

Statewide Drought-Related Emergency Regulations to Curtail Diversions to Protect Senior Water Rights

State Water Resources Control Board Meeting
July 1, 2014

Introduction and Context

- Finding of Emergency
- Timeline
- Background / Current Process
- Proposed Regulation
- Supply and Demand
- Health and Safety Exception
- Fiscal Effects
- Context

Finding of Emergency

- Due to severe drought conditions, immediate action is needed to effectively curtail diversions when water is not available under the diverter's priority of right to make water available for senior water rights and protect stored water releases
- Standard curtailment and standard rulemaking processes cannot timely address impacts of the current drought

Water Code (WC) Section 1058.5

- In critically dry years preceded by two or more below normal or drier years or when Governor has issued a drought emergency proclamation, Board may adopt emergency regulations to:
 - require curtailment of diversions when water is not available under a user's priority of right
 - Require reporting of diversion or use or the preparation of monitoring reports
- Additional penalties for violations
- Remain in effect for up to 270 days

Timeline

- May 2013: Executive Order B-21-13
- December 2013: Drought Task Force
- January 17: Governor declares drought state of emergency
- January 17: Board issues notice of potential for curtailments
- February 18, 19, 26: Board drought workshops
- March 1: Governor signs drought relief package (SB 104), includes expansion of WC 1058.5

Timeline, cont.

- April 25: Governor issues Proclamation of Continued State of Emergency related to the drought
- Starting in April: Board posts information on lack of water availability
- May 20 and 21: Board holds drought workshop on Delta Watershed curtailment options and adopts curtailment emergency regulations including enforceable drought emergency minimum flows for Mill, Deer & Antelope Cr.
- May 16-29: Board sends out curtailment notices
- Jun 16: Board begin compliance inspections
- Jun 20: Board posts notice of proposed rulemaking

Statewide Water Rights and Claims of Rights

- ~ 18,410 Post-1914s Water Users
 - ~ 12,260 Permits and Licenses
 - ~ 6,150 Small User Registrations / Certifications
- ~ 15,770 Pre-1914 / Riparian Claims of Right

2014 Curtailment Notices

➤ Delta Watershed

- Post-1914 water rights with Term 91
 - Notices sent May 13
- Other Post-1914 water rights
 - Notices sent May 27

➤ Russian River upstream of Dry Creek

- Post-1914 with priority of Feb 19, 1954 or later
 - Notices sent May 27

2014 Curtailment Notices, Cont.

- Scott River Watershed (Adjudicated)
 - “Junior” class
 - Surplus Class
 - Post-1914s in Schedule E
 - Junior rights in Schedule D4
 - Notices sent May 16, 2014

Curtailment Certification Forms

- Term 91: by date specified
- Others: submit form within seven days of curtailment with following information:
 - Diversion under right has been curtailed
 - Identify Alternative sources
 - Sole source of water for health and safety
 - Diversion is for hydropower or other non-consumptive use
 - Other info

Certification Form Reporting

Curtailment Area	No. of Rights Receiving Notices	No. of Cert Forms Returned	Percent Forms Returned	Percent Forms Returned by Face Value	Percent Forms Returned & Diversion Curtailed by Face Value
Sacramento R. Watershed	5,438	1,695	31	78	8
San Joaquin R. Watershed	3,158	755	24	47	7
Russian River above Dry Cr.	659	343	52	18	7
Scott River	212	53	25	NA	NA
Total	9,437	2,846	30	65*	7*

* Does not include Scott River

Health and Safety Claim Forms

as of June 30, 2014

Watershed	Public Water System	Domestic Claims	Energy Claims	Fire Protection Claims	Air Quality Claims	Other Claims	Total
Sacramento	14	74	1	13	0	10	112
San Joaquin	7	7	0	3	0	2	19
Russian R. abv Dry Cr.	4	5	0	3	0	4	16
Scott River	0	0	0	0	0	0	0
Total	25	86	1	19	0	16	147

Public Water Systems Reporting Need for Health & Safety Exception

Water-shed	Public System	App ID	Face Value (AF)	No. of People	Needs	Days of Water
Sac R.	Siskiyou Co. FCD*	A023016	141	900	D	4
	Hidden Valley Lake CSD**	A030049A	651	6,000	D	2
	Hidden Valley Lake CSD**	A030049B	1,649	---	D	2
	Gold Lake Lodge	A006057	5	100	D	1
	USDA FS – L. Tahoe Basin	A005981	4	164	D	0
	Elwell Lakes Lodge	A004281	5	60	D	1
SJR	City of Stockton	A004062	12	80	D, Fire	1.5
Russian R.	Russian River Co. WD	A029901	302	3,400	D, Fire	3
	Rains Creek WD	A024912	35	230	D, Fire	5
Scott R.	---	---	---	---	---	---
Total			2,804	10,634		

- * For campground use with 300 sites; assuming 3 people per site, 3 x 300 = 900 people
- ** Hidden Valley population is 6000 total.

Curtailment Projections

➤ Delta Watershed

- “Pending”: Between June 15 and July 1 -- junior pre-1914 rights
- “Projected”: Between July 1 and July 15 -- senior pre-1914, and riparians

➤ Russian River

- “Pending”: none
- “Projected”: By June 15, no water available under riparian rights upstream of Dry Cr.

Current Curtailment Process

- Curtailment notices, not enforceable orders
- Further investigations and case specific findings may be required for issuance of a cease and desist order (CDO) or administrative civil liability (ACL)
- Penalties: \$1,000/day and \$2,500/acre-foot
- Diverters may request hearing and challenge determination of unavailability
- Requires significant time and staffing resources

Current Curtailment Process

- If too costly or no alternative water supplies, curtailed diverters are likely to continue to divert due to:
 - Existing low penalties
 - Lengthy process to impose penalties
 - Potential benefits of noncompliance
- Limited enforcement abilities reduce likelihood of diverters reporting their use
 - Non-reporting will increase enforcement difficulties

Proposed Emergency Regulation

- Allows Deputy Director of Water Rights or designee to issue curtailment orders in order of water right priority when water not available under a user's priority of right
- Do not apply to non-consumptive uses
- Provides for reconsideration of curtailment orders
- Allows for alternative water sharing agreements
- Requires reporting on water use and compliance

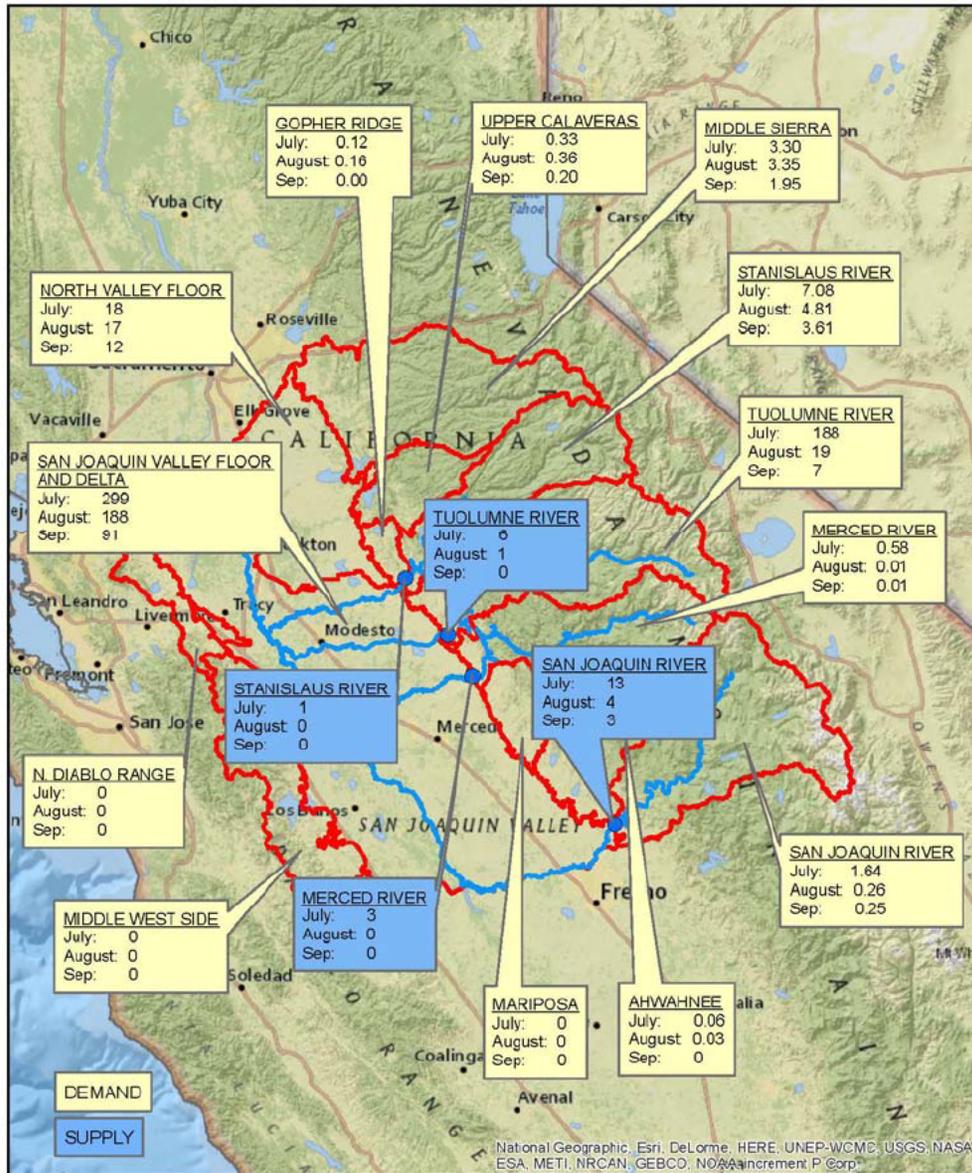
Proposed Emergency Regulation

- Streamlined and increased enforcement
 - 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
- Enforceability and penalties provide greater assurance that curtailed water rights holders will cease diverting water and that water rights holders will report information regarding their water use to assist the Board to refine curtailments and enforcement

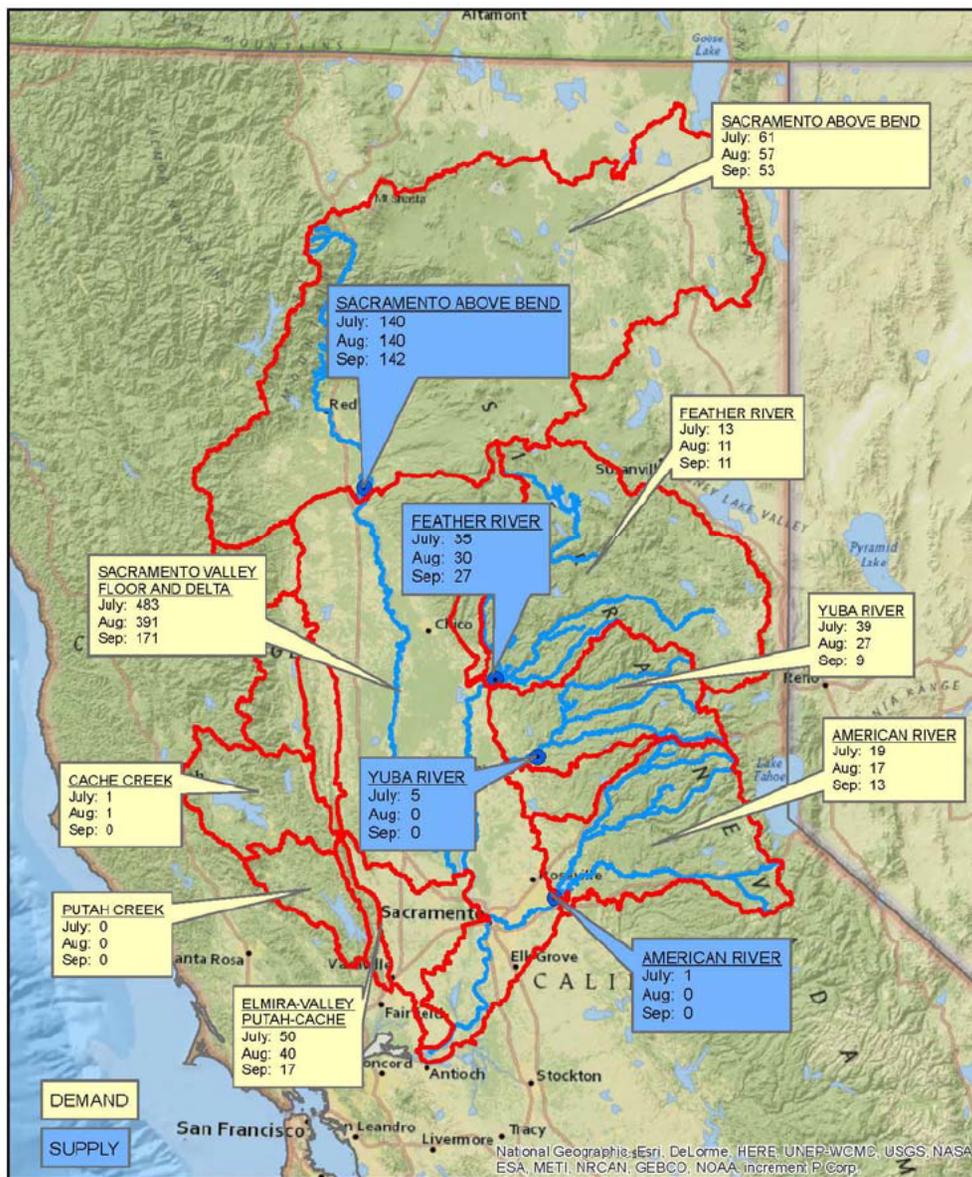
Delta Demand

	Delta Island Consumptive Use (DICU) Model	Dayflow	1977 Drought	2010 Statements
	Monthly demand in thousand acre-feet			
May	89	116	117	137
June	169	223	175	213
July	253	268	185	229
August	164	233	148	170
September	86	157	90	90

**2010 REPORTED SENIOR DEMAND
AND 90% FULL NATURAL FLOW (FNF) FORECAST
SAN JOAQUIN BASIN**
(UNITS IN THOUSAND ACRE-FEET)



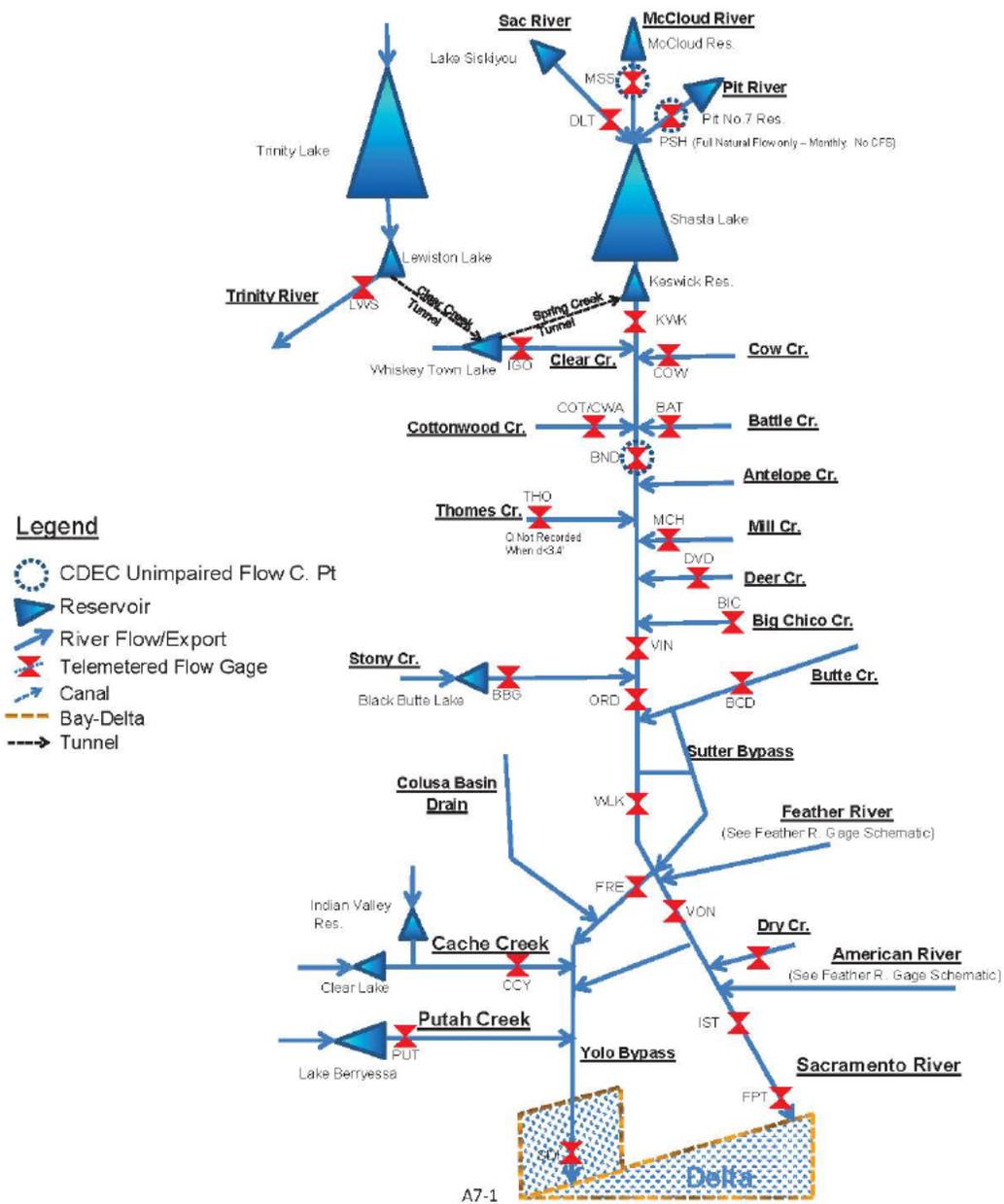
2010 REPORTED SENIOR DEMAND AND 90% FULL NATURAL FLOW (FNF) FORECAST SACRAMENTO BASIN (UNITS IN THOUSAND ACRE-FEET)



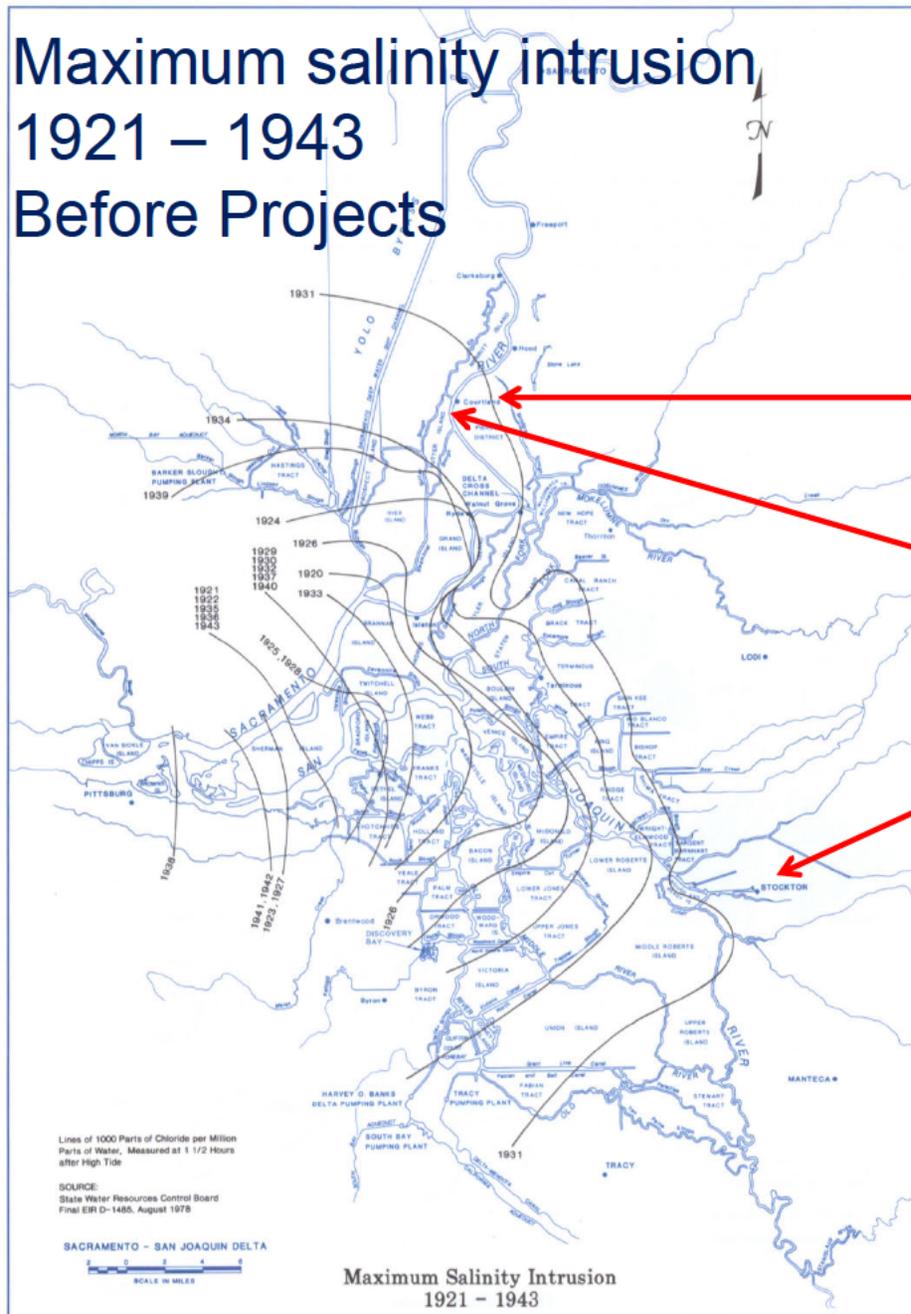
Sacramento and San Joaquin Supply and Demand

	July	August	September
	(thousand acre-feet)		
<u>Supply</u>			
Sacramento	181	170	169
San Joaquin	23	5	3
Total	204	175	172
<u>Demand</u>			
Sacramento	670	553	276
San Joaquin and Delta	518	232	116
Total	1,189	785	392

Appendix 7: Sacramento River Watershed Hydrology Schematic



Maximum salinity intrusion 1921 – 1943 Before Projects



1,000 ppm chlorides isohaline
(equal to about 3.8 mmhos/cm EC)

In 1931, a critical dry year, 1,000 ppm isohaline reached...

upstream of Courtland on the Sacramento River, and

upstream of Stockton on the San Joaquin River

(from State Water Board
Final EIR for D-1485 as
reprinted in DWR Delta
Atlas)

Minimum Health and Safety Needs

- Existing emergency curtailment regulations for Deer, Mill and Antelope Creeks include exceptions for minimum health and safety needs (WC section 878.1)
- Minimum health and safety exceptions are not currently proposed to apply to the proposed emergency regulation
- Requesting comments on whether the health and safety exceptions should apply

Health and Safety Needs, cont.

- Section 878.1 creates process for continued diversion, when no reasonable alternate supply is available for:
 - domestic and municipal supplies
 - Supplies for energy critical to basic grid
 - Fire protection
 - Air quality
 - Public health or safety threats
 - Other critical health and safety needs subject to Deputy Director approval

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 – Curtailment Certification Form

- Cost to public water agencies associated with new certification form:
 - 2,446 public agency diversions
 - \$318,000 statewide (at \$130 per form)
- Curtailments and related costs not affected
- No effect on State or local government or federal funding of State programs

Fiscal Impacts – Section 878.1 Exemption from Curtailment

- Additional curtailments required to satisfy potential demand associated with exemption
 - Drinking water supplies with no storage or groundwater access
 - 50 gallons per person per day for 2.6 million people for 270 days = 110,000 acre-feet
- Additional curtailments affect:
 - Agricultural / municipal uses and private / public diversions
 - Agricultural revenue losses at \$1,068 per acre-foot (for estimating tax revenue impacts only)

Fiscal Impacts – Section 878.1 Exemption from Curtailment

- Public agricultural & municipal water agencies
 - Reduced water sales and replacement costs for curtailed agencies
 - Decrease in revenue losses for exempted agencies with 878.1 exemption
- State and local government tax revenue
 - Net change in tax revenue from public agency water sales
 - Decreased tax revenue from reduced agricultural production

Fiscal Impacts – Section 878.1 Exemption Curtailments

Item	Curtailed Agencies	Exempted Agencies	Net Effect
<u>Public Water Agency Impacts</u>	(\$ millions)		
Water Sales Revenue	-7.9	93.5	85.6
Replacement and Other Costs	-6.8	-	-6.8
Subtotal	-14.7	93.5	78.8
<u>State and Local Government Tax Revenue Impacts</u>			
Water Sales Tax Revenue	-0.8	9.4	8.6
Ag Production Tax Revenue	-3.6	-	-3.6
Subtotal	-4.4	9.4	5.0
Total	-19.1	102.9	83.8

Comparison of Curtailments with and without Regulations

	Current Process- Notices	With Emergency Regulations
Effect	<ul style="list-style-type: none"> • Curtailment Notice cannot compel compliance without subsequent actions 	<ul style="list-style-type: none"> • Curtailment Order to achieve compliance is in effect immediately
Opportunity for Input/ Challenge	<ul style="list-style-type: none"> • Evidentiary hearing on CDO/ACL • Petition for reconsideration of order issued after ACL/CDO hearing • Review by court 	<ul style="list-style-type: none"> • Petition for reconsideration of curtailment order • Evidentiary hearing on CDO/ACL • Petition for reconsideration of order issued after ACL/CDO hearing • Review by court
Enforcement	<ul style="list-style-type: none"> • Individual investigations and enforcement • Not enforceable until after hearing and final order, if requested • No enforceable reporting 	<ul style="list-style-type: none"> • Orders enforceable immediately • Enforceable reporting • Infraction – enforced in court
Potential Penalties	<ul style="list-style-type: none"> • ACL for unauthorized diversion/use - up to \$1,000/day plus \$2,500/af • ACL for violation of CDO – up to \$10,000/day 	<ul style="list-style-type: none"> • Same ACL Authority as w/o reg • Up to \$500/day for violation of reg – alternative to ACL for unauthorized diversion/use • Infraction - additional up to \$500/day for violation of reg (not admin penalty)

Next Steps

- If Board adopts resolution:
 - 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 July 13
 - Reg would be in effect for 270 days

Comments

- Comment deadline extended until Jun 30, 2014 at noon
- ~50 Comment letters received

Commenters

Commenter	Commenter
California Building Industry Assoc.	Banta-Carbona ID, Patterson ID, The West Side ID, and West Stanislaus ID
California Cattlemen's Association	Hidden Valley Lake CSD
California Farm Bureau Federation plus 10 associations	Law Office of Patrick J. Maloney
Central Delta Water Agency	City of Ukiah
Central Delta Water Agency, incl RC Farms Inc.	Mendocino County Farm Bureau
City and County of SF and SF Public Utilities Comm.	Anderson Cottonwood ID and 12 add'l IDs/WDs
City of Portola	San Joaquin River Exchange Contractors Water Authority
South Delta WA, Central Delta WA, Woods IC	Mountain House CSD
Delta Farms RD No. 2030, Zuckerman-Mandeville, Inc., and Heritage Farms Co., etc.	Myers Engineering Inc.
California Building Industry Assoc.	Naglee Burk ID

Commenters, cont.

Commenter	Commenter
Hwy 12 Farms, Inc. and Michael Scriven	Wagner & Bonsignore Consulting Civil Engineers / Ellison, Schneider & Harris, LLP
San Joaquin Tributaries Authority	West Coast Grape Farms
Plumas County Board of Supervisors	Robert Meacher
Northern California Water Association, incl. 18 WDs	Burta Herger
Byron-Bethany Irrigation District	Cal Andre
South Delta Water Agency	David Absher
RDC Farms, Inc., and 11 Delta farms	Doug Murdock
State Water Contractors	Frank Crowe
SWRCB, Office of Enforcement	John and Cathy Maas
Turlock ID	Kenneth & Audrey Trevaskis

Commenters, cont.

Commenter	Commenter
Lance and Mary Bundy	
Margaret, John, Jeff, Jerry and Michel	
Michael Warburton	
Robert Granelli	
David Absher	

Questions?