

# Restoring Leverage in an Era of Anti-Regulation

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# For 30 Years, Everyone Was an Environmentalist

- Almost every public entity framed itself as environmentally friendly and responsible:
  - Governments (conservative and liberal alike)
  - Businesses
  - Utilities
  - Farmers
  - Mom and dad, and especially kids
- People educated to environmental values

# With MAGA and Trump II, Culture Has Radically Shifted

- Executive orders put development first, *e.g.*:
  - Unleashing American Energy (012025)
  - Emergency Measures to Provide Water Resources in California and Improve Disaster Response in Certain Areas (012425)
  - Zero-Based Regulatory Budgeting to Unleash American Energy (040825)
- Trump to oil execs, 012126: "My goal is to not let any windmills be built."
- Regulation is "burdensome" and expensive

# Attacks on Environmental Protection Strategic and Aggressive in Trump II

- Project 2025 was the blueprint:
  - “Mischaracterizing the state of our environment generally and the actual harms reasonably attributable to climate change specifically is a favored tool that the Left uses to scare the American public into accepting their ineffective, liberty-crushing regulations, diminished private property rights, and exorbitant costs.”
  - “Subsidized renewable resources are undermining electric reliability.”
- Right-wing messaging: clear, consistent, on point.

# Trump II Comes against a Backdrop of Longstanding Regulatory Retreat

- Many liberals/progressives adopt conservative framing that regulation impedes action
- Change in dynamic by YIMBY movement to build housing; attacks focused on CEQA
- In California, retreat is largely Democrat-led
- Federal Dems also embrace “streamlining”
- *Lack of firm regulatory framework weakens resource agencies, non-profit advocacy*

**So What Ain't We Got?**

**We ain't got leverage!**

# The State Water Board Doesn't Want to Regulate

- Bay-Delta Accord (1994) made cooperation for Delta flow a default; weak enforcement since
- Current “Voluntary Agreements” to supplant Bay-Delta Plan a new level of anti-regulation
  - “State Team” includes both DWR and Water Board
- Agricultural waivers since 1988 allow weak group compliance for ag waste discharges
  - Started from loophole in Clean Water Act
  - But it's become engrained in agency culture

# For Ag Water Quality Enforcement, Anti-Regulatory Culture Institutional

## Project 2025

- **“Compliance Before Enforcement.** EPA should foster cooperative relationships with the regulated community, especially small businesses, that encourage compliance over enforcement.”

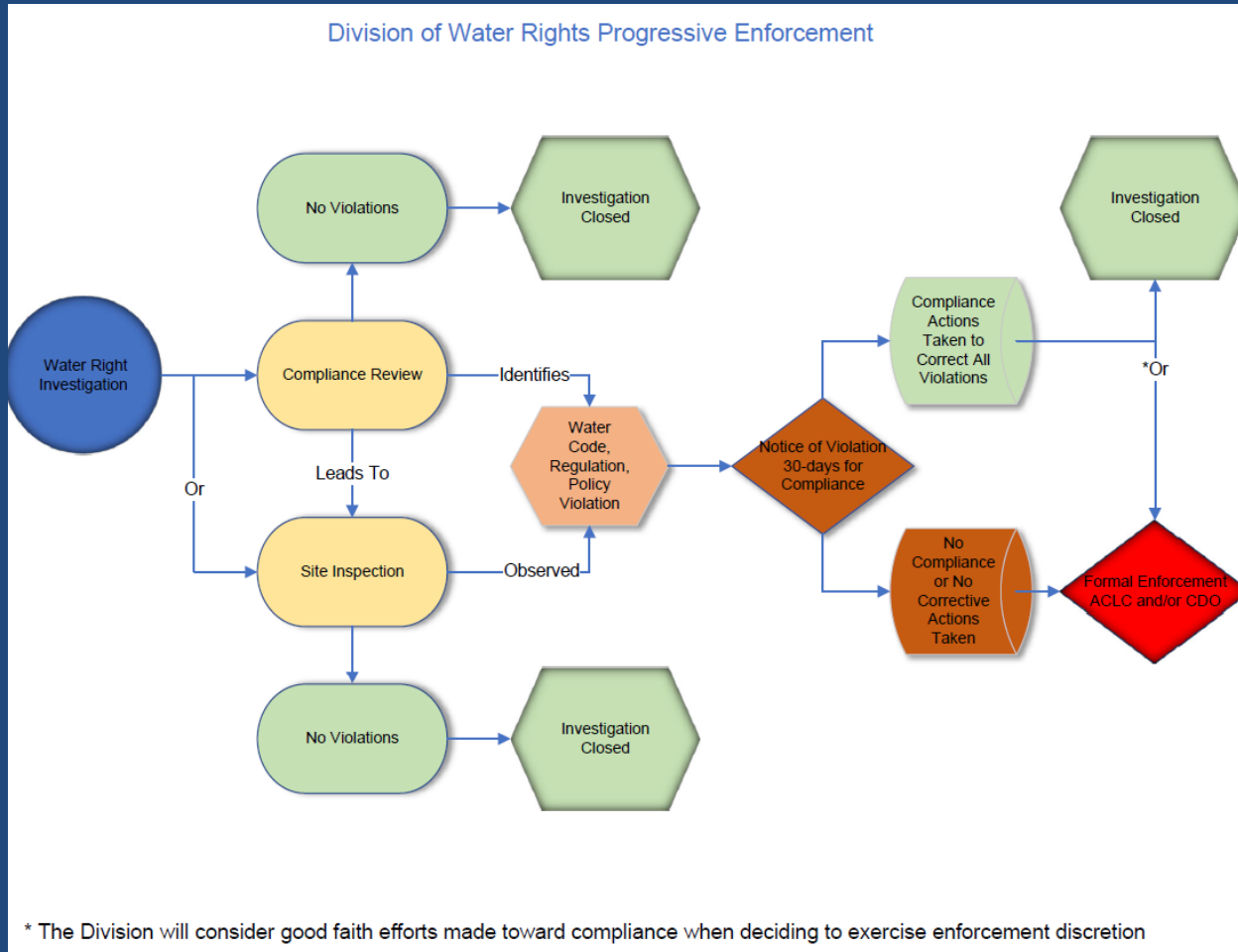
## CV Regional Board 2025 (Expert Panel GW pollution 111425)

- “We have many examples of addressing water quality issues without the use of enforceable limits, and we believe [enforceable limits] would be premature without strong indicators that our current approach is not working.
- [https://youtu.be/0F98DmK\\_EW8](https://youtu.be/0F98DmK_EW8) (20:16-28)

# Division of Water Rights a Particularly Reluctant Regulator

- Enforcement rarely initiated w/out complaint
- Focus of water rights enforcement is coming into compliance
- Focus is *not*: deterring non-compliance with consequences
- Application for a water right or petition to conform right to use generally closes complaint, although process may take decades

# State Water Board Complaint Flow Chart



Source: [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/enforcement/docs/dwr-enf-flow-chart.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/enforcement/docs/dwr-enf-flow-chart.pdf)

# Notes on State Water Board Complaint Flow Chart

- Board considers enforcement at “discretion”
- “Corrective actions” will end complaint
- At a 2019 Board workshop on water rights enforcement, Deputy Director, Water Rights touted “10-step” process before issuance of Administrative Civil Liability (ACL) or Cease and Desist Order (CDO)

# Weakened Resource Agencies Reduce Environmental Protection

- Preemptive (not just reactive) political meddling has become a default expectation
- Fish agencies rarely show up at Water Board except to defend water user initiatives, *e.g.*:
  - Voluntary agreements for Bay-Delta Plan
  - “Temporary Urgency Changes” in very dry years
- Agency abstention dumps protection in the laps of non-profits
  - Legal cases weaker w/o deference accorded agency evidence

# Leverage and Good Deals Are Complements, Not Opposites

- The most productive recent water deals have occurred when there has also been a forcing mechanism:
  - San Joaquin River Restoration impelled by pending litigation before Judge Lawrence Karlton
  - Dynamic of Klamath negotiations changed after agencies and NGOs prevailed in trial-type hearings implemented under Federal Power Act
- Water deals w/o leverage: often bad deals

# Unreliable Agency Partners Require Non-Profits to Increase Skills, Scope (1)

- Legislative engagement required
  - Defend against rollbacks; amend, amend, amend
  - Occupy field with preemptive or positive bills
  - Statutory setbacks are durable, weaken litigation
- Develop offensive legislative strategies at both federal and state levels
- Oppose regulation rollbacks; litigate new rules
- Oppose rollbacks in individual proceedings

# Unreliable Agency Partners Require Non-Profits to Increase Skills, Scope (2)

- Increase subject-matter expertise, bandwidth
- Engage in regulatory proceedings
  - Be comprehensive but strategic; don't fuss
  - Establish a complete record w/o agency help
  - Engage with an eye to litigate
- Be prepared to litigate
  - More regulatory decisions likely to end up in court
  - Higher burden of proof w/no agency deference

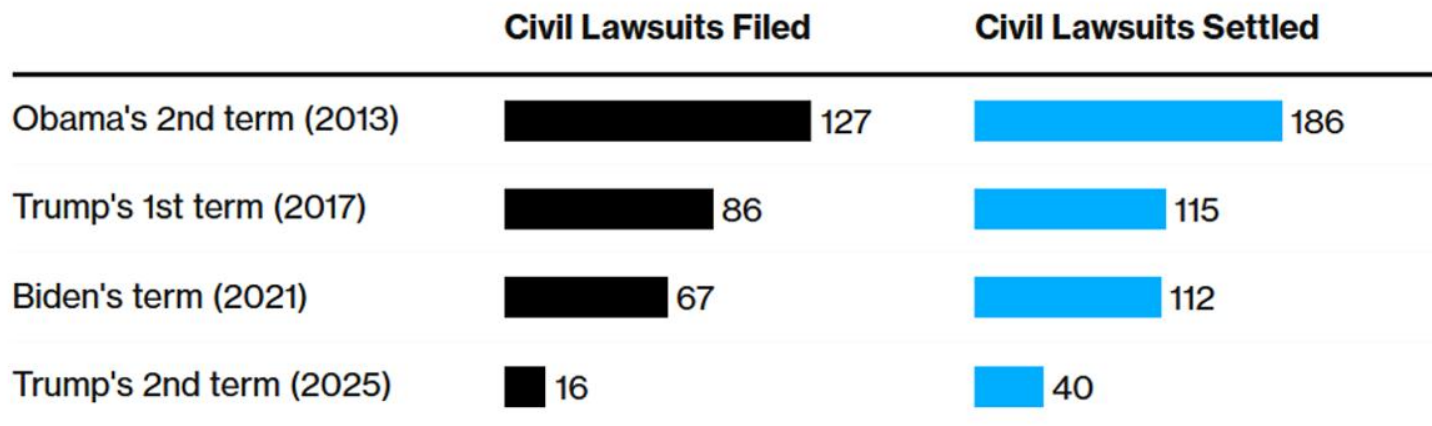
# Develop and Nurture Coalitions

- No single non-profit or approach can do it all
- The need to work in coalitions never greater
- Need for clarity within coalitions never greater
- Develop common strategies, divisions of tasks
- Set aside obsolete grudges
- Broaden visions: understand how what your organization does affects the work of others
- Share resources and the credit

# Continue Historical Enforcement Practices

- Clean Water Act (CWA) citizen lawsuits
  - Historically, 80-90% of CWA enforcement cases brought by non-profits; now even greater

## Under Trump, Federal Enforcement of Polluters Is Down



Source: An Environmental Integrity Project analysis of federal court records

Note: Court records reviewed between Jan. 20, 2025 and Jan. 19, 2026

Graphic source: <https://www.bloomberg.com/news/articles/2026-02-05/epa-enforcement-of-polluters-has-dropped-under-trump>

# Litigate judiciously

- Don't threaten to sue: if you're going to sue, sue, don't talk.
- Don't pretend like you're going litigate every outcome
  - No one has the bandwidth
  - Loss of credibility, non-profits' greatest asset
- Litigate to win
  - Settlement of litigation is by-product of leverage

# Cultivate Softer Paths and Develop Relationships

- Organizations and agencies are not monolithic
  - Bad management does not mean bad staff
- A limited number of water agencies have real conservation ethics, at least some of the time
  - “The best way to win is by not fighting.”
  - Water users know their systems; learn from them
- Pick your battles and your tactics
- Leverage creates options, not mandates

# Non-Profits and Allied Water Users Have Had to Carry a Bigger Load ...

- As the crisis of Bay-Delta estuary deepens
  - Bay-Delta Water Quality Control Plan
  - Proposed Sites Reservoir
  - Proposed Delta Tunnel
  - Groundwater recharge default constraints
  - Surface and groundwater water quality
  - Drought operations (temp. urgency changes)

# Salmonid Restoration Passes in Part through the Restoration of Leverage

- Restoration of leverage is a multi-front campaign: legislation, regulation, regulatory engagement, litigation. Keys are:
  - Protecting foundational environmental laws
  - Rehabilitation and funding of agencies
  - Diligent engagement in regulatory processes
  - Strategic litigation
  - Nurturing important relationships
  - Building effective and durable coalitions

# Thank you!



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Merced River at 5000 cfs April 2017. Photo: C. Shutes