

**AB 1337 (Wicks): State Water Resources Control Board: water shortage enforcement**  
**OPPOSE**



April 11, 2023

Honorable Rebecca Bauer-Kahan  
Chair, Assembly Water, Parks, and Wildlife Committee  
1020 N Street, Room 160  
Sacramento, CA 95814

**RE: AB 1337 (Wicks) – State Water Resources Control Board: water shortage enforcement.**  
**Position: OPPOSE**

Dear Chair Bauer-Kahan:

The undersigned organizations write to respectfully express our opposition to AB 1337, which would provide unprecedented statutory authority for the State Water Resources Control Board (State Water Board) to restrict water diversions through regulation and to enforce the regulations through orders curtailing the diversion or use of water under any claim of right.

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 is little more than 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.

**AB 1337 threatens to undermine the basic foundation of water management and water delivery in California by proposing to authorize the State Water Board to reallocate water rights with little or no constitutional process.**

The bill would authorize the State Water Board to adopt sweeping regulations and to enforce them by later orders curtailing diversions or use of water under any claim of right. The bill would not require the State Water Board to hold a hearing before issuing curtailment orders when a hearing would be "impractical." Of course, this would be incredibly subjective. Given the absence of specificity regarding these regulations, it is impossible to know whether or how any curtailment orders would be tailored to specific factual situations. The bill excludes the involvement of a neutral arbitrator to evaluate whether a diverter is complying with regulations. Instead, the bill is structured so the State Water Board may write the rules and enforce them when and how it sees fit. *AB 1337 proposes no less than to strip every water right holder in California of their state and federal constitutional guarantee of due process.*

If the State Water Board did afford diverters and users of water a hearing before curtailing their rights, AB 1337 would allow the Board to tailor the hearing to the "circumstances" of the order—a vague standard that provides almost no assurances to water right holders. In addition, the hearing could be collective rather than an individual process and may be an oral or written process. The bill lacks any

specifics as to how a hearing would be conducted. It is silent as to the burden of proof, standard of review, who would oversee the hearing, how a party or parties subject to an order could defend their diversions or uses, whether they would have an opportunity to present or cross-examine witnesses, etc. The State Water Board could seemingly satisfy its obligations for issuing a curtailment order by merely giving each party a minute or two to present their case before making a final determination.

Furthermore, this raises the question of timing and delay. It would be infeasible for the State Water Board to fill up every Board agenda for months with hearings. Water diverters who have been curtailed without an opportunity to be heard first would be at the mercy of whenever the State Water Board can put their hearing on the agenda, further compromising due process protections and water supply reliability. This “process” would provide little more comfort to those subject to a curtailment order than issuing a curtailment order without any due process.

### **AB 1337 would allow the State Water Board to remake water management through unconstrained rulemaking authority**

Compounding our concerns over the absence of constitutional due process guarantees is that AB 1337 would authorize the State Water Board to adopt sweeping, and *permanent*, regulations. Neither the proponents nor opponents of this bill know what regulations the State Water Board would adopt in accordance with the bill. The rulemaking authority that would be afforded to the State Water Board is almost entirely without guardrails. The State Water Board would merely need to argue any regulations advance the reasonable use doctrine, protect public trust resources, promote water conservation, or further any of the other enumerated justifications provided in the bill.

Proposing to hand the State Water Board unbounded rulemaking authority ignores the plethora of tools already available to implement, manage, and enforce California’s water rights system. The State Water Board has a century’s worth of laws, regulations, and court decisions it commonly relies on to balance consumptive and environmental demands.

### **Exempting regulations and curtailment orders from CEQA would prevent the State Water Board from understanding the environmental impacts of these decisions**

AB 1337 would exempt all regulations and orders issued in accordance with the bill or Water Code Section 1058.5, which allows the State Water Board to adopt emergency regulations during extreme droughts, from the California Environmental Quality Act (CEQA). This would be extremely problematic, as it would authorize the State Water Board to ignore impacts within the service areas of a water supplier.

For example, if regulations and curtailment orders limited a municipal water supplier’s diversions, the water supplier would need to make up for this loss of supply through increased use of other sources, such as groundwater or desalination. Alternative water sources have their own environmental costs and benefits. In addition, reducing diversions may also decrease the amount of recycled water a water supplier has access to, as inputs to the system decrease. A CEQA exemption would prevent the State Water Board from considering these impacts.

The CEQA exemption further underscores why decisions regarding reasonable use and public trust cannot be made in a regulatory process without giving the affected parties the right to present evidence

of the impacts of these decisions. A robust regulatory and hearing process provides neutral decisionmakers with information and scientific evidence sufficient to make a truly informed decision.

**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 would provide unfettered authority for the State Water Board to adopt regulations when it sees fit and for any purpose it sees fit. Once those regulations are adopted, the bill would hand the State Water Board punitive authority to curtail and penalize diverters and users without the information needed to make informed decisions. This bill represents an unconstitutional violation of state and federal due process protections. Ultimately, the real losers of AB 1337 will be the communities and industries that depend on the reliable supply of water that California's existing water rights system ensures.

For these reasons, we respectfully request a "NO" vote when AB 1337 is heard in the Assembly Water, Parks and Wildlife Committee on April 18. 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](mailto:krisa@acwa.com).

Sincerely,

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cc: The Honorable Buffy Wicks  
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