

Consumptive Use Permit (CUP) Delegation of Authority to take Final Agency Action

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Presentation Overview

- Why are we discussing this now?
 - Opportunity to re-visit the delegation concept
 - Six new Governing Board members since the last time this concept was explored
 - Some permit applications warrant policy discussion



Presentation Overview

- Introduction to the CUP Program
- History of delegation of authority to take final agency action on CUP applications
- Opportunity to revisit delegation scope



Introduction to the CUP Program

- CUPs
 - Establishes the right to use water
 - Water is not a property right
 - Must meet the “three-pronged test”
 - Reasonable-Beneficial Use
 - Not interfere with presently existing legal uses of water
 - Consistent with the public interest
- Two types of permits
 - General Permit
 - Individual Permit



Consumptive Use Permits

General Permit

- Minor Standard General Permits three million gallons per month or less (<100,000 gallons per day)
- Major Standard General Permit greater than three million gallons per month up to 15 million gallons (<500,000 gallons per day)
- Authorized by staff



Consumptive Use Permits

Individual Permit

- Projects requesting in excess of 15 million gallons per month (>500,000 gallons per day)
- Currently final action is authorized by the Executive Director
- Pre-SB2080 final action was taken by the Governing Board



History of Delegation of Authority to take Final Action on CUP Applications

2009 Legislative Session – SB2080

Mandated that governing boards delegate to executive directors the authority to take final agency action concerning permit applications for Consumptive Use Permits (CUPs) and Environmental Resource Permits (ERPs)

July 8, 2009

The SFWMD governing board voted to delegate approval of Chapter 373, Part II permits and all approvals of variances or waivers to the executive director

History of Delegation of Authority to take Final Action on CUP Applications (continued)

2010 Legislative Session

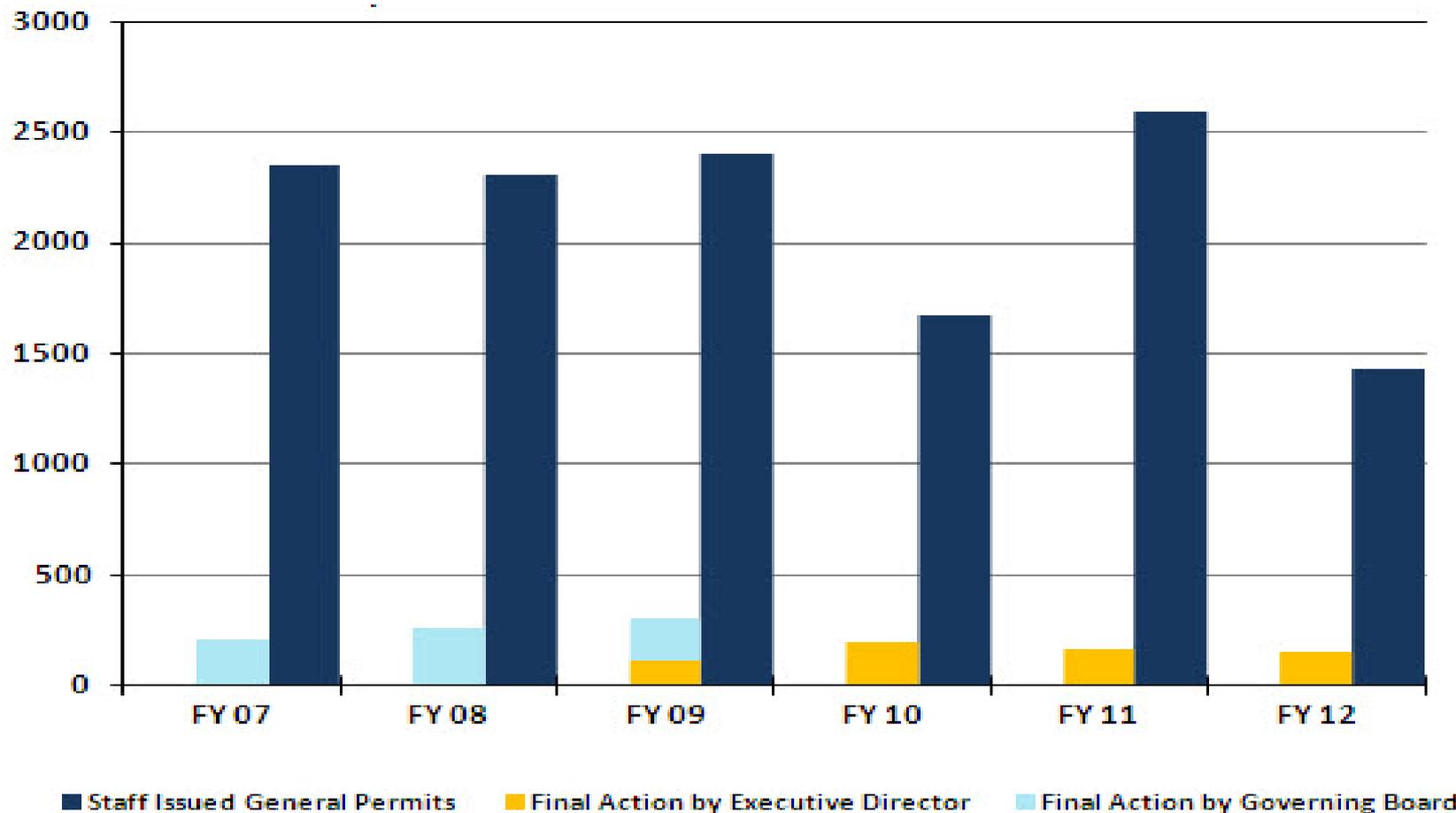
The Legislature passed SB 550 which

- Removed the provisions requiring delegation of CUP permit decisions from governing board to the executive director
- Retained board authority to delegate all or part of CUP permitting to executive director

June 10, 2010

After significant discussion, the governing board voted to continue with the current process to delegate approval of Chapter 373, Part II permits and all approvals of variances or waivers to the executive director

Consumptive Water Use Permits Issued



Post - Delegation Public Involvement and Communication

- Modified District's website to incorporate:
 - List of applications processed
 - List of applications complete
 - Lists of individual permits issued for previous month
 - Agenda for Public Meeting to Discuss Regulatory Matters
- Hold regularly scheduled monthly public meetings to discuss regulatory matters
 - Video conferenced to Service Centers (Lower West Coast, Martin/St. Lucie, Okeechobee and Orlando)
 - Webcast



Heightened Public Concern

- Examples of projects determined to be of heightened public concern would include, but are not limited to:
 - Permits with a duration of greater than 20 years
 - Projects that have generated significant third party interest
 - Permits that have a likelihood of a request for an administrative hearing



Post - Delegation Public Involvement and Communication

- Held application-specific public meetings for projects with increased public interest, e.g.:
 - Ft Lauderdale International Airport
 - City of West Palm Beach

- Created a separate process for those projects determined to be of Heightened Public Concern
 - Agenda item for monthly public meeting
 - Notice of Rights and Draft Staff Report mailed out at least 21 days prior to permit issue date (when possible)



Post - Delegation Public Involvement and Communication

- Discussed substantive regulatory issues associated with specific applications at Governing Board Meetings:
 - Okeechobee Utility Authority
 - Polk County Southeast Wellfield
- Added executive director's regulatory report whereby governing board is updated on permits previously issued by executive director



Implementation of Delegation – Water Management District Comparison

| Governing Board Action | SFWMD | SJRWMD | SWFWMD | SRWMD | NFWWMD |
|---|-------|---------------|---|---------|---------|
| New Permits | | ≥ 500,000 GPD | ≥ 500,000 GPD | ≥ 1 MGD | ≥ 1 MGD |
| Renewal / Modification | | ≥ 500,000 GPD | ≥ 10 MGD, or ≥ 100,000 GPD increase, or ≥ 10% increase | ≥ 1 MGD | ≥ 1 MGD |
| Environmental Augmentation | | | ✓ | | |
| Bottled Water | | | | ✓ | |
| Executive Director Discretion w/ parameters | | ✓ | ✓ | ✓ | ✓ |
| Governing Board Discretion | | ✓ | | | |
| Denials | ✓ | ✓ | ✓ | ✓ | ✓ |

Implementation of Delegation Consumptive Use Permits Issued

July 2009 to March 31, 2013:

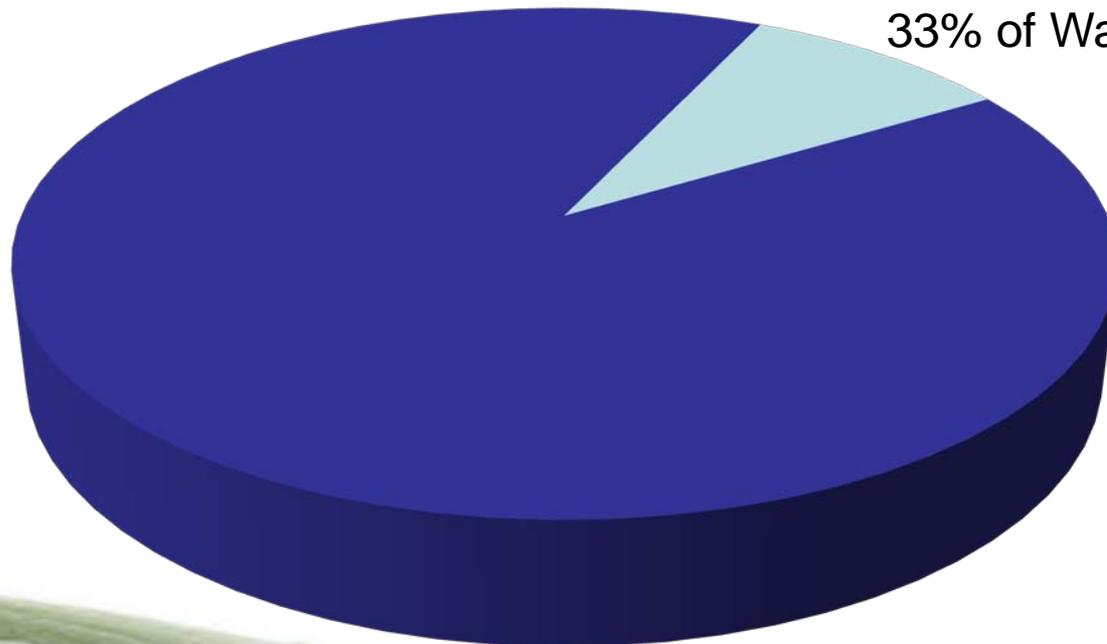
Total Consumptive Use Permits Issued = 7,519

Total Individual Permits Approved by Executive Director = 713

- 15 -30 mgm = 181
- 30 – 300 mgm = 307
- >300 mgm = 124
- dewatering = 101

Final Action
by Executive
Director
9.5 % of Permits
33% of Water Allocated

Staff Issued
General
Permits
90.5%



Implementation of Delegation Improved Agency Action Timeframes

- Prior to SB2080, individual CUPs were issued once a month at Governing Board meetings
- After SB2080, individual permits are typically approved by the Executive Director on a weekly basis.

| NUMBER OF DAYS TO FINAL ACTION FROM LEGAL COMPLETE DATE | PRIOR TO SB2080 | AFTER SB2080 |
|--|------------------------|---------------------|
| </= 90 DAYS | 100% | 100% |
| </= 75 DAYS | 54% | 75% |
| </= 60 DAYS | 24% | 38% |

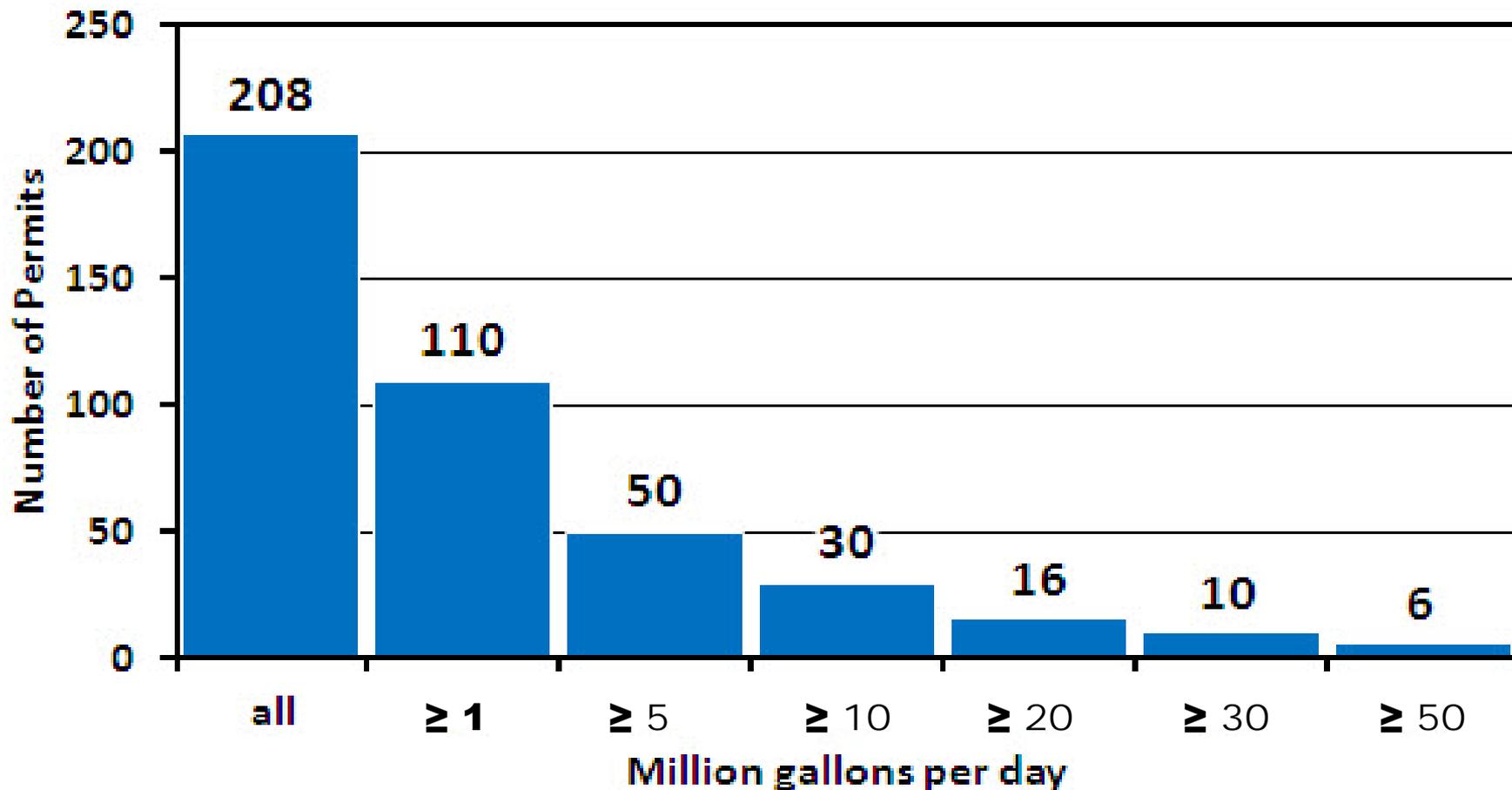


Implementation of Delegation Lessons Learned

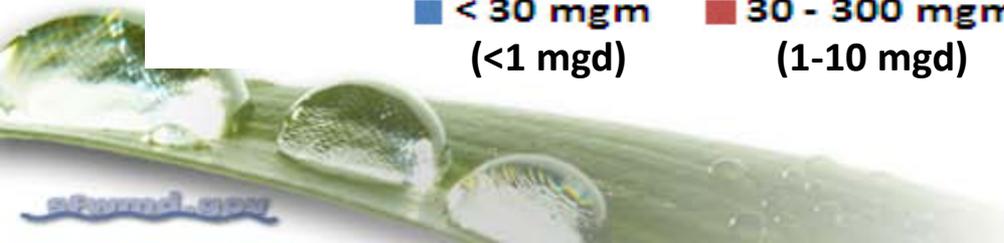
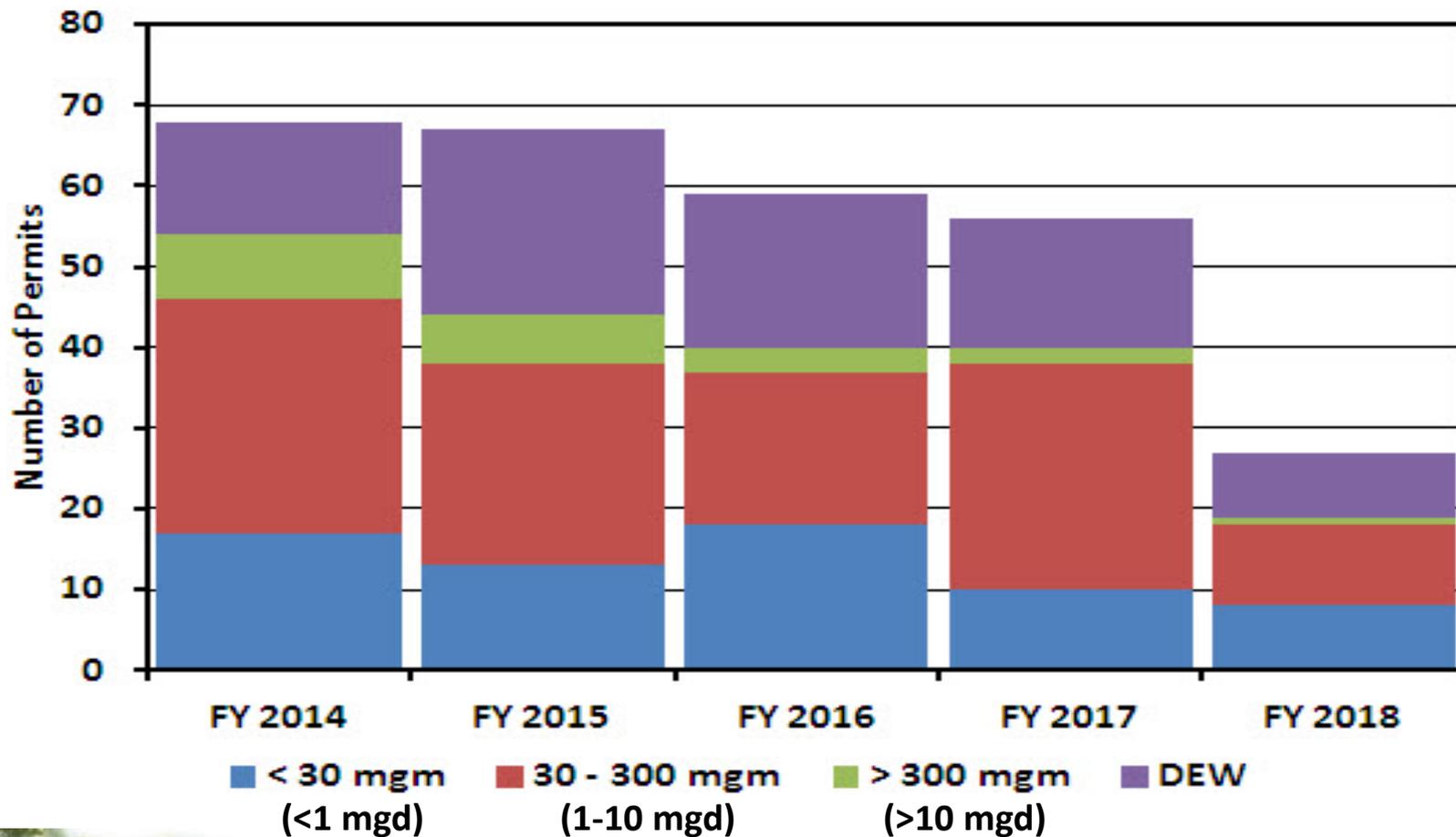
- Timing of agency action improved
- Balanced interest in swift agency action with desire for public input
 - Heightened public concern
 - Select issues discussed with Governing Board
- A few projects warrant elevated discussion as agency action occurs



Average Number of Individual Consumptive Use Permits Issued per Year FY2008 to FY2012



Consumptive Use Permits Expiring



Options for Governing Board Consideration Presented at WRAC

#1 Current Process:

All CUP issuance actions delegated to Executive Director

#2 Current process, with authority to elevate:

Delegate all CUP issuance actions, with discretionary authority to Executive Director to elevate agency action to Governing Board

#3 Restore Pre-SB2080 Process:

Governing Board takes final agency action on all Individual (15 MGM or 500,000 gpd) CUP applications; applications for General CUP issued by staff

#4 Delegate based on higher volume threshold

#5 Other Options



Comments from WRAC

- Current process is working fine.
- Whatever was done is a vast improvement from where we were.
- Delegation resulted in a more open process.
- The SJWMD hybrid seems to be working.
- Restore to Pre-SB2080 Process
- The discretionary authority needs to be defined.
- Straight renewals should not be elevated to the Governing Board.
- Most comments supported delegation with discretionary authority to the Executive Director to elevate to the Governing Board.
- Develop a hybrid “1A” delegate to the Executive Director with defined discretionary authority.

WRAC Option 1A

#1A Current process with defined criteria to elevate:

Delegate all CUP issuance actions to the Executive Director, except for those Individual CUP applications that meet the defined criteria to elevate to the Governing Board for final action



Recommended Criteria to Elevate Applications to Governing Board for Final Action

- Individual CUP applications may be elevated to the Governing Board for final action if they meet any of the following criteria.
 - Permit duration over 20 years
 - Permit allocation greater than or equal to 20 mgd
 - Located within Orange, Osceola and Polk Counties (CFWI) with an allocation greater than or equal to 5 mgd
 - Re-allocation of terminated water use in LOSA (3.2.1.G. BOR)



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DISCUSSION

