

AB 1337 (Wicks): State Water Resources Control Board: water diversion curtailment
OPPOSE



May 12, 2023

The Honorable Chris Holden
Chair, Assembly Appropriations Committee
1021 O Street, Ste. 8220
Sacramento, CA 95814

RE: AB 1337 (Wicks) – State Water Resources Control Board: water diversion curtailment.
Position: OPPOSE

Dear Chair Holden:

The undersigned organizations write to respectfully express our opposition to AB 1337, which, as amended on April 20, 2023, would provide unprecedented statutory authority for the State Water Resources Control Board (State Water Board) to curtail the diversion or use of water under any claim of right during any water year.

Water suppliers are collectively responsible for delivering water for domestic, agricultural, and industrial purposes throughout the state. Many of these agencies also provide water for fish and wildlife uses. These agencies rely on a water rights priority system that is essential to our state's economic, social, and environmental stability. The water rights that the people, the Legislature, and the courts have developed over the past century provide the legal framework upon which billions of dollars have been invested to make water consistently available to Californians.

AB 1337 would overhaul how California has managed and delivered water for more than a century. The bill's vision for future water management involves handing the State Water Board unfettered authority to control water use as it sees fit. Under this proposed system of water management, water managers would operate at the whims of the state. Reliability in water rights would be severely diminished, and many water agencies would struggle to meet the needs of homes and businesses throughout the state.

Curtailments have only recently been used in a widespread fashion in California, and they have significant ramifications that extend far beyond the water right holders themselves. Curtailments, and the resulting reduction in anticipated water supply, can disrupt agriculture, industry, and other water-dependent sectors, leading to job losses, revenue declines, and other economic hardships. Additionally, curtailment orders can disproportionately impact small and disadvantaged water users who may lack the resources to adapt to changing water conditions.

Accordingly, curtailment authority should remain reserved for emergency drought conditions in order to ensure that this tool is used judiciously and effectively. By limiting curtailment to the most severe and urgent water shortages, the State Water Board can ensure that this tool is used only when necessary and that its impacts are carefully managed.

AB 1337, in contrast, proposes that the State Water Board should use curtailment to manage all water right allocations, within all watersheds, in any water year. There is nothing in the bill that prevents the State Water Board from issuing curtailments even in a year like California is currently experiencing, where there is more than enough water in watersheds throughout the state to satisfy all water rights. This would be an unnecessary task for the State Water Board and threaten to create chaos in the way water is managed, diverted, and used.

AB 1337 threatens to undermine long-standing water management and water delivery practices in watersheds throughout California.

It is not as if the water rights priority system is left unmanaged during the absence of curtailment orders. Watersheds throughout California are governed by court decrees, local water sharing agreements, watermasters, and more. In recent years, voluntary agreements among rights holders and other stakeholders have been developed in order to manage water in ways that increase predictability and supply reliability, all while addressing environmental concerns. These local water management practices are preferable to widespread state-issued curtailment orders for several reasons.

First, these tools are typically more tailored to the unique needs and circumstances of a particular watershed or basin. By involving local stakeholders in the management process, these tools can help ensure that water management decisions are made with a greater understanding of the local hydrology, ecology, and economy.

Second, local water management practices can provide greater certainty and stability to water users. Court decrees and adjudications establish legal rights to water that are more difficult to change than state curtailment orders, which can be subject to revision as drought conditions change. Watermasters, who are appointed by courts to oversee water allocation and distribution, can provide on-the-ground expertise and management that is more responsive to local conditions and needs.

Third, local water management practices are often more collaborative and cooperative than curtailment orders, which can be perceived as top-down and heavy-handed. By involving local stakeholders in the management process, these tools can help build trust and cooperation between water users and facilitate more effective and sustainable water management over the long term.

Finally, local water management practices can be more flexible and adaptable to changing conditions than state curtailment orders. For example, watermasters can adjust water allocation and distribution on a daily or weekly basis based on real-time information about water availability and demand.

While state curtailment orders can be an important tool for managing water scarcity during emergency drought conditions, local water management practices such as court decrees, adjudications, and watermasters are often more effective, collaborative, and adaptable tools for managing water resources over the long term. By leveraging these tools, water managers can ensure that water management decisions are more tailored to the unique needs and circumstances of each watershed or basin and more responsive to changing conditions.

While meant to address a narrow Court of Appeal decision, the proposed amendment to Water Code section 1052 could have far greater consequences for water right holders.

In addition to granting the State Water Board with sweeping, new curtailment authority, AB 1337 seeks to address a recent California Court of Appeal decision that held the State Water Board lacks jurisdictional authority to issue curtailment notices to pre-1914 appropriative water rights holders under Water Code section 1052, subd (a).¹ While the amendment proposed in section 1052 is meant to address the scope of the State Water Board's curtailment authority, the implications of this amendments may be far greater. Section 1052, subd (a) provides that "[t]he diversion or use of water

¹ *California Water Curtailment Cases* (2022) 83 Cal.App.5th 164.

subject to this division other than as authorized *in this division* is a trespass” (emphasis added). The proposed amendment to this section would eliminate this limitation and potentially authorize the State Water Board to enforce a “trespass” for far more than curtailments. Consistent with other legislation introduced this year, this bill could create substantial new avenues for enforcement authority, which means that law-abiding water right holders are at increased risk of punishment based on a host of vague and fact-specific doctrines and principles. We do not believe the consequences of this amendment have been adequately considered. Additionally, this amendment is unnecessary because the State Water Board has most recently issued curtailments under different, existing authority pursuant to Water Code section 1058.5.

Instead of proposing to radically overhaul water management in California, we support the Legislature modernizing the administration of the existing water rights system

There are a number of promising proposals this year that would modernize administration of the water rights priority system with improved data, efficiency, and transparency, while maintaining the existing priority system as its legal and operational foundation. Governor Newsom has proposed appropriating more than \$30 million to implement a new State Water Board project called Updating Water Rights Data for California (UPWARD). This program is intended to improve the way the state collects and manages its water rights data and information, which will be critical for data-driven water management decisions, particularly when hydrology affects supply, such as during droughts. In addition, we support proposals that have been introduced that would lead to increased deployment of stream gages, which would provide data essential to better water management. The Legislature has recognized the importance of improved data, as well, investing more than \$82 million over the past two years to help advance this important effort.

The consequences of AB 1337 should not be considered lightly. This bill threatens to remake the way water rights are managed in California by employing a top-down approach that would override decades of successful collaborative water management practices.

For these reasons, we respectfully request a “NO” vote when AB 1337 is heard in the Assembly Appropriations Committee. For questions about our position or comments, please contact Kristopher Anderson, Legislative Advocate with the Association of California Water Agencies, at (916) 441-4545 or krisa@acwa.com.

Sincerely,

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