

State water regulator flexes new muscle in response to drought

By Chris
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A rare rain was falling outside, but that wasn't enough to lift the spirits of Felicia Marcus, California's top water regulator, on a recent morning.

First, her staff announced that residents up and down the state had barely cut back their water use despite months of warnings about the drought. Then, a local homeowner reported a neighbor whose lawn sprinklers were running even though it was raining.

"I wanted to drive over there and say, 'What are you thinking?' " Marcus recounted.

It's the kind of behavior that Marcus, the self-described "state nag" as chairwoman of California's Water Resources Control Board, is determined to stamp out as the drought drags on for a fourth year and Gov. Jerry Brown tightens rules for conservation.

Long considered timid and politically weak, the board is flexing new muscle in response to a dry spell that threatens to be the worst in modern California history.

Felicia Marcus

As chairwoman of California's Water Resources Control Board, Felicia Markus -- an L.A. native and longtime environmental activist -- is the state's top water regulator. (Mark Boster, Los Angeles Times)

It is delivering emergency water to parched communities, reviewing never-before-collected data on irrigation around the state and considering limits on farmers who are accustomed to taking their fill from the state's rivers and streams.

On Friday, the board is scheduled to issue unprecedented new regulations to require urban Californians to use 25% less water.

Experts said the challenge of the drought appears to be a turning point for the board and for the way officials manage California's water.

"They are exercising authority that the state board has never exercised before," said Lester Snow, executive director of the nonprofit California Water Foundation, which supports research and other projects. "They're plowing new ground."

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Leading the effort is Marcus, a Los Angeles-area native and longtime environmental activist who played a key role in cleaning up Santa Monica Bay three decades ago as a lawyer for Heal the Bay. Afterward, she led the Los Angeles Department of Public Works.

"I had to grow up 40 years in four," she said. "We had floods, riots, earthquakes."

Marcus returned to the world of environmental advocacy with occasional stints on government panels, and in 2012 Brown appointed her to the water board. He made her chairwoman the following year.

"When I go somewhere, disasters tend to hit," said Marcus, who lives with her husband in a loft in Emeryville, across the bay from San Francisco.

Now she pinballs around Sacramento, meeting with lawmakers, environmentalists and agriculture groups. And she urges Californians to take shorter showers, stop washing their cars and let their lawns turn brown.

The water board has never been a powerhouse.

"From the very beginning, the state water board was made weak," said Michael Hanemann, a UC Berkeley professor of environmental and resource economics.

Responsibility for California's water system is spread among several agencies, including the California Department of Water Resources and the federal government. On crucial topics such as managing groundwater, Hanemann said, the board was "shut out of the picture" because some water users feared overbearing oversight.

Like any regulatory agency, the board can also be torn between competing interests, making a satisfying middle ground elusive.

"At any given moment, you have a group of people fearing the jackbooted thugs coming in and taking your water, and another group of people think they're being too timid and not using the authority that they have," said Snow, a former state secretary for natural resources.

Emboldened by the governor's recent order restricting water use, Marcus and her fellow board members are preparing to take action.

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They are ramping up the collection of information on water use that has been largely unreported for decades. Farmers with rights to divert water from rivers and streams were not previously required to tell the state how much they're taking, and the board is gaining new power to conduct inspections.

"We're too hamstrung to do anything meaningful unless we get this information," said Cris Carrigan, director of the water board's Office of Enforcement.

Armed with the new data, the board will be in a better position to curtail water supplies if the drought continues. Farmers have received such warnings — even those whose rights date back more than a century or whose land is adjacent to a river.

Although similar notices have been sent in the past, they haven't been enforced on those with older rights.

I had to grow up 40 years in four. We had floods, riots, earthquakes. - Felicia Marcus, California's top water regulator

With livelihoods riding on a steady flow of water, powerful agricultural interests won't take any new constraints lightly. The water board, said Holly Doremus, a UC Berkeley law school professor of environmental regulation, "will face litigation, they will face threats of litigation, they will face political responses."

The water board is also drafting regulations for cuts in cities' water use from 10% to 35%, depending on how well residents have been conserving so far. Wealthy towns such as Newport Beach would face the steepest cuts under draft rules released by the board last week.

The board expects to vote on its new regulations in early May, after a period of public input.

How well it is able to enforce the governor's orders will be a major test for the board, which Marcus says remains underfunded. Brown's latest proposed budget offers it \$6.7 million more to hire enforcement staff, and some of that money is already being spent under emergency legislation.

Carrigan said the board will probably have to focus its water-meter checks and other inspection efforts on such large

water users as golf courses and universities. The board can also levy fines of \$10,000 a day on local water agencies, which will be responsible for most of the enforcement work, if they're not meeting conservation targets.

That responsibility is unlikely to go over well in some quarters.

"When your business is selling water, and your customers have to use that much less, it affects your revenues over time," said John Woodling, executive director of the Regional Water Authority, which represents Sacramento-area water agencies.

Marcus suggested that local agencies charge more for water when residents exceed use limits, and the governor asked the board to work with those agencies to develop new pricing plans.

She also hopes educational efforts — notifying residents when they use too much water, sharing tips on cutting back — will spur more conservation.

Otherwise, she said, if the hot summer arrives and Californians aren't reducing water use, "we're in a world of hurt."

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