# *International Municipal Lawyers Association*
# *2015 Annual Conference*
# *Las Vegas, Nevada*

## Work Session II: Today's Water Wars – Water Rights and Water Quality: From East Coast to West Coast

## The Evolving Challenges of Managing Water Quality and its Relationship to Water Supply

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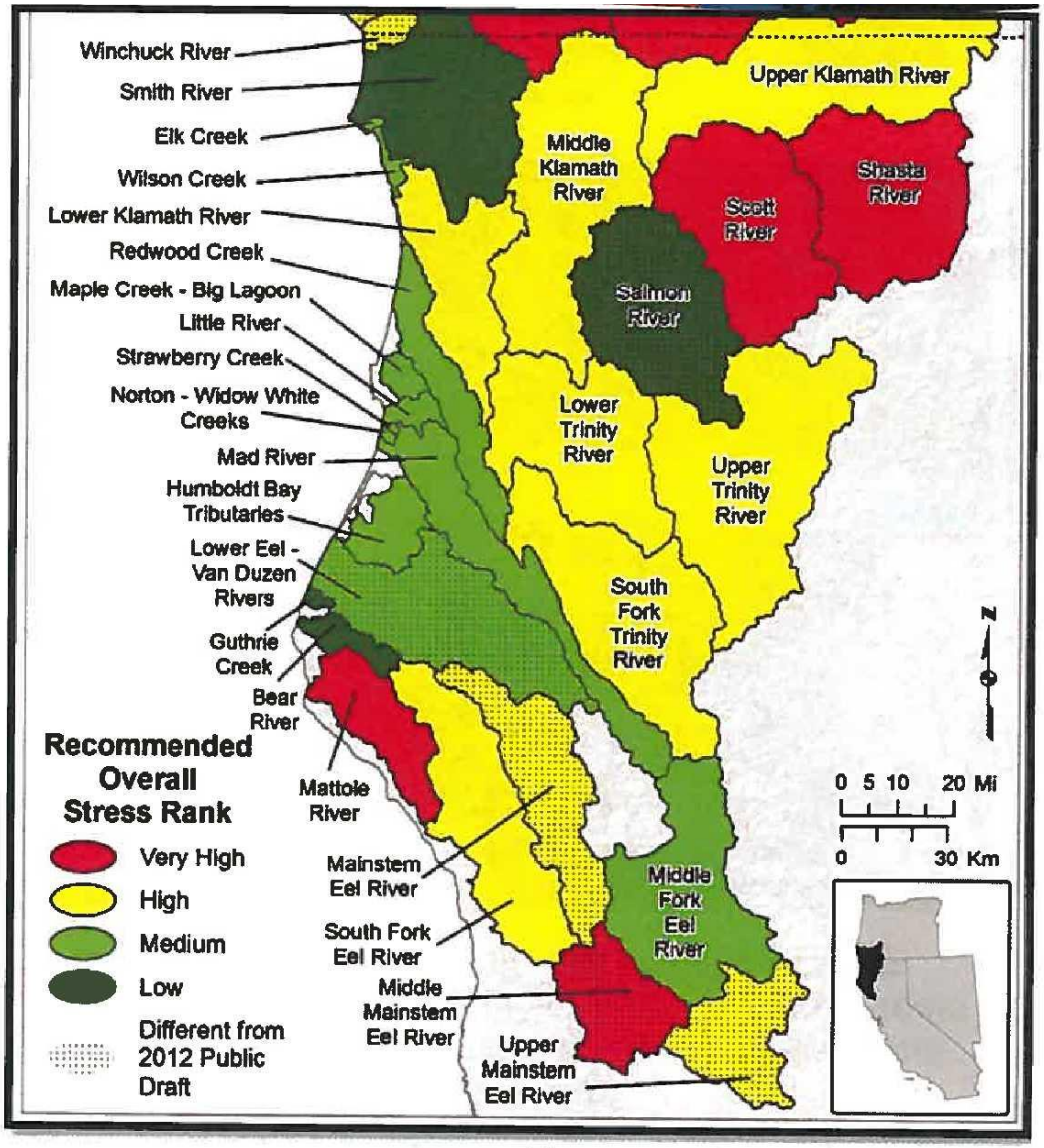
# *Premise #1 – Convergence of Water Quantity and Water Quality*

- Sharp distinctions between water quality and water quantity are artificial. (PUD No. 1 of Jefferson County v. Washington Department of Ecology (1994) 511 U.S. 700, 719).
- Many of the major water quality issues are quantity problems; water quality issues influence quantity and supply options.
- This convergence is the source of many pending legal disputes; new "water wars."

# Flow Conditions in the North Coast Region




Source: Asarian, 2014

# *Premise #2 – Legal Structure not Currently Well-Organized to Fully Address Convergence*

- Lack of water as a form of pollution (33 U.S.C. § 1362(19).).
- Lack of water or flow itself not a pollutant. (33 U.S.C. § 1362(6); Virginia Department of Transportation v. EPA (E.D. Va. 2013) 2013 U.S. Dist. LEXIS 981).
- Allocation of quantities of water and water rights left to the states. (33 U.S.C. § 1251(g)).
- Application of National Pollutant Discharge Elimination System program to water systems in flux.
- Groundwater.

# *Premise #3 – Evolving Issues Playing out under Severe Drought Conditions and in the Shadow of Climate Change*

- Severe drought in California and other portions of the west.
- Current and long-term effects of climate change.

# *Drought in California*

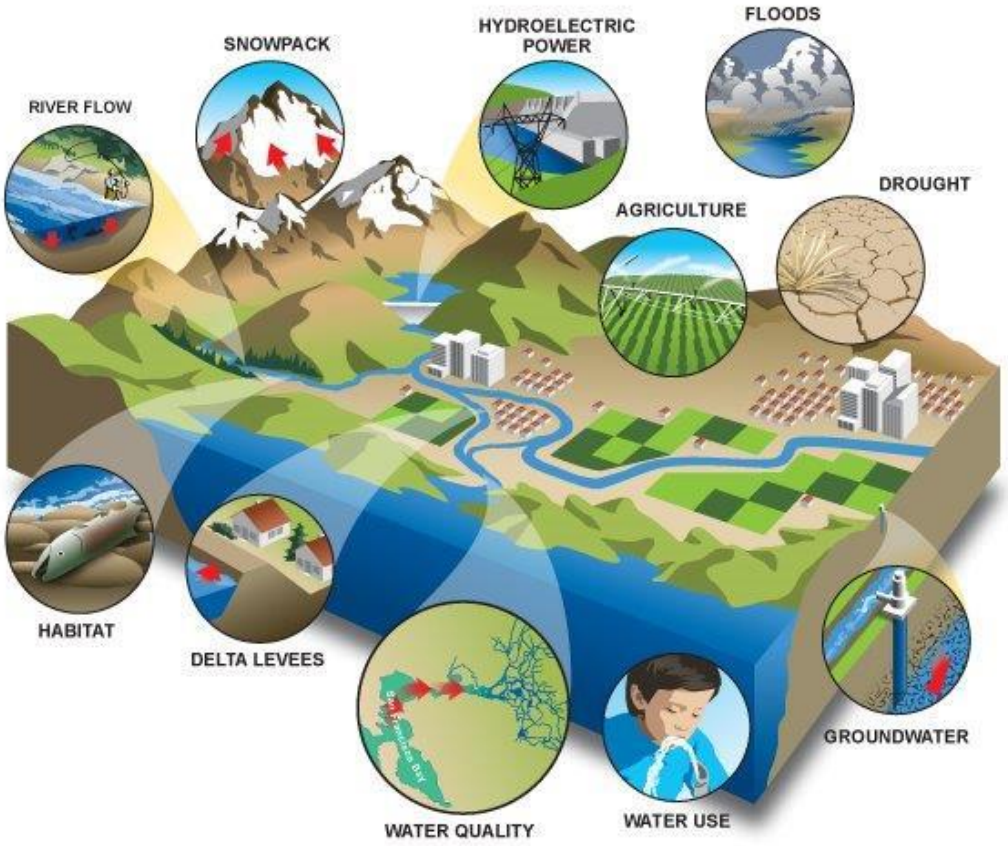
- Multi-year drought conditions.
- 2013/2014 – Driest period on record.
- 2014 – Hottest year on record.




2011
2014

# *2014 National Climate Assessment*

- Climate Change Impacts on the Water Cycle.
  - Drought.
  - Flooding/precipitation events.
  - Sea level rise/storm surges.
  - Changes in surface and groundwater patterns
  - Water quality impacts.


RIVER FLOW
SNOWPACK
HYDROELECTRIC POWER
FLOODS
AGRICULTURE
DROUGHT
HABITAT
DELTA LEVEES
WATER QUALITY
WATER USE
GROUNDWATER

# *Emerging Issues*

- Litigation over the ecological impacts of water management systems; impacts on supply.
  - Delta Smelt.
  - Whooping Crane.
  - Salmon.



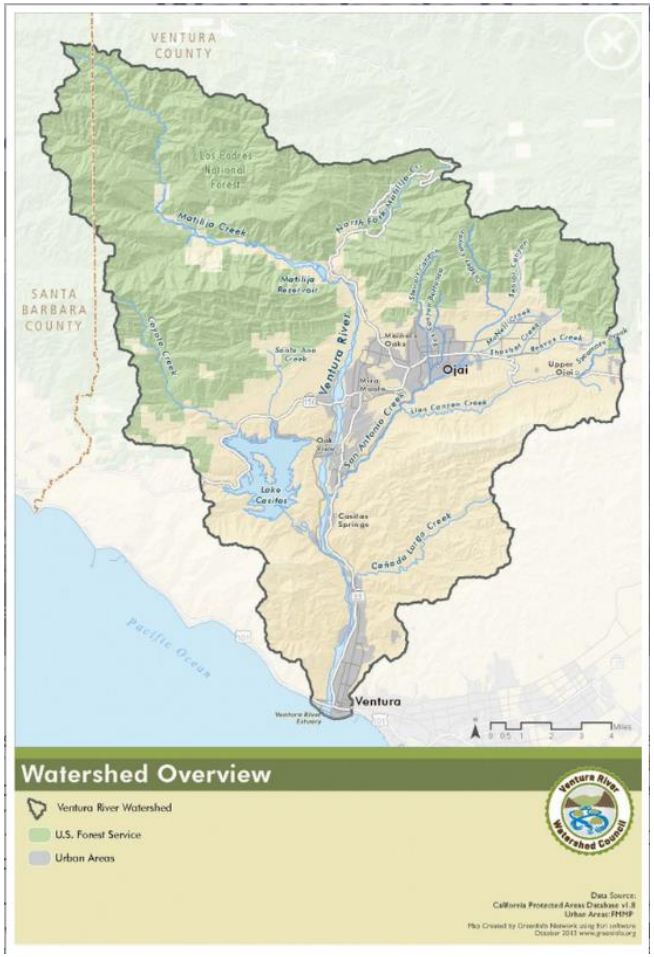
Photo ©TPWD



# *Emerging Issues*

- Litigation to extend Clean Water Act to water supply systems.
  - Water Transfer Rule.
  - NPDES Permits. (ONRC Action v. United States Bureau of Reclamation (9th Cir. August 21, 2015) ___ F.3d ___[Dock. No. 12-35831]).
  - TMDLs; Water Quality Standards (flow).
  - WOTUS Rule.

# *Ventura River Example*







# *Ventura River Example*

- River a significant source of municipal and agricultural water supply.
- Steelhead trout and other species.
- Listed as impaired for pumping and diversion.
- EPA declined to pursue TMDL.
- NGO has filed action against the City, asking court to declare City's use unreasonable under certain low flow conditions.

# *Conclusion*

- Convergence of water quality/quantity will remain a source of significant litigation.
- Challenges compounded by drought and climate change.
- Results of litigation will likely shape legal framework to address this convergence.