding of State programs
  - Analysis of economic impacts not required
- Government agencies potentially affected:
  - Public agricultural and municipal water agencies
  - State and local governments

# Fiscal Impacts – Informational Order Response

- Cost to public water agencies associated with new certification form:
  - 2,483 public agency diversions
  - \$561,958 statewide (at \$65 per post-1914 form and \$1,008 per senior right)
- Curtailments and related costs not affected
- No effect on State or local government or federal funding of State programs

# Typographical error

- (c)(1)(C): “Where a water right holder, diverter or user responds to an investigation, curtailment order or any notice of curtailment by asserting a right to divert under a contract or water transfer for which the Board has not approved a change petition and for which no record hads been filed with the Board;”

# Recommendation

- Adopt Resolution as presented (with correction)

# Next Steps

- Regulation and supporting documentation submitted to Office of Administrative Law (OAL) for approval
- Public may submit comments to OAL for five calendar days
- OAL has up to ten calendar days to review
- Reg would go into effect on or about April 1
- Reg would be in effect for 270 days

# Comments

- Comment deadline extended until March 16, 2015, at noon
- Comment letters received

# Commenters

Commenter	Commenter
California Sportfishing Protection Alliance	
Local Agencies of the North Delta	
Restore the Delta	
Banta-Carbona Irrigation District & Patterson ID	
San Joaquin Tributaries Authority	
Sierra Club California	
Spaletta Law, PC	

# Questions?