



July 3rd, 2017

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

RE: Assembly Bill 313 – SUPPORT

RUSSELL KAGEHIRO
President
Division V

TIM MAGGIORE
Vice President
Division III

LARRY ENOS, JR.
Director
Division I

MARK MAGGIORE
Director
Division II

FELIX MUSCO
Director
Division IV

CHARLES TUSO
Director
Division VI

JEFF BROWN
Director
Division VII

RICK GILMORE
General Manager
Secretary

Dear Ms. Jackson:

On behalf of Byron-Bethany Irrigation District (BBID), I write in strong support of Assembly Bill 313, good governance legislation introduced by Adam Gray (D-Merced) to provide fundamental fairness and due process currently lacking in California's water rights management system. AB 313 overwhelmingly passed the Assembly with strong bipartisan support and cleared the Senate Committee on Natural Resources and Water without a single "no" vote.

The bill removes inherent conflicts of interest and biases in the present system that unfairly disadvantage water rights holders. Currently, the State Water Resources Control Board (SWRCB) writes regulations, initiates enforcement actions, and conducts hearings in its own court where Board staff serve as prosecutors, and Board members serve as judge and jury. As a result, many water rights holders feel coerced to settle administrative actions initiated by the SWRCB, rather than pursue justice in the present inherently unfair, onerous process.

AB 313 restructures water rights hearings by creating an independent Water Rights Division in the Office of Administrative Hearings (OAH). Under this bill, specially trained neutral administrative law judges (ALJ) will conduct hearings and submit a decision to the full SWRCB for adoption, ensuring objectivity for *all*.

The following key points respond, in part, to opposition raised at the recent Senate Committee hearing, and provide additional supportive detail:

- **AB 313 inarguably presents the most objective water right hearings process:** It is difficult to comprehend any opposition to the due process the bill provides. Even if the so-called SWRCB "firewall" between staff and the Board during hearings worked – unrealistic, to say the least – the proposed ALJ process is unquestionably the most objective way to undertake quasi-adjudicative hearings.

- **AB 313 has *no* impact on current environmental protections:** The bill makes no change to existing environmental law. It is *strictly* a good governance bill focused on due process and fairness.
- **AB 313 removes SWRCB conflicts and inefficiencies:** Enforcement of water rights is clearly important; creating an independent Water Rights Division allows the SWRCB to concentrate on water policy, the implementation of the policy, and the prosecution of alleged violators. It removes the conflict and inefficiency of splitting staff time between prosecution and judging.
- **AB 313 guarantees hearings are run with necessary legal expertise:** Hearings at the SWRCB are undertaken by one Board member acting as a Hearing Officer. Except for the attorney member of the Board, the remaining members are *not* experienced in conducting evidentiary hearings. Consequentially, most of the legal advice on how to conduct the hearing is provided by conflicted staff, as is the hearing report and recommendations provided to the full Board for a decision. In other words, the Board's only means of making important decisions is to review a report or hearing record that emanates from a poorly-run hearing, drafted by conflicted staff. Under AB 313, the full Board will review a clean, well-prepared record that will not be unduly influenced by a conflicted staff.
- **AB 313's proposed amendments ensure there is no issue with "splitting" hearings:** The discussion raised by Opposition is misleading and confuses the subject of the hearings with the substance of the complaint that would be dealt with in the hearings. Cease and Desist Orders (CDO) and Enforcement must emanate from complaints that a diverter is unlawfully diverting water in some manner, such as: wasting water, not having a permit or license to divert water, violating the public trust, etc. These complaints are what will be reviewed by the ALJ as part of the hearing process.
- **AB 313 will *not* lead to significant extra costs:** SWRCB Board and staff time will be greatly reduced, and water rights matters will be dealt with in an expeditious manner; decisions will come in months, not years. Moreover, there will be no need to "staff up" as the Opposition contends. The OAH exists and can begin to hear cases the day after the Bill becomes law.

It is for these reasons that BBID supports AB 313, and we respectfully urge you to join us in support of the bill.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Rick Gilmore". The signature is fluid and cursive, with a large initial "R" and "G".

BYRON BETHANY IRRIGATION DISTRICT
Rick Gilmore
General Manager

cc: Members of the Senate Standing Committee on Judiciary; Consultants;
Dennis Cardoza, Foley & Lardner LLP; Robyn Black, Eclipse Government
Affairs