

EDITORIALS

Law would bring fairness to water board disputes

BY THE EDITORIAL BOARD

SEPTEMBER 17, 2017 4:40 PM

The odds were against Assemblyman Adam Gray in his long-shot efforts to force fairness on decisions made by the State Water Resources Control Board.

Most of the board was against him. Appointed by the governor, these five people have virtually unchecked power to decide water disputes – including those the board’s own staff creates.

The environmental community was against him. With four of the five members of the water board always on their side, any loss of the board’s power is, by extension, a loss for them.

The Save-the-Delta crowd, who rail against the state’s Delta-draining WaterFix, dislikes any plan that doesn’t end with them getting more water.

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Despite these formidable foes, at around 3 a.m. on Saturday morning, Assembly Bill 313 passed in the senate and now awaits Gov. Jerry Brown’s signature.

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AB313 is all about one thing – fairness.

Since the late 1960s, the state water board’s regulators write citations, its staff develops the arguments against those cited, its attorneys bring the charges before a board which then decides. You can always appeal, but they hear the appeals, too.

“The current process is judge, jury and prosecutor all in one place,” said Gray. “They’ll tell you there’s a firewall, but the same executive director is in charge of both sides of the house.”

Gray’s bill inserts a neutral administrative law judge, like those used in disputes with other state agencies, between enforcement and appeal.

The water board can ignore the judge’s decision, but it would serve as ammunition in a court of law.

Why is this important?

There have been 2,562 disputes involving water board decisions. Of those, only 39 went to a hearing and only four times did the board rule against its staff. Some cases have dragged on for years.

Roughly speaking, you’ve got about a 1-in-600 chance of prevailing in a beef with the water board.

Knowing the futility, most are intimidated and don’t challenge the board.

The other reason this is important is the board’s pending decision on our region’s water rights, rooted in 130 years of legal precedent. The water board’s decision on how much water must be sent down the Merced, Tuolumne and Stanislaus rivers is due in October. If the board rules as expected, potential economic losses will measure in the hundreds of millions of dollars.

It would be nice to have a neutral party prepared to look over the board’s shoulder as we try to balance science and the plight of salmon and farmers.

Gray’s AB313 will help create fairness in a regulatory process. That search for fairness might explain why so many people rushed to help get this bill passed.

On the senate floor, Anthony Cannella and Cathleen Galgiani led the fight. And they even got help from southern Californian Bob Hertzberg.

“He is a Los Angeles legislator with a strong environmental bend,” said Gray. “But he’s also a very fair-minded person. ... He was instrumental in helping us.”

But more help is needed.

“We need to rally the community,” said Gray, “to call, write, text and support the bill. We’ve got to impress upon the governor’s office to sign this. I’m sure the water board will lobby the governor – they don’t want to lose any authority.”

Gray, Cannella and Galgiani engineered an important but improbable win on AB313. Now it’s up to the rest of us to help convince the man with the final say.

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