



AB 1337 Myth v. Fact

Opposition Points with Rebuttals

- Point
 - AB 1337 is a total upheaval of the water rights system.
- Response:
 - AB 1337 does not change the system California uses to manage its water rights. Instead, it simply gives the State Water Board the authority to enforce that system against all water right holders.
- Point
 - This is too broad of authority to give to the State Water Board
- Response:
 - AB 1337 gives the Water Board necessary tools so it may effectively manage the State's water rights system. This is not an overly broad grant of authority, it's the bare minimum to ensure that the State Water Board can carry out its legal obligations. California Courts have long held that the "the function of the Water Board has steadily evolved from the narrow role of deciding priorities between competing appropriators to the charge of comprehensive planning and allocation of waters." (*Id.* at p. 444, [189 Cal.Rptr. 346](#), [658 P.2d 709.](#))" *Light v. State Water Resources Control Bd.*, 226 Cal.App.4th 1463, 1481 (Cal. Ct. App. 2014). The Water Board cannot comprehensively manage the state's water if it pre-1914 water rights cannot be curtailed to maintain the priority system.
- Point
 - AB 1337 Violates Due Process or Fundamental Fairness because diverters are not given the opportunity for a full evidentiary hearing to demonstrate that the Water Board improperly curtailed their rights.
- Response:
 - This argument conflates two important concepts: (1) the authority to curtail and (2) the methodology to determine when curtailments are necessary. AB 1337 only deals with the first concept, authority. Without authority, it does not matter which methodology the Board uses, it will not be able to manage the priority system through curtailments.

The second concept, methodology, dictates when the Water Board finds that there is not enough water to satisfy a diverter's priority of right and how the Water Board identifies a diverter's priority. This argument assumes that the Water Board will use faulty methodology to determine water levels or a diverter's priority. However, there are readily available tools in the Water Code for diverters to challenge a Water Board decision if they believe the Board relied on insufficient or incorrect evidence. Further, the Water Board, as the state's expert agency, is best situated to make those determinations.

In addition, AB 1337 gives the Water Board the authority to promulgate regulations. As noted by the court in a case dealing with curtailments to prevent waste and unreasonable use, there is no due process requirement to hold a full



evidentiary hearing before promulgating regulations, as “[s]uch a requirement would turn the regulatory process on its head.” *Stanford Vina Ranch Irrigation Co. v. State*, 50 Cal.App.5th 976, 1004 (Cal. Ct. App. 2020).

- Point
 - AB 1337 injects uncertainty into all pre-1914 water rights.
- Response:
 - California’s water rights system is largely based on the idea of first in time, first in right. And the State Water Board is responsible for managing this system. In part, this is accomplished by protecting senior water rights by telling junior appropriators when to curtail. These curtailments are an essential part of managing California’s water rights system and, if junior appropriators do not curtail, the system becomes a free-for-all and even the most senior water rights face uncertainty. AB 1337 does not inject uncertainty into the water right system, instead, by enforcing the priority system against all right holders, the bill will create greater certainty.
- Point
 - AB 1337 will infringe upon vested water rights.
- Response:
 - AB 1337 will not infringe any vested water rights. All water rights are conditional, contingent upon the amount of water in the system and seniority status. There is no absolute right to water in California. AB 1337 simply allows the Water Board to enforce those conditional components of a water right upon pre-1914 water rights, the same way it does on all post-1914 water rights.
- Point
 - AB 1337 would render the water supply unreliable.
- Response:
 - AB 1337 only gives the Water Board the authority to enforce the prior appropriative system on all water right holders, not just post-1914 water rights. Pre-1914 water rights already exist within this system, and any fear that enforcing the system makes a water right unreliable indicates that the water right was already unreliable, and was being relied upon outside of its true priority.

News Posts

Note, some of these posts were written before the bill was amended in Water, Parks, and Wildlife.

- <https://calmatters.org/commentary/2023/04/california-water-rights-battle-legislature/>
- <https://www.politico.com/newsletters/california-playbook-pm/2023/05/08/newsom-wades-into-the-deep-end-00095880>
- <https://www.mercurynews.com/2023/04/15/editorial-california-should-reform-outdated-water-rights-system/>
- <https://cacoastkeeper.org/we-need-to-modernize-our-water-rights-system/>
- <https://mercedcountytimes.com/legislative-bills-pose-new-threat-to-water-supply/>
- <https://www.law.berkeley.edu/research/clee/research/wheeler/water-allocation/curtailments/>



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