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September 28, 2017

The Honorable Edmund G. Brown, Jr.
Governor, State of California
State Capitol
Sacramento, California 95814

Re: Assembly Bill 313 (Gray) Water – REQUEST FOR APPROVAL

Dear Governor Brown:

As an attorney that represents many family farmers from the Lodi area, through the heart of the Delta, and down the west side of the San Joaquin Valley all the way to the Los Banos/Santa Nella area. I am sending this letter to you urging you to sign into law AB 313.

Under current law, the State Water Resources Control Board (“State Water Board”) is empowered to bring complaints seeking monetary fines and cease and desist actions against water rights holders. Any such actions brought by the State Water Board are not heard by an impartial third party, such as a judge, but by the State Water Board itself! This is akin to the State Water Board being both the prosecutor and judge on the same matter, something that hardly lends itself to the notion of fair play and justice of having a matter heard by an impartial party.

The opponents of AB 313 argue that the enactment of this legislation would weaken the State Water Board’s ability to enforce and administer water rights in the State of California, and that the current system has fundamental protections for due process rights, including rules that the State Water Board’s hearing officers and prosecution teams cannot coordinate or discuss matters pertaining to an enforcement action. To support this argument, they cite the State Water Board’s dismissal of the enforcement action that was brought against the Byron Bethany Irrigation District as proof that the “system works”. I would beg to differ.

Unlike Byron Bethany Irrigation District, which had the resources to defend its water rights, most other water rights holders, such as small districts, small businesses, and family farmers do not have those resources. Although “justice” may exist under our current system of water rights enforcement that the opponents of AB 313 are advocating for, that “justice”, to be meaningful, requires substantial resources and comes at a very high price. To the person who gets hit with a cease and desist action and/or an administrative civil liability complaint by the State Water Board, in that person’s mind, the agency that is bringing that action against them is also the same agency that will hear the matter if that person chooses to contest the enforcement action in question. In this instance, especially with a resource as crucial as water at stake, “perception becomes reality”.

Although that person can technically appeal an adverse decision by the State Water Board by having its decision reviewed in the civil courts, how likely is that to occur if one’s resources are limited? Therefore, the more likely outcome is that “the little guy” just rolls over and tries to cut the best deal he, she or it can cut with the State Water Board with the limited resources at hand to try to hold on to some of that precious commodity of life. At the end, all you have is a person that has a jaundiced view of the fairness of the State of California’s system of water rights enforcement as it currently exists

AB 313 seeks to remedy this perception of bias and unfairness by having any administrative civil liability complaint brought by the State Water Board against a water rights holder for the imposition of monetary fines and/or a cease-and-desist action to have that matter heard by an impartial administrative law judge that is specially trained to hear water rights matters.

The merits of AB 313 are obvious:

- Having a trained administrative law judge hearing water rights matters reinforces the belief of one facing a massive fine or a cease-and-desist action by the State Water Board that he or she will be treated fairly and more likely to accept the outcome of their case in that they “got a fair shake” by having their case heard by an impartial judge that knows the law and has no biases, perceived or actual, and not the agency that brought the action against them in the first place.
- Having AB 313 become law would go a long way in creating good will between your Administration and the various stakeholders involved in the use and regulation of water such as irrigation districts, farmers and other constituencies across the entire state, many of who have no faith in the current system of water rights administration and enforcement. This good will is something that as Governor you could then seek to leverage into building support with these stakeholders for the Twin Tunnels project, many of whom oppose it at this time.

In conclusion, it is my opinion that there is more upside, both to the people of this State and your Administration’s plans to improve the reliability, availability, delivery, and regulation of water in California, by signing AB 313 into law rather than vetoing it. Those individuals and groups that are urging you to veto AB 313 have a vested interest in maintaining the current status quo, a status quo that I think we can all agree is broken and is harming the people and those who do business in the State of California, both North and South.

Sincerely,



STEVE NICOLAOU

SN/sn