

Assembly Bill 1337

Fair Regulation of Water Rights

As amended on April 20, 2023
Assemblymember Buffy Wicks (AD-14)

THIS BILL

Assembly Bill 1337 gives the State Water Board the authority to limit water diversions from all rights holders in times of shortage.

THE ISSUE

The State Water Resources Control Board (Water Board) is charged with the comprehensive planning and allocation of the state waters.

Whenever there is a water shortage, the Water Board must step in and curtail junior right holders to ensure enough water stays in the system to satisfy those with more senior water rights. If junior appropriators do not curtail, the system becomes a free-for-all and even the most senior water rights face uncertainty.

However, in the Six Appellate District's recent decision in *California Water Curtailment Cases* No. H047270, it upheld the position that the Water Commission Act of 1913 exempted pre-existing water rights from regulation. This stands in stark contrast to other Western States who simply incorporated pre-existing rights into their regulatory system.¹ This exemption has both major policy and equity implications.

Beginning with policy, pre-1914 water rights account for approximately 45% of all diverters by number and 35% of all diversions by volume.² If there is only a regional drought

and no statewide emergency, the Water Board cannot curtail these pre-1914 rights to protect the integrity of the State's water rights system. As California faces increasingly severe and unpredictable droughts, it is imperative that the State Water Board be able to regulate the entire water right system.

As to equity considerations, in the later 1800s and early 1900s, numerous laws made it illegal or practically impossible for any minority to obtain or maintain a water right.³

For example, in 1850 California passed An Act for the Government and Protection of Indians, which made it legal to enslave American Indians and deny property rights.⁴ The California Land Claims Act of 1851 stripped Mexican and Latino landowners of land grants and required difficult documentation and litigation to retain their property rights.⁵ California passed the Alien Land Law in 1913, which specifically excluded Asian immigrants from owning or leasing property in the state.⁶ Moreover, racially restrictive covenants and redlining in the early 20th century forced Black Californian farmers toward the outskirts of Central Valley farmland.⁷

Pre-1914 rights are the strongest claims to water in the state, yet these claims were unavailable to minorities and are exempt from regulation. These issues are long overdue for legislative reform.

¹ See, e.g., Oregon Revised Statutes [539.240](#)

² Assembly Water, Parks and Wildlife Committee, [Modernizing Water Rights](#), (Feb. 28, 2023) at 1:36:49 – 1:37:02.

³ SWRRCB, [Resolution Condemning Racism](#) (2021).

⁴ Eduward D. Castillo, [California Indian History](#), NATIVE AMERICAN HERITAGE COMMISSION, (last visited Mar. 20, 2023)

⁵ Online Archive of California, [California Private Land Claims Collection](#), (last visited Mar. 20, 2023).

⁶ EJI, [A History of Racial Injustice](#), (last visited Mar. 20, 2023).

⁷ Kate Poole, [Water Rights and Wrongs in California](#), (Apr. 28, 2022),

SOLUTION

The Water Board already has the ability to curtail water use in order to balance legitimate demands from residents, agriculture, businesses, and the environment.

AB 1337 clarifies that the Water Board also has clear authority to curtail pre-1914 rights during times of shortage.

When California doesn't have enough water to go around, everyone needs to sacrifice.

SUPPORT

California Coastkeeper Alliance (sponsor)
Planning and Conservation League (sponsor)

Mono Lake Committee
Ban SUP (single use plastic)
California Environmental Voters
California Trout
Clean Water Action
Coachella Valley Waterkeeper
Defenders of Wildlife
Friends of the Eel River
Friends of the River
Humboldt Baykeeper
Inland Empire Waterkeeper
Los Angeles Waterkeeper
Mono Lake Committee
Monterey Waterkeeper
Orange County Coastkeeper
Russian Riverkeeper
San Diego Coastkeeper
Santa Barbara Channelkeeper
South Yuba River Citizens League
Trout Unlimited
Union of Concerned Scientists
Wholly H2O
Yuba River Waterkeeper

CONTACT

Zak Castillo-Krings
Office of Assemblymember Wicks
(916) 319-2014
zak.castillo-krings@asm.ca.gov

