

# Staff Workshop on Proposed Emergency Regulation for the Sacramento-San Joaquin Delta Watershed

July 27, 2021

1:00 p.m. – 5:00 p.m.



Division of Water Rights, Bay Delta & Hearings Branch

# Welcome to the Staff Workshop on Proposed Emergency Curtailment and Reporting Regulation for the Delta Watershed

## Presenters

### Division of Water Rights

- Diane Riddle
- Conny Mitterhofer
- Riley Nolan
- Lisa Hong
- Jesse Jankowski
- Nicole Williamson
- Robert McCarthy

### Office of Chief Counsel

- Dana Heinrich
- Stephanie Postal
- David Rose

### Facilitator

- Molly Williams
- Amy Blunk



# Workshop Logistics and Housekeeping

- **If you wish to view the workshop only** – view the webcast at: <https://video.calepa.ca.gov> (closed captioning available)
- **If you wish to provide oral comments or ask clarifying questions during the workshop** – join via Zoom or call in
  - If joining via Zoom – submit a virtual speaker card (see link posted in chat)
  - If joining via phone call – press \*9 to raise your hand
  - Staff will invite you to unmute yourself when it is your time to speak
- **If you have questions** – email [Bay-Delta@waterboards.ca.gov](mailto:Bay-Delta@waterboards.ca.gov)
- **If you wish to submit written comments** – email comments to [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov), with a copy to [Bay-Delta@waterboards.ca.gov](mailto:Bay-Delta@waterboards.ca.gov) by **12:00 noon on July 29**



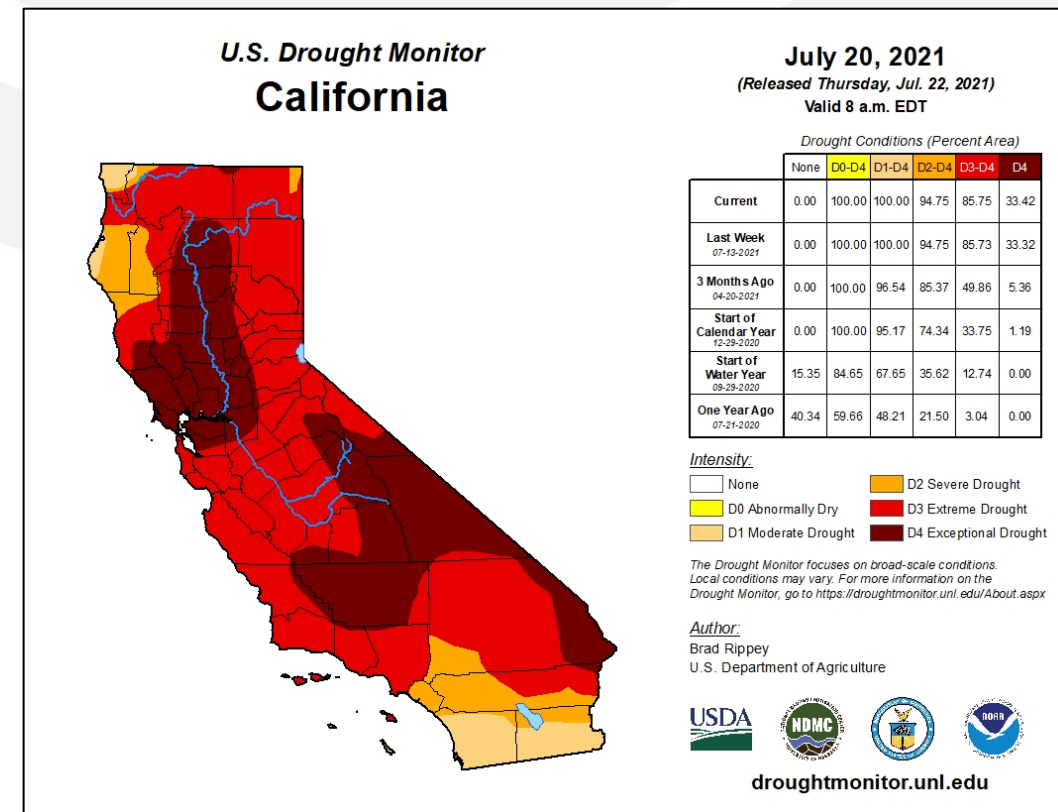
# Agenda

- Introduction and Background
- Activities and Public Outreach To-date
- Updates to Methodology and Visualization Tool
- Summary of Proposed Emergency Regulation
- Next Steps, Schedule, and Resources
- Comments and Questions from Stakeholders

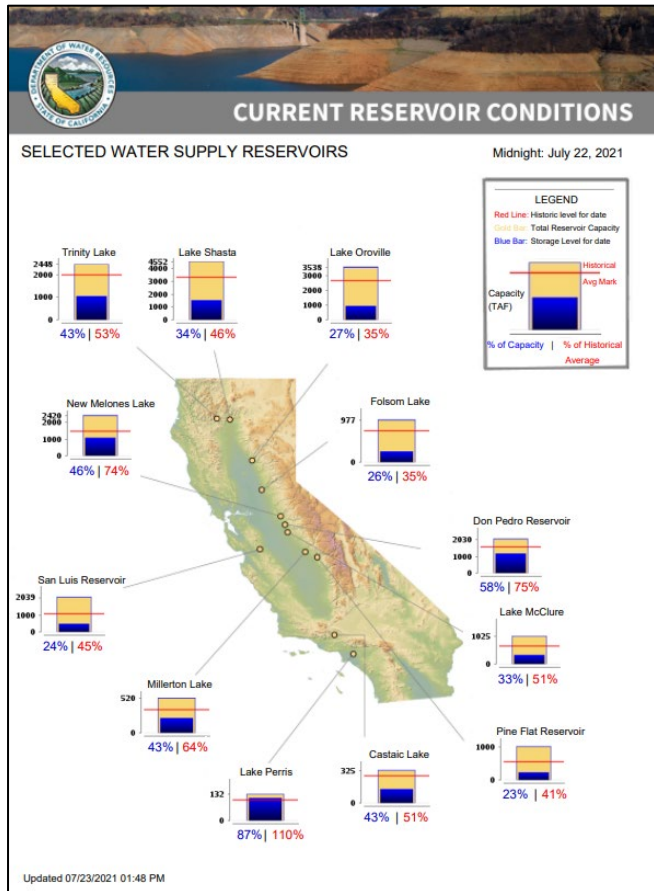
# Introduction and Background

## Hydrologic Conditions and Emergency Proclamation

- Extreme dry hydrologic conditions in the Delta Watershed – water years 2020 and 2021 second driest two-year period on record, behind 1976-1977
- Runoff projections degraded significantly between April and May and depletions continue to be high
- May 10 Drought Emergency Proclamation – directs Board to consider emergency regulations to curtail diversions

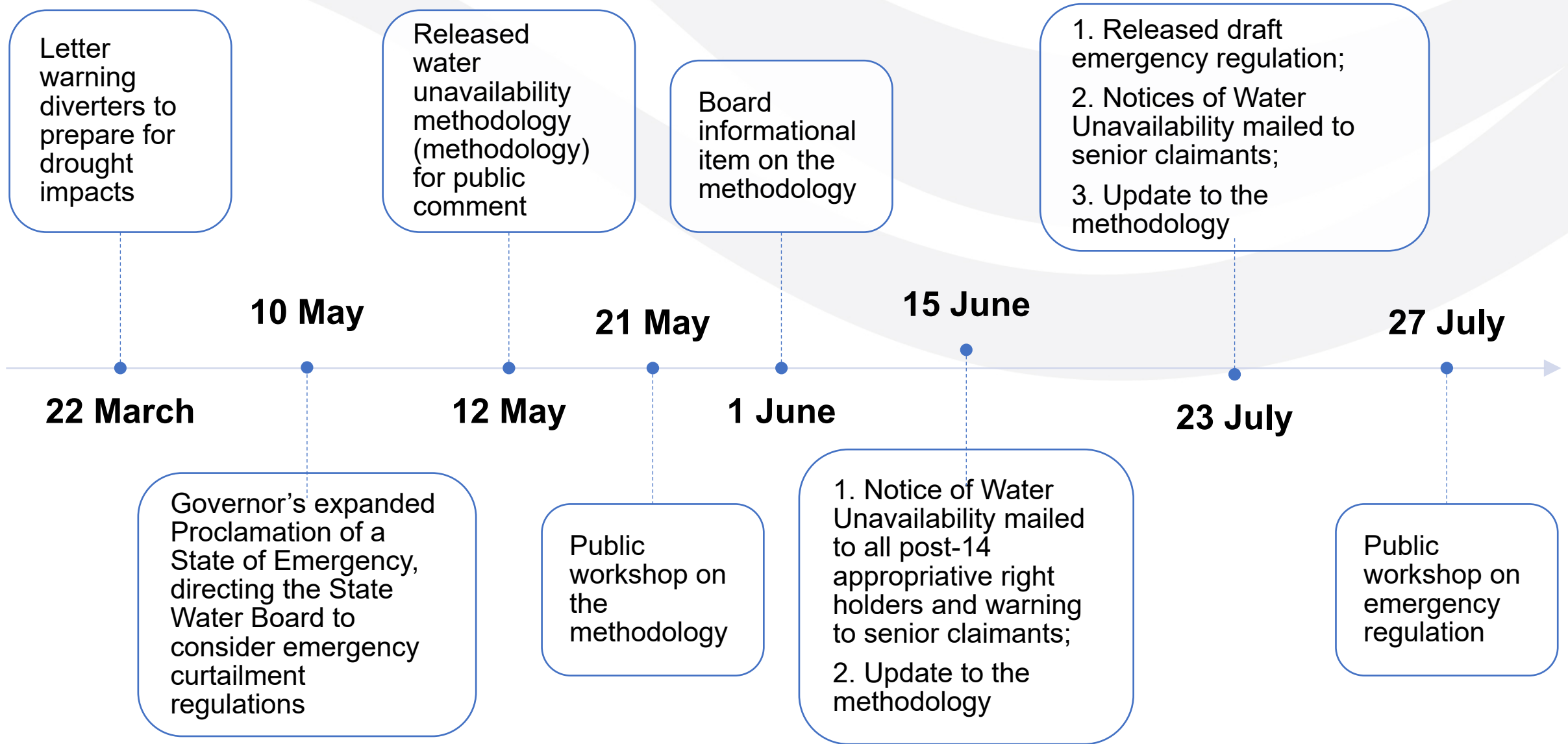


# Need for Water Unavailability Methodology and Emergency Regulation



- Need to act quickly – administer water right priority system in times of shortage and notify users when water is not available at their priority of right
- Protect senior diverters
- Ensure that previously stored water released by Central Valley Project and State Water Project (Projects) is protected
  - Protect water needed for salinity control and other requirements
  - Avoid drawing down critically low Project reservoir storage further, leading to concerns for health and safety water supplies, salinity control in the future, and impacts to the environment



# Actions to Date




# Notices of Water Unavailability

1. Review letter
2. Complete Water Unavailability Certification Form using login info identified in letter ★  
<https://public.waterboards.ca.gov>
3. **Highly Suggested:**  
Subscribe to the Delta Drought email list on the State Water Board's Email Subscription Webpage to receive updates on drought conditions and Board actions.

**EXAMPLE LETTER**



GAVIN NEWSOM  
GOVERNOR



JARED BLUMENFELD  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

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State Water Resources Control Board

June 15, 2021

«MAIL\_RECEIVER\_NAME»  
«MAIL\_RECEIVER\_ADDRESS»  
«CITY», «STATE» «ZIP»

**Login ID (Same as Water Right ID)**  
★ **Login Password**

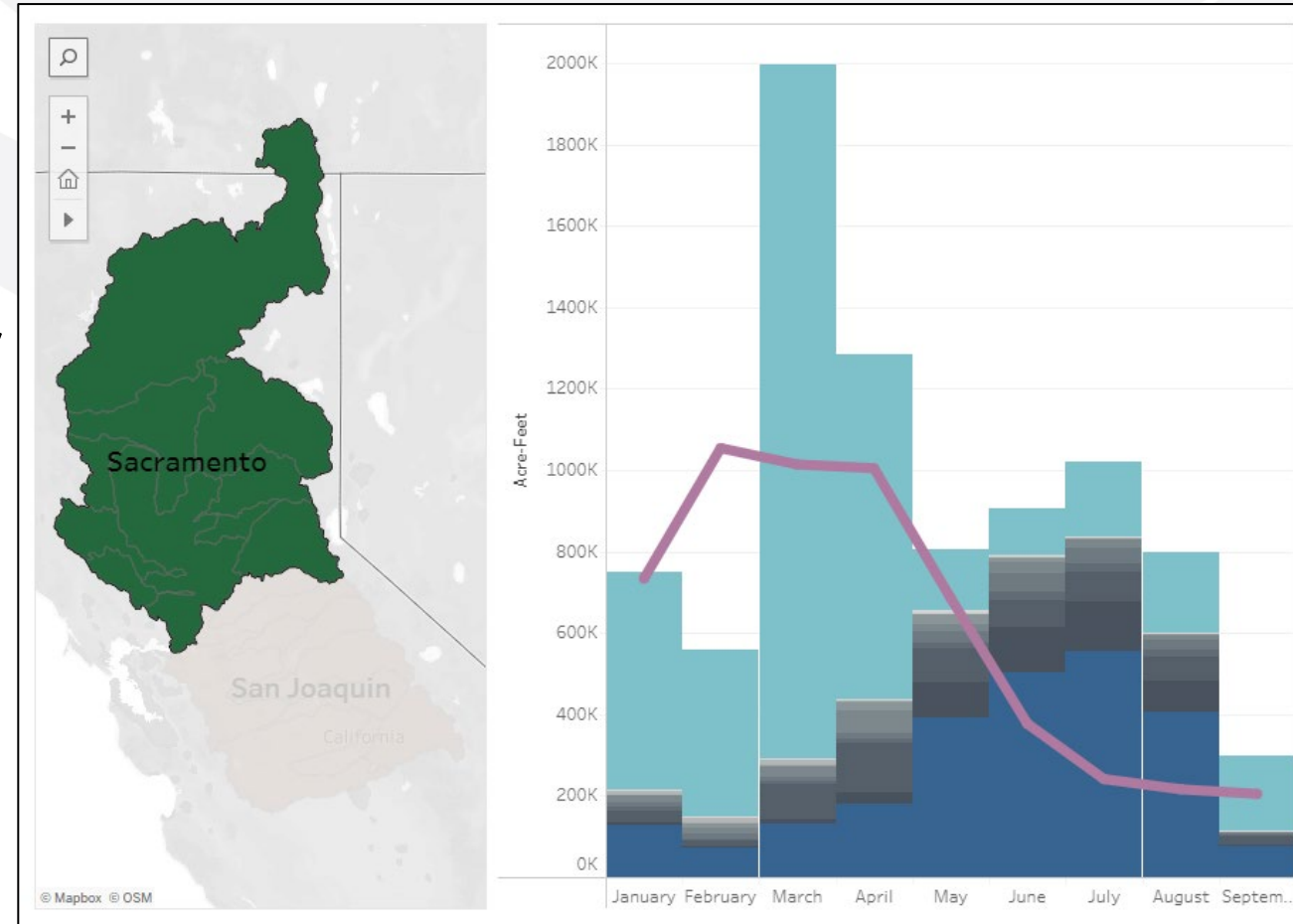
In Regard to Water Right: «WR\_ID»  
Primary Owner: «PRIMARY\_OWNER»

**NOTICE OF WATER UNAVAILABILITY FOR POST-1914 WATER RIGHT HOLDERS  
AND WARNING OF IMPENDING WATER UNAVAILABILITY FOR PRE-1914 AND  
RIPARIAN CLAIMANTS IN THE SACRAMENTO-SAN JOAQUIN DELTA  
WATERSHED<sup>1</sup>**



# Water Unavailability Methodology – Overview

- Compares past and anticipated 2021 supply against 2018 and 2019 quality-controlled demand data
- Used to determine whether natural or abandoned flows are available for diversion by priority date
- Analysis on a sub-watershed and watershed scale
- Presented at May 21 Staff Workshop



# Methodology Updates

## (June 15 Revision)

- Changed how abandoned instream flows contribute to watershed supply (replacement, not addition)
- Excluded Stony Creek abandoned flows
- Excluded “disconnected” headwater sub-watersheds from supply ratio calculations for Legal Delta demand proration
- Reassigned certain demands to better reflect their supply sources (Oroville, Folsom, Friant)
- Refined Putah Creek supply forecasts
- Updated June-Sept supply forecasts with latest info
- Added Appendix C describing comments



# Methodology Updates (July 23 Revision)

- Evaluation of water unavailability for pre-1914 appropriative and riparian claimants
- Water is only available to riparian claims in Legal Delta from their watershed (Sacramento or San Joaquin River)
- Revised criteria for “disconnected” headwater sub-watersheds – when not all riparian demands can be met by local supplies
- Added new visualization tab comparing monthly supply forecasts to daily cumulative supplies
- Refined Bear River supply forecasts
- Updated July-Sept supply forecasts with latest info
- Added section references to Appendix C comments



# Methodology Comments Received – Slide 1 of 5

## Supply & Demand Data

- Disaggregate statement demand into riparian and pre-14 appropriative claims
  - Incorporated in July 23 revision
- Use other means of estimating supply (e.g., hydrodynamic model); compare B-120 & CNRFC forecasts; supply data may not be accurate
  - Methodology uses best data available on natural flow supplies
  - Staff compared past B-120 and CNRFC forecasts - no changes warranted
  - Some subwatershed supplies refined in revisions, CNRFC will be used in early wet season
- Use 2020 demand; reduce demand due to drought
  - Full demand datasets unavailable for all rights/claims in 2020
  - Proposed regulation includes reporting requirements to update demand data for larger users
- Use real-time systems shorter than monthly timestep
  - Daily supply data not available at all locations and are less reliable than monthly data
  - Daily demand data not available, and even if available would require significant quality control
  - Methodology incorporates monitoring of cumulative daily supplies in monthly forecast selection and use of real-time data for sub-monthly curtailment decisions
  - Proposed Board resolution encourages exploring other approaches this winter

# Methodology Comments Received – Slide 2 of 5

## Return Flow

- Do not make Legal Delta return flows available to rights upstream
  - Methodology lacks spatial granularity to exclude specific return flows
  - Return flows are only applied to reduce demands on the valley floor
  - Delta return flows are available to other Legal Delta diverters, avoids underestimating supply
- Add municipal return flows as additional supply
  - Return flow factor used in Methodology includes agricultural and municipal return flows

## Abandoned Flow

- New Melones releases should be considered as abandoned flow at Vernalis
  - Releases to meet Delta outflow and water quality objectives are not considered abandoned
- Include reservoir releases in excess of full natural flow
  - Releases for instream flows are considered abandoned below intended reach
  - Releases of previously stored water for downstream diversion (e.g., contracts) and releases for Delta outflow or water quality objectives are not considered abandoned

# Methodology Comments Received – Slide 3 of 5

## Legal Delta Hydrology

- Consider water residence time, tidal inflows, and quality
  - Tidal inflows not sufficient quality for use
  - One month residence time is a conservative assumption during dry conditions, will revisit as appropriate in wet season
  - Overlapping riparian/pre-1914 claims assumed to have senior priority, with correlative shortages rather than full curtailment (unless zero supply)
- Exceptions for Delta lowland claimants
  - Proposed regulation allows petitions for exception from curtailment for Delta lowlands areas where curtailments would not result in water savings
- Change supply availability for Delta riparian demands (Order 89-8)
  - Incorporated in July 23 revision - riparian demands only have access to supply within the watershed where they are located

# Methodology Comments Received - Slide 4 of 5

## Projects & Contractors

- Clarify settlement contractor demands met by natural flow or storage
  - Methodology assumes most settlement-type contractors will take water under underlying right first, rely on contract if not available
  - Methodology does not address diversions of previously stored water
  - Exchange Contractors' demands assumed to be met by previously stored water, unless there is a call on Friant in the future
- Don't treat Projects as most junior; Contractor demands double-counted
  - Recognizes area of origin protection, excepting New Melones
  - All inbasin uses assumed to be met by stored water this summer, will revisit as appropriate in wet season
  - Designating Projects as most junior avoids double-counting senior demands and is a conservative assumption for all other users

## Other

- Account for water transfers; consider impacts on water transfers
  - Methodology addresses natural flows, transfers occur within priority system
  - Methodology doesn't address diversion or transfer of previously stored water

# Methodology Comments Received Slide - 5 of 5

## Other (cont.)

- Do not include rediversions of rim dam releases
  - Methodology only includes demands for natural/abandoned flow, not previously stored water
- Account for channel accretions/depletions
  - Accretions and depletions due to surface water diversions are included in return flows
  - Depletions to vegetation or groundwater interaction not included as conservative assumption
- Inadequate justification to curtail within the San Joaquin watershed; do not include Stanislaus River water as available downstream
  - San Joaquin watershed is part of interconnected Delta watershed, hydrology impacts all water right holders according to priority system
  - Proposed regulation encourages voluntary agreements which achieve same objectives
- Consider water users with no alternative water sources; use online alerts to lift curtailments; support voluntary agreements
  - Proposed regulation allows health/safety exceptions and alternative curtailment proposals
- Requests for additional clarifications in Methodology Report
  - Incorporated in July 23 revision, Appendix C directs to specific sections



# Evidence of Emergency

- On May 10, 2021, Governor Gavin Newsom issued a drought emergency proclamation for 41 counties, including those within the Sacramento-San Joaquin Delta (Delta) watershed
- Together, water years 2020 and 2021 are the second driest two-year period on record, behind 1976-1977
- ~800 thousand acre-foot deficit in expected runoff this spring

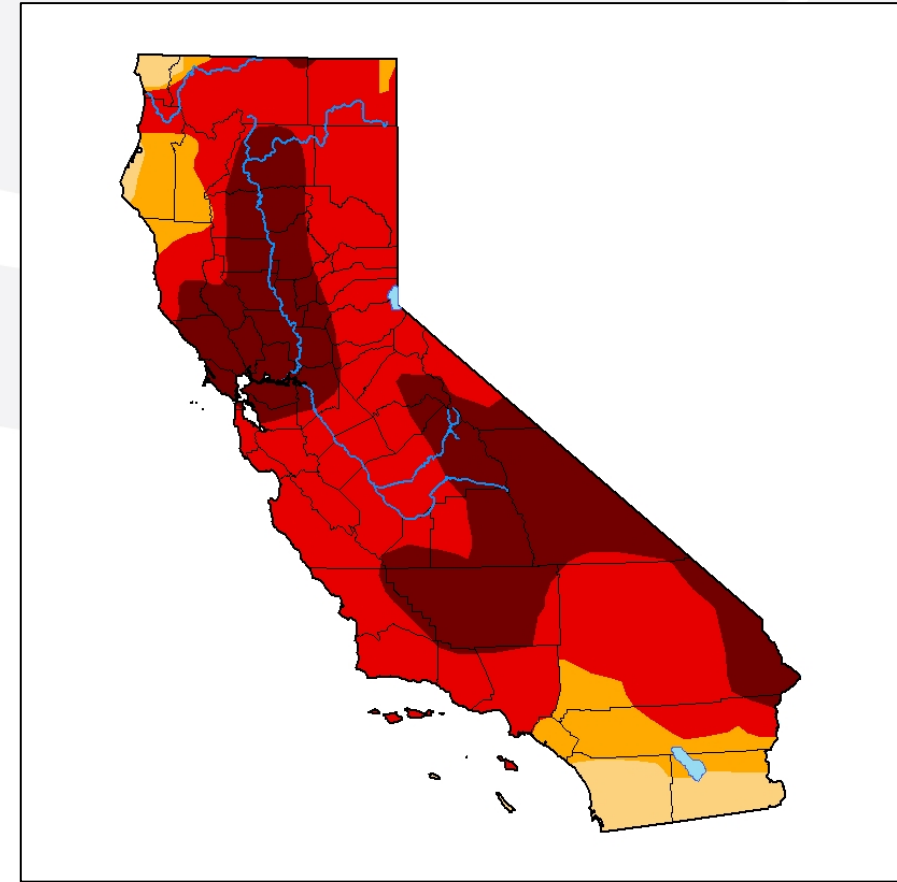


Image: U.S. Drought Monitor

# Proposed Emergency Regulation – Slide 1 of 3

- **May 10, 2021 Drought Declaration**

- Directs State Water Board to consider emergency regulations to curtail water diversions when water is not available at water right holders' priority of right or to protect releases of stored water in the Delta watershed

- **Proposed Emergency Regulation**

- Curtailments of Diversions due to Lack of Water Availability in the Delta Watershed and
- Enhanced Water Use and Other Reporting

# Proposed Emergency Regulation – Slide 2 of 3

## Section 876.1: Emergency Curtailments due to Lack of Water Availability in the Delta Watershed

- Initial orders identifying curtailment process and reporting requirements will be sent to each water right holder, claimant, or agent of record
- Curtailments may be ordered when flows are insufficient to support all diversions
- Updated information regarding water diversion curtailment and reporting orders will be provided on the State Water Board's drought webpage and through the Delta Drought email distribution list

Website: [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/drought/delta/](https://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/delta/)

Email Subscription List:

[https://www.waterboards.ca.gov/resources/email\\_subscriptions/swrcb\\_subscribe.html](https://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.html)

# Proposed Emergency Regulation – Slide 3 of 3

## Section 876.1: Emergency Curtailments due to Lack of Water Availability in the Delta Watershed Cont'd

- Curtailment decisions will rely upon the Water Unavailability Methodology and other pertinent, reliable, and publicly available information, including information regarding short term precipitation and runoff events
- Curtailments may be temporarily suspended for diverters when flows increase or are expected to increase
- Information may be submitted to the Deputy Director to support a proposed correction to a water right priority date for which the order was received

# Proposed Emergency Regulation Exceptions – Slide 1 of 2

## Section 878: Non-Consumptive Uses

- Diversions may not be required to curtail in response to a curtailment order if the diversion and use of water does not decrease downstream flows
  - Direct diversions for hydropower
  - Direct diversions dedicated to instream uses for the benefit of fish and wildlife
  - Other direct diversions solely for non-consumptive uses
  - Direct diversions located within the Legal Delta used exclusively to irrigate lands entirely below sea level where there is no net increase in water use

# Proposed Emergency Regulation Exceptions – Slide 2 of 2

## Section 878.1: Minimum Human Health and Safety Needs

- Diversions for minimum human health and safety needs not greater than 55 gallons per person per day may continue after issuance of a curtailment order
- If more than 55 gallons per person per day is needed, the diverter must submit petition to the Deputy Director

# Proposed Emergency Regulation Exceptions

## Section 878.2: Alternative Water Sharing Agreements

- Water users may propose alternatives to water diversion curtailments that achieve the purposes of the curtailment process
- Proposals must demonstrate that implementing the alternative water sharing agreement will not injure other legal users of water or result in an unreasonable impact on fish and wildlife
- Deputy Director may approve a proposal subject to conditions, including record keeping and reporting requirements

# Proposed Emergency Regulation

## Section 879(d): Reporting

- All water right holders and claimants issued an initial order are required to submit a certification that they will comply with section 876.1
- Water right holders and claimants with an authorized face value or annual reported diversion amount of 1 thousand acre-feet (TAF) or greater may be required to provide monthly reporting information regarding actual diversion volumes and demand projections
- Deputy Director may issue orders requiring additional information related to a diversion or use of water



# Proposed Emergency Regulation Compliance and Enforcement

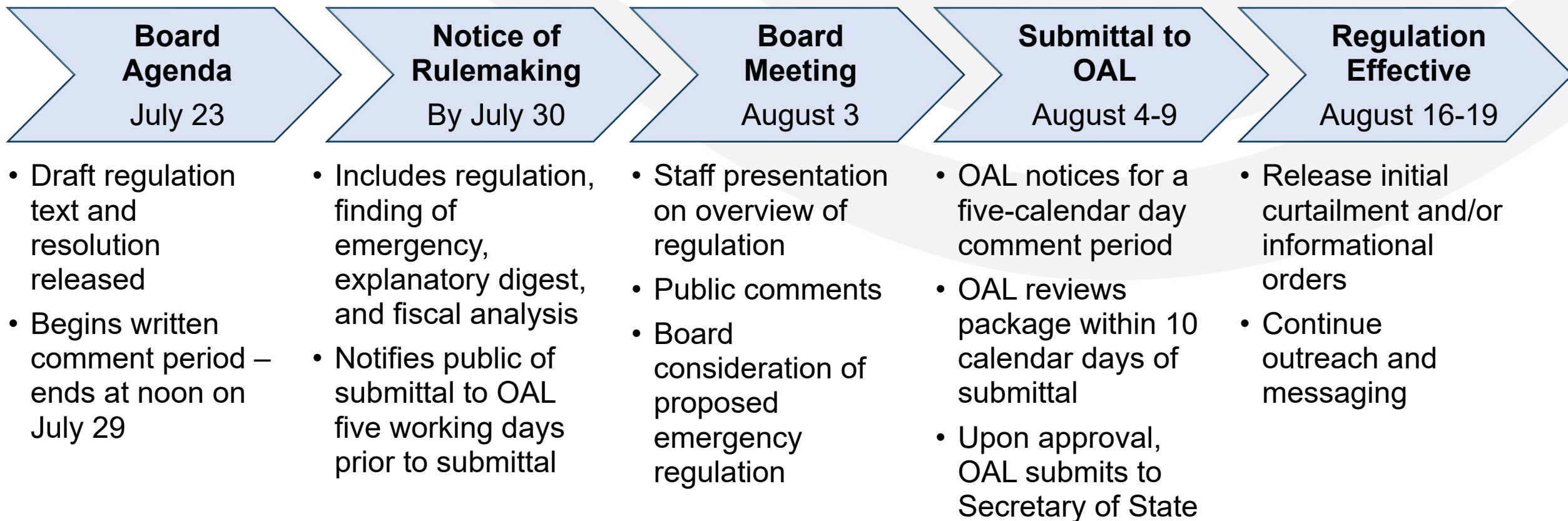
## **Section 879.1: Conditions of Permits, Licenses, and Registrations**

- Compliance is a condition of water right permits, licenses, certificates, and registrations

## **Section 879.2: Compliance and Enforcement**

- Identifies authorities under which the State Water Board may pursue enforcement for violations

# Overview of Regulatory Process and Schedule



OAL – Office of Administrative Law

# Summary of Next Steps

- **Comment Period Ends: 12:00 Noon on July 29**
  - Email written comments to [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov), with a copy to [Bay-Delta@waterboards.ca.gov](mailto:Bay-Delta@waterboards.ca.gov)
  - Indicate Item #5 and title in your email
- **Board Meeting on August 3 – Agenda Item #5**
  - [https://www.waterboards.ca.gov/board\\_info/calendar/#08-2021](https://www.waterboards.ca.gov/board_info/calendar/#08-2021)
- **Earliest Effective Date of Regulation: August 16 – 19**
- **Curtailment/Informational Orders Could Follow: August 17 – 31**



## Public Comments & Clarifying Questions

- If joining via Zoom – submit a virtual speaker card (see link posted in chat)
- If joining via phone call – press \*9 to raise your hand
- Staff will invite you to unmute yourself when it is your time to speak



## Additional Questions

Email questions to: [Bay-Delta@waterboards.ca.gov](mailto:Bay-Delta@waterboards.ca.gov)

# Resources – Contact the State Water Board

**Email:** [Bay-Delta@waterboards.ca.gov](mailto:Bay-Delta@waterboards.ca.gov)

## **Delta Drought Phone Line:**

Call (916) 319-0960 and leave a message and staff will return your call as soon as possible

## **Webpages:**

**Delta Watershed Drought Webpage:**

<https://www.waterboards.ca.gov/drought/delta/>

**Water Unavailability Methodology Webpage:**

[https://www.waterboards.ca.gov/drought/drought\\_tools\\_methods/delta\\_method.html](https://www.waterboards.ca.gov/drought/drought_tools_methods/delta_method.html)

**Delta Drought Email Subscription List:**

[https://www.waterboards.ca.gov/resources/email\\_subscriptions/](https://www.waterboards.ca.gov/resources/email_subscriptions/)

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Subscribe to the Delta Drought email list to receive notifications and the latest updates.

Email Address: *(required)*

Your Full Name: *(required)*

*(e.g. John Smith)*

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Check your email account for a confirmation email to complete your subscription.