



September 28, 2017

The Honorable Jerry Brown
Governor
State Capitol, Suite 1173
Sacramento, CA 95814

RUSSELL KAGEHIRO
President
Division V

**RE: Response to AB 313 Opposition Letter Submitted on
September 22, 2017 by Environmental Organizations**

TIM MAGGIORE
Vice President
Division III

Dear Governor Brown:

LARRY ENOS, JR.
Director
Division I

Contrary to statements contained in the above-referenced letter signed on behalf of several environmental organizations (Signatories), nothing in AB 313 alters environmental protections, or reduces the State Water Resources Control Board's (Board) enforcement authority. In fact, the objections raised in the above-referenced letter were raised by many of the same Signatories soon after the bill was initially introduced, and they were addressed prior to the bill's hearing before the Assembly Water, Parks, and Wildlife Committee.

MARK MAGGIORE
Director
Division II

FELIX MUSCO
Director
Division IV

CHARLES TUSO
Director
Division VI

JEFF BROWN
Director
Division VII

Water is of critical importance to California, and the administration of the State's water rights system requires not only competent leadership, but also public confidence that water is allocated and regulated in a fair and unbiased manner. Water rights are varied, but of their specific nature (riparian, pre-1914, etc.), they are highly guarded property rights. Without confidence in the water rights system and its administrators, it simply will not work. The Board is the entity that administers the water rights system in California.

RICK GILMORE
General Manager
Secretary

In its role as administrator, the Board establishes policies and regulations regarding the use of water, with Board staff charged with implementing these policies and enforcing the Board's regulations. Nothing in AB 313 changes this. What is modified by AB 313 is how quasi-judicial determinations are made in the context of enforcement of Board policies and regulations. The current process has Board staff (1) acting to determine if prosecution is warranted; (2) acting as prosecutors; and (3) acting as staff to the Board members hearing the matter, and ultimately the full Board, which makes the final decision in such matters. Thus, the Board and its staff currently act as prosecutor, judge, and jury. Fair-minded and objective observers believe that proceeding in this manner violates even the most fundamental precepts of due process – the right to a fair and unbiased determination of whether an accused water right holder has acted in an improper manner.

The Signatories argue that other government entities follow a process similar to the Board as justification for vetoing AB 313.¹ Even if true, however, as previously observed the water rights subject to Board enforcement involve property rights entitled to the highest degree of due process. Moreover, arguing as the Signatories do that there are processes in place that separate employees working for the same agency, sometimes in offices next to each other, from influencing one another, defies common sense and common experience. Aside from the fact that every Board staff member works directly for the Board and is either supervised by the Board's General Counsel or the Executive Director, no real separation exists. Indeed, this concept of "separation," in practice, at the Board is pure fiction.

AB 313 brings order out of chaos. Under AB 313, the Board and Board staff are free to fully focus on the prosecution of cases without also having to be concerned with the judicial function. A specially trained Administrative Law Judge (ALJ) Hearing Officer, versed and experienced in conducting trials, will hear Board enforcement actions and issue a decision, thus avoiding any perception of impropriety, and also insuring that the judicial function is undertaken in a more informed manner. Furthermore, decisions will be timely, with final Board review taking place within 30 days after the ALJ decision. While the Signatories object to this process, the fact remains that due process is a fundamental and basic protection which, if adhered to, fosters confidence in the water rights system, thereby advancing the underlying policy function that the Board has been assigned.

Finally, contrary to the Signatories' argument, the cost of administering the provisions of AB 313, particularly if one includes the costs to the accused party, will not be substantially greater than what is expended today. Once established in the Office of Administrative Hearings, the water rights ALJ system will avoid the extra costs of the Board holding hearings, which then need to be reduced to a Staff Report subsequently explained and acted on by the full Board. An efficiently run hearing by an ALJ will always be less expensive, overall, than the cumbersome process that is currently utilized by the Board.

At the end of the day, one could fill the hearing room with California water right holders who agree about the essential importance of the due process protections afforded by AB 313. Those in opposition are limited to the special interest, whose interests are fostered by the current biased and conflicted system.

¹ The Signatories incorrectly claim that the California Air Resources Board (CARB) utilizes a similar process as the current Board process. CARB, however, uses the process created under AB 313. (17 tit. §§ 60065.1, et seq.; and 60075.1, et seq.)

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