



June 19th, 2017

Senator Robert Hertzberg
Chair, Senate Committee on Natural Resources and Water
State Capitol, Room 4038
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 Mr. Hertzberg:

On behalf of Byron-Bethany Irrigation District (BBID), I'm writing in strong support of Assembly Bill 313, introduced by Assemblyman Adam Gray (D-Merced) to restore due process to the state's broken water rights management structure.

Rather than providing the basic foundational fairness California's water rights holders expect and deserve, the current system is hamstrung by built-in conflicts of interest and biases that effectively prevent due process. Instead, the current structure grants state agencies with unchecked power and little accountability to the communities they are supposed to serve. That's why AB 313's reforms are so necessary. The bill proposes to restructure water rights hearings, creating a new Water Rights Division in the Office of Administrative Hearings (OAH), introducing a much-needed neutral third party to adjudicate complicated water rights matters.

Currently, the State Water Resources Control Board (SWRCB) exercises vast control over water rights. The SWRCB not only writes regulations, it also initiates enforcement actions, and then conducts its own hearings in which Board staff act as prosecutors and the SWRCB itself acts as the judge and jury. The configuration inherently denies water rights holders due process and impartiality.

BBID experienced this first-hand. The District was hit with a highly-publicized SWRCB administrative civil liability complaint (ACL) carrying a proposed \$5-million dollar fine. The case was eventually dismissed after the District took a high-stakes stand. Its legal team showed BBID was lawfully exercising its pre-1914 water right.

A coalition of environmental interests asserts in an AB 313 opposition letter that the BBID case is proof the system is working; in fact, the exact opposite is true. The SWRCB's haphazard action came without affording BBID due process, threatened to bankrupt the District, threatened to abruptly cut off the water supply of thousands of residents and more than one-hundred growers and ranchers with no notice – and eventually the ACL was proven by BBID's legal team to be without merit.

Even then, the victory came with a \$1.6 million price tag in legal expenses. In large part, that's why BBID was forced to raise its water rates, meaning multi-generational family farmers paid the price for the SWRCB's mistake. Moreover, the District's victory is an unprecedented exception, not the rule: it is the only time the SWRCB lost a case in its own court. BBID's experience illustrates the need for change. Most water users settle as best they can because of the coercive nature of the current structure of adjudication.

Under AB 313, any and all quasi-adjudicative matters involving water rights would be decided upon by administrative law judges in the new Water Rights Division, which would conduct hearings and make a recommendation to the Executive Director of the SWRCB. The changes ensure objectivity for water rights holders, while still providing a forum for state water agency experts to give appropriate input. AB 313, which passed through Assembly Committees without a single "no" vote, and passed the Assembly by a 64-4 margin, is an impactful initial step toward the needed reforms to California's water management.

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 Committee on Natural Resources and Water;
Consultants; Dennis Cardoza, Foley & Lardner LLP; Robyn Black, Eclipse
Government Affairs