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H.R. 5781: Legislation to Maximize Water Supplies to Address Drought in California

California is experiencing serious water shortages due to widespread drought. (See **Figure 1**.) The state is served by two large water infrastructure projects that store water for future use—the federal Central Valley Project (CVP) and the State Water Project (SWP). Both projects have had to reduce water deliveries in 2014 to the farmers and communities they serve. Many water users have received no water from the CVP and SWP this year and are supplementing surface water supplies with groundwater, leading to concerns that local aquifers are being depleted. The dry hydrological conditions, in combination with regulatory restrictions on water being pumped from the Sacramento and San Joaquin Rivers Delta confluence with the San Francisco Bay (Bay-Delta) to protect water quality and fish and wildlife, have resulted in water supply cutbacks for CVP and SWP water users throughout their respective service areas and historic cutbacks to senior water rights in some areas. The effects are widespread and are being felt by many economic sectors, including agriculture, urban areas, and fish and wildlife resources. Water supply reductions and disagreements over the causes and need for them are at the heart of legislation in the 113th Congress aimed at maximizing CVP and SWP operations.

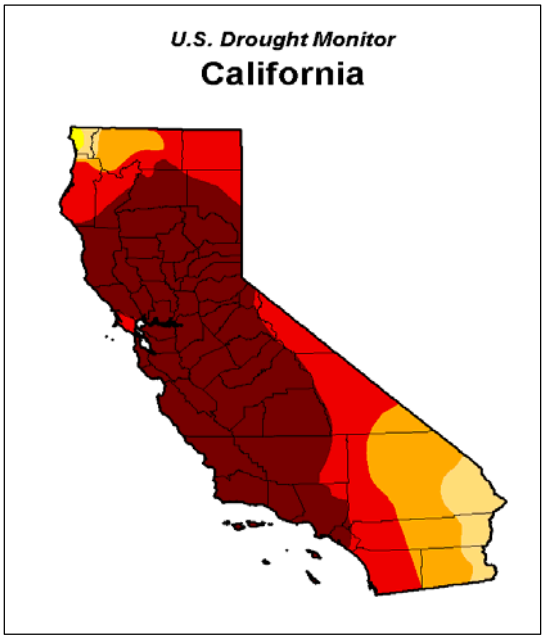
Challenges for Congress

Faced with the prospect of another dry winter and water shortages in 2015, the short-term issue for Congress is how to respond to demands for increased water deliveries, while avoiding harm to the environment, including several fish species, and economies that depend directly on environmental resources (e.g., recreation, commercial and sport fishing). Other issues include how to address water supply in general and how to finance any improvement or increase in water supply storage given current fiscal constraints and earmark moratoria. A longer-term issue for Congress is how to improve federal water delivery reliability and stabilize the aquatic ecosystems upon which water and power users and diverse economies depend, while also protecting and improving habitat for federally listed species.

Legislative Initiatives

Several bills have been introduced in the 113th Congress to address California water supply and drought in particular. This report focuses on the most recent bill, H.R. 5781, which was introduced on December 2, 2014. It includes a brief summary of key provisions of H.R. 5781, and a discussion of how it compares to two other bills aimed at addressing different aspects of drought in California (H.R. 3964, which passed the House on February 5, 2014; and S. 2198, which passed the Senate on May 22, 2014.) Some of this analysis draws from a CRS report comparing the two earlier bills, CRS Report R43649, *Federal Response to Drought in California: An Analysis of S. 2198 and H.R. 3964*.

Figure 1. Drought in California, as of December 2, 2014



December 2, 2014
(Released Thursday, Dec. 4, 2014)
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Drought Conditions (Percent Area)

	None	D0-D4	D1-D4	D2-D4	D3-D4	D4
Current	0.00	100.00	99.72	94.42	79.69	55.08
Last Week 11/25/2014	0.00	100.00	99.72	94.42	79.69	55.08
3 Months Ago 9/2/2014	0.00	100.00	100.00	95.42	81.92	58.41
Start of Calendar Year 12/31/2013	2.61	97.39	94.25	87.53	27.59	0.00
Start of Water Year 9/30/2014	0.00	100.00	100.00	95.04	81.92	58.41
One Year Ago 12/3/2013	2.61	97.39	94.15	82.53	27.59	0.00

Intensity:
- D0 Abnormally Dry
- D1 Moderate Drought
- D2 Severe Drought
- D3 Extreme Drought
- D4 Exceptional Drought

The Drought Monitor focuses on broad-scale conditions. Local conditions may vary. See accompanying text summary for forecast statements.

Source: U.S. Drought Monitor, http://droughtmonitor.unl.edu/Home/StateDroughtMonitor.aspx?CA

H.R. 5781 contains three titles that aim to increase water supplies for users through approving modifications in water conveyance operations and certain water projects. Under

the bill, these actions are to be consistent with existing laws and regulations. H.R. 5781 also would aim to protect water rights and existing water allocations for users under certain circumstances, and would aim to prohibit any "redirected adverse water supply or fiscal impacts." A summary of the titles in H.R. 5781 and a comparison to H.R. 3964 and S. 2198, is provided below.

Overview of H.R. 5781

Title I. California Emergency Drought Relief. This title would direct the Secretaries of the Interior and Commerce to direct the operations of the CVP, and allow the SWP, to provide the "maximum quantity of water supplies possible" to water users by approving, consistent with applicable laws and regulations, certain types of projects and operational changes. The title would also authorize several specific measures intended to increase water supplies and streamline regulatory processes to facilitate their implementation. This portion of the bill reflects similar aims of S. 2198, with some key differences concerning the types of projects and operations that could be implemented. These provisions raise the issue of how agencies will maximize water supplies while staying consistent with existing laws and regulations, and how these actions will affect environmental conditions, including water quality and species survival. Several provisions within the title aim to reduce or monitor the environmental effects of these activities; however, a new definition of negative effects on a species' long-term health may affect implementation of actions compared to existing conditions.

Section 103 of H.R. 5781 would authorize a new "temporary operational flexibility" for pumping water out of the Delta for a "cumulative" period of 28 days during certain high-flow conditions on the Sacramento River. This could potentially result in increased pumping and additional water supplies for some CVP and SWP contractors compared to existing conditions. This section could generate concern about the potential environmental effects of pumping additional water out of the Bay-Delta ecosystem and its effects on in-Delta or upstream water users. The concern appears to be addressed, in part, by H.R. 5781, which directs the Secretaries to comply with ESA, monitor incidental-take levels of listed species, comply with state regulations, and adhere to state water rights. This proposed 28-day period of pumping is not included in S. 2198 or H.R. 3964.

Title II. Protection of Third Party Water Rights. Title II aims to protect California water rights priorities under state law. It does so by directing the Secretary of the Interior to "adhere to California's water rights laws governing water rights priorities and to honor water rights senior to those held by the United States for operation of the CVP, regardless of the source of priority." It also goes on to list several specific California water code sections, including two that were not previously listed in H.R. 3964. H.R. 5781 also addresses the rights related to specific diversions for senior water right holders in the Sacramento Valley and specific protections for Friant Unit water users. Some of the language appears to address ongoing legal disputes regarding the priority of water made available from the CVP under Sacramento Settlement contracts and supplies under water service contracts for the same contractors diverting water from the Sacramento River, and is more detailed than similar provisions in H.R. 3964. In contrast, S. 2198 states: "Nothing in this Act preempts any State law in effect on the date of enactment of this Act, including area of origin and other water rights protections." The specificity in H.R. 5781 may raise questions as to what is not included in the water rights protection language.

Title III. Miscellaneous Provisions. This title states that nothing in the bill would preempt or modify the United States' authority to operate the CVP in accordance with state law and established water rights. Further, this title states that the act will expire on either September 30, 2016, or on the date that the governor of California suspends the state of drought emergency declaration, whichever is later.

Questions Emerge

H.R. 5781 raises several potential questions and issues that are unique to the bill, and in some cases are similar to issues raised by S. 2198 and H.R. 3964. For example:

- How will the Secretary of the Interior implement the provisions in the bill to result in increased water supplies for users while remaining consistent with existing laws and regulations?
- What are the short- and long-term environmental effects of the bill, given the uncertainty of how long the state will be under a drought emergency declaration?
- What are the short- and long-term effects on water users, assuming no redirected adverse impacts or changes to state water law?
- How will the potential projects and operational changes, as well as mitigation expenses, be funded under this bill?
- What are the precedent-setting provisions in the bill for managing resources while complying with environmental laws?

Betsy A. Cody, bcody@crs.loc.gov, 7-7229
Pervaze A. Sheikh, psheikh@crs.loc.gov, 7-6070
Charles V. Stern, cstern@crs.loc.gov, 7-7786

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