

“Never let a good crisis go to waste.”

This adage, attributed to Chicago Mayor and former Obama White House Chief of Staff Rahm Emanuel, seems especially apt regarding emergency legislation enacted by California lawmakers and signed into law last weekend by Governor Jerry Brown in response to the worst drought in recorded California history. That drought has prompted enactment of water reforms that proved impossible just five years ago.

Last Thursday, the California Legislature enacted by overwhelming, bipartisan majorities two bills designed to address some of the worst manifestations of the state’s unprecedented drought—[SB 103](#) and [SB 104](#). Most of the media attention has focused on provisions in those bills that allocate \$687 million to drought relief efforts. This includes funding to secure emergency drinking water supplies for drought-stricken communities; money to help local communities more efficiently capture and manage water; and housing and food assistance for farm workers and others whose economic livelihood has directly suffered due to the drought. (Most of this funding comes from previously approved California water bonds and proceeds from the state’s cap-and-trade auctions under AB 32, a.k.a. the Global Warming Solutions Act of 2006.)

These are important and timely government responses to California’s drought, to be sure. But I confess I am relatively more intrigued by other, less-publicized provisions of the new legislation that strengthen the state’s water rights enforcement system. Those amendments to California’s Water Code increase substantially the monetary penalties state water regulators and courts can impose in response to illegal water diversions and related offenses. (The previously set statutory fines and penalty levels were almost laughably modest.) To be sure, the enhanced sanctions only apply to conduct occurring in years when California, as in 2014, faces drought conditions. But it’s an improvement over the status quo and, hopefully, will prompt broader reforms to California’s water rights enforcement laws.

Another under-the-radar provision of the newly approved drought legislation empowers state regulators to adopt emergency regulations setting “requirements for groundwater replenishment using recycled water.” That’s noteworthy because until now, state legislators have been loathe to give California regulators explicit rulemaking authority over the state’s groundwater resources, leaving groundwater essentially unregulated at the state level. (California is the only Western state *without* statewide groundwater regulation.) Again, the new statutory requirement is but a modest, incremental step. But at least it’s something.

What makes the penalty and groundwater provisions in the new drought legislation especially noteworthy is that similar changes were originally proposed as part of the

comprehensive California “Delta/water reform” legislation enacted in 2009. However, efforts by State Senator Fran Pavley to include in the 2009 legislative package specific provisions to strengthen California’s water rights system and to begin regulating groundwater at the state level were unsuccessful. What a difference five years—and an unprecedented drought—make.

Let’s hope that these new, modest changes to California water law signal the beginning, rather than the end, of meaningful efforts to reform California’s systems of water rights enforcement and groundwater regulation. Recent political and environmental history demonstrates that it often takes a major crisis to motivate government decision-makers to enact often long-overdue reforms. For that reason, perhaps some good can come out of drought conditions that currently hang like a meteorological sword of Damocles over California’s economy and environment.