



July 5, 2017

Senator Hannah-Beth Jackson, Chair
 Senate Judiciary Committee
 State Capitol, Room 2187
 Sacramento, CA 95814

RE: AB 313 (Gray): Water – OPPOSE

Dear Senator Jackson and Members of the Committee:

On behalf of the undersigned conservation organizations, we are writing to oppose AB 313 by Assemblymember Gray. AB 313 is unnecessary, increases state costs, and would impede the orderly administration of water rights in the State, and it threatens water rights holders, California’s rivers and fisheries, and the communities and jobs that depend on healthy fisheries.

Under existing law, the State Water Resources Control Board (“SWRCB”) is authorized to issue an order establishing administrative civil liability, after notice to the party and a hearing where the State must prove that the party violated its water rights. Cal. Water Code § 1055. The SWRCB’s enforcement and administration of water rights under existing law includes fundamental protections for due process rights, consistent with the requirements of the California Administrative Procedures Act. *See* Cal. Gov. Code §§ 11430.10-11430.80. These strict rules

prevent conflicts of interest by ensuring that the Board's hearing officer and prosecution team cannot coordinate or discuss matters. In 2009, the California Supreme Court unanimously held that these procedures provide an impartial tribunal and therefore comply with the due process requirements of the Constitution. *Morongo Band of Indians v. State Water Resources Control Board*, 45 Cal. 4th 731 (2009). The Legislature has authorized numerous other state agencies and Commissions to implement administrative enforcement processes like those of the SWRCB, including: the Bay Conservation and Development Commission; the California Air Resources Board; the California Coastal Commission; the State Lands Commission; Regional Water Quality Control Boards; and Regional Air Pollution Control Districts.

AB 313's proposal to limit the SWRCB's authority to enforce violations of water rights through administrative civil liability is unnecessary because the Board already ensures the protection of due process rights and avoids conflicts of interest. For instance, during the drought, after an administrative hearing, the SWRCB dismissed the complaint against the Byron Bethany Irrigation District and West Side Irrigation District. *See* SWRCB Water Rights Order 2016-0015. The Board's decision to dismiss the staff complaint demonstrates that the Board exercises independent judgment, and that the changes proposed by AB 313 are unnecessary.

Administrative hearings regarding water rights are complex matters that require expertise, as demonstrated by the recent cases that led to Water Rights Order 2016-0015. The members of the SWRCB are required to represent a diversity of expertise and interests, to ensure that they represent the public interest and are qualified to serve. *See* Water Code § 175. In contrast, the State's existing administrative law judges currently lack expertise on water rights and water quality that is necessary to effectively administer water rights, yet AB 313 would require the State to have administrative law judges ready to hear these complex matters next year.

Moreover, AB 313 would fragment the existing enforcement process and create duplicative and overlapping processes, increasing costs for both the State and for water rights holders who are subject to enforcement. AB 313 could lead to duplicative hearings and a more inefficient enforcement process, because the SWRCB would still have legal authority to hold certain administrative enforcement proceedings before the Board. In addition, the SWRCB would be required to hold a hearing to consider whether to adopt, modify or deny the ALJ's ruling, and if the SWRCB ruled to modify or deny the ALJ's ruling, it could result in a separate water rights hearing before the SWRCB. As a result, water rights holders and SWRCB could have to participate multiple hearings, fragmenting the State's administration of water rights and leading to duplicative proceedings, and undermining enforcement of water rights.

Finally, AB 313 is estimated to increase State costs by more than \$1.4 million per year. At a time when the SWRCB has acknowledged significant unmet funding needs for significant state

Letter from conservation groups opposing AB 313
July 5, 2017

priorities, California cannot afford to waste its limited funding on unnecessary, duplicative processes as proposed in AB 313.

For these reasons, we urge you to vote **NO** when AB 313 is heard in committee. Thank you for consideration of our views.

Sincerely,

Doug Obegi
Natural Resources Defense Council

Jena Price
California League of Conservation Voters

Kyle Jones
Sierra Club California

Rachel Zwillinger
Defenders of Wildlife

Jay Ziegler
The Nature Conservancy

Susan Jordan
California Coastal Protection Network

Juan Altamirano
Audubon California

Ron Stork
Friends of the River

Adam Keats
Center for Food Safety

Jennifer Clary
Clean Water Action

Geoff McQuilkin
Mono Lake Committee

Elizabeth Dougherty
Wholly H2O

Conner Everts
Southern California Watershed Alliance
Environmental Water Caucus

Katherine K. Evatt
Foothill Conservancy

Bill Jennings
California Sportfishing Protection Alliance

Carolee Krieger
California Water Impact Network