

Overall, the California Legislature had a most productive year when it comes to environmental issues. It extended until 2030 the cap-and-trade program that's a centerpiece of the state's ongoing efforts to reduce California's aggregate greenhouse gas emissions. It passed the mis-named "gas tax" legislation, which not only provides funding to rebuild California's once-proud but now crumbling road and highway infrastructure but also makes available much-needed funding for the state's public transit systems. And the Legislature finally mustered the will to enact a 15-bill package designed to address California's long-festering affordable housing crisis. (That housing legislation, which Governor Brown signed into law 10 days ago, is no panacea but, rather, a promising start to what should be an ongoing effort by California's political leadership to address the state's chronic shortage of housing for low and moderate income state residents.)

But the California Legislature laid at least one large political egg when, at the end of its 2017 session, it enacted and sent to Governor Jerry Brown's desk [AB 313 \(Gray\)](#). That ill-conceived bill would severely undermine the California State Water Resources Control Board's authority to halt and penalize illegal water diversions.

Currently, when the Water Board's staff learns of illegal diversions of California water supplies, it can ask the five-member Board to consider those charges in formal hearings at which the water diverter may defend his or her conduct. (Board enforcement staff are separated by an ethical wall from Board members and their advisors, to assure the fairness of the administrative process.) If the Board finds that illegal diversions have occurred, it has the authority to both order the diverter to cease the illegal conduct and to impose civil penalties for the past, improper diversions. This administrative enforcement authority tracks that currently available to other California natural resources agencies such as the Coastal Commission and San Francisco Bay Conservation & Development Commission.

AB 313 would strip the Board of its authority to hold administrative hearings on these proposed enforcement actions. Instead, it would shift responsibility for holding those hearings to a new program within the state Office of Administrative Hearings. Recommended actions arising out of those OAH hearings—which could take weeks or months to complete—would be sent back to the Water Board for final action.

Central Valley agricultural water districts who are the principal proponents of AB 313 claim that this "reform" is necessary to provide fairness and due process to those charged with illegally diverting the state's increasingly scarce water

resources. Implicit in their argument is the assertion that the Board's current administrative hearing process is unfair to those charged with violating California water law.

But these arguments are wrong on the law, and wrong on the facts.

Water users have advanced the identical due process arguments to challenge the Board's administrative enforcement process in the courts. In 2009, however, [the California Supreme Court unanimously rejected those claims](#), finding that the Board's existing enforcement procedures provide an impartial hearing process and fully comply with constitutional requirements of due process.

Nor does the history of the Board's current water rights enforcement process yield evidence of biased results or excessive administrative enforcement efforts.

Between 2012 and 2016, Board staff received over 2500 complaints of illegal water diversions but requested the Board to consider undertaking enforcement hearings in only 39 cases. The Board only initiated enforcement hearings in five of those 39 cases, and wound up dismissing one of the actions brought before it by Board staff.

That record hardly demonstrates a pattern and practice of the Board routinely "rubber stamping" the administrative sanctions proposed by its staff, as AB 313's supporters assert. To the contrary—and especially in the wake of an unprecedented five-year California drought—the statistics suggest that the Board and its staff have been unduly cautious and insufficiently rigorous in halting illegal diversions of finite state water supplies.

Moreover, the altered administrative process mandated by AB 313 would bifurcate, complicate and inevitably delay state administrative water rights enforcement hearings designed to halt such illegal water diversions. It would deprive the Board, water claimants and the public alike of the scientific, engineering and legal expertise necessary to render these often complex water rights determinations.

President Abraham Lincoln once said, "Without enforcement, laws are nothing more than good ideas." Rigorous enforcement of California's water rights system is critical to the public interest. The state has a highly variable, drought-prone climate. California possesses the largest population and largest irrigated agricultural economy in the nation. At the same time, we have highly degraded aquatic resources, including numerous endangered species and vulnerable fish species that are of significant commercial, cultural and economic value. And,

finally, California's water rights system is substantially oversubscribed. (Recent academic studies reveal that statewide, water rights have been issued for approximately five times California's available supply.)

AB 313, in sum, is a solution in search of a problem. The Water Board should be commended for finally taking steps to curb and sanction illegal water diverters. Its current administrative enforcement process most certainly should not be made more cumbersome, time-consuming and uninformed.

California Governor Jerry Brown should veto AB 313.