

# 2014 Emergency Drought Legislation

## Drought Response Authority

AB 80 / SB 104

The emergency drought legislation includes proposed amendments to the Water Code designed to enhance the State Water Resources Control Board's (SWRCB) ability to respond to drought. A key aspect of drought response is ensuring the existing water rights laws are followed. To facilitate compliance, the legislation includes streamlined authority to enforce water rights laws and heightened penalty amounts for illegally diverting water during drought conditions.

In addition, the drought response requires the ability to effectively establish and enforce emergency drought regulations. The legislation builds on existing authority of the SWRCB to adopt emergency drought regulations to promote conservation and prevent waste and unreasonable use of water during times of drought.

Key elements include:

- **Consistent Drought Definition for New Drought-Related Authorities/Penalties.** Under existing law, the SWRCB has authority to develop emergency drought regulations in a critically dry year following two dry years. Because of how narrowly the existing statute was crafted, this authority is not available to the SWRCB during this year, even though reservoir and drought conditions are the worst on record. The new authorities provided by the legislation would be more flexible and allow the State Water Board to invoke them in a critically dry year that follows two below normal, dry, or critically dry years, or if the Governor declares a drought emergency. The same drought definition is used in the streamlined water right enforcement and enhanced water right drought penalties contained elsewhere in the legislation.
- **Enhanced Drought Response Authority.** The legislation expands current emergency drought rulemaking authority for the SWRCB. Currently, the Board can adopt emergency regulations to prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion or to promote conservation or water recycling. The legislation includes explicit authority for the State Water Board to issue emergency regulations requiring curtailment of water diversions when water is unavailable to satisfy a diverter's priority of water right and requiring reporting to the State Water Board.

Any curtailment regulations would follow established California water right laws concerning priority. Those laws generally mean that senior water rights must be satisfied before junior water rights can divert anything. The legislation also allows the Board to enforce its emergency drought regulations through cease and desist orders or civil penalties, and also authorizes local enforcement of the regulations as an infraction, subject to a fine of up to \$500 per day of violation.

- **Streamlined Authority to Enforce Water Right Violations in Times of Drought.** The legislation includes streamlined authority, comparable to California’s water quality laws, to assess civil penalties during times of drought. Currently, many violations of water rights laws require that the SWRCB first issue a cease and desist order following an administrative hearing, and then if a person violates the cease and desist order, the Board has to (1) conduct a separate administrative hearing to assess an administrative civil liability or (2) refer the matter to the Attorney General for prosecution in court. During times of drought, the legislation would authorize the Board to directly enforce violations of water rights permits, licenses, certificates, registrations, regulations, and orders by pursuing civil penalties of up to \$500 per violation.
- **Higher Penalties in Times of Drought.** The legislation establishes higher penalties for certain water rights violations in times of drought. Penalties for illegally diverting water during a drought would rise from the current amount of up to \$500 per day. During a drought, the amounts would be up to \$1,000 per day and up to \$2,500 per acre-foot of water illegally diverted or used. Separately, if the Board has issued a cease and desist order to a person and the person violates the cease and desist order, the person may be subject to penalties of up to \$1,000 per day. During a drought, the authorized penalty amount for violation a cease and desist order would rise up to \$10,000 per day.