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August 4th, 2017

Byron-Bethany Irrigation District Responds to LA Times Editorial on Assembly Bill 313

On August 3rd, the LA Times Editorial Board [penned a puzzling editorial](#), imploring legislators “not to mess with California’s water umpire.” Apparently, the Times thinks sticking with the status quo – a flawed structure that prevents due process and lacks impartiality – is good enough. It isn’t.

Contrary to statements made in the editorial, Assembly Bill (AB) 313, introduced by Assemblyman Adam Gray (D-Merced) does nothing to “undermine” or diminish the State Water Resources Control Board’s (Board) ability to pursue its mission or enforce its regulations. Nor does AB 313 add “additional layers of bureaucracy.” Nor, as some opponents suggest, does AB 313 do anything to weaken California’s strict environmental standards.

AB 313 merely requires that adjudications commenced by the Board be heard by a specially trained Administrative Law Judge (ALJ) instead of a Hearing Team comprised of one or more Board Members. Currently, in all enforcement proceedings before the Board, the Board staff and Board Members act as prosecution, judge, and jury. The Board initiates enforcement actions, and conducts hearings in its own boardroom in which its staff serves as the prosecution, and Board Members serve as the judge and jury. Draft decisions are prepared by Board staff, issued by the assigned Board “Hearing Team,” and submitted to the entire Board for adoption. Similarly, under AB 313 decisions issued by the ALJs must be reviewed and adopted by the entire Board. Thus, contrary to statements in the editorial, AB 313 does not “gum[] up the enforcement process,” nor does it create “additional layers of bureaucracy.”

Moreover, if there is any doubt that the current system creates a stacked deck, consider the following: out of 2,560 complaints the Water Board filed between 2012 and 2016, only five hearings were conducted. The Water Board upheld four complaints and dismissed one. The single dismissal was the first time a water rights holder prevailed over the Board. The reason so few hearings are requested is because water rights holders feel the current system is biased, and lacking the most basic tenants of fairness and due process.

The editorial contains the claim that AB 313 “undermines” the Board’s enforcement process. In reality, it strengthens it. By requiring hearings before specially trained ALJs, AB 313 ensures a neutral, expert judge will adjudicate these complex and critically important matters involving property rights; not mere licenses. These specially trained ALJs will create a coherent record and issue a decision based on that record which, as stated above, must be reviewed and adopted by the Board. Nothing in the bill guarantees a better outcome for the water rights holder. It simply allows for the constitutional protection of due process be afforded to the state’s water users.

Furthermore, AB 313 removes any potential bias or conflicts of interest. While there are supposed to be procedures in place separating Board staff who participate in administrative proceedings, the fact remains that this staff works for the same executive agency, sometimes in offices next to each other. Under these circumstances, it’s difficult to believe that regardless of best intentions, separation and objectivity is maintained. The fact remains that every member of the Board staff works directly for the Board and is either supervised by the Board’s General Counsel or the Executive Director, and under these circumstances actual separation cannot exist.

Finally, AB 313 has received overwhelming bipartisan support through the Assembly and passed Senate committees because it makes good common sense. AB 313 is good governance legislation that makes our water rights administration function more effectively, efficiently and fairly.

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