

# SB 389 – Surface Water Rights Verification

## SENATOR BEN ALLEN

### Fact Sheet

#### SUMMARY

To obtain a more accurate evaluation of water usage in a given system, SB 389 grants the State Water Resources Control Board (State Water Board) the authority to review, verify, and issue decisions on senior water rights claims not granted via the Water Commission Act of 1913 (the Act), namely pre-1914 appropriative and riparian water rights.

#### BACKGROUND

The California Water Commission Act of 1913 established the government entity that later became the State Water Board and created a formal water right permitting process. Prior to the Act, water right claims could be initiated through diversion and use (known as appropriation), and were given priority based on the date of the first action leading to appropriation, such as staking a claim or posting a notice.

Water rights held prior to the Act, referred to as riparian and pre-1914 rights, were legacied in and continue to be recognized by the State Water Board. However, since they preceded the Water Board's permitting authority, pre-1914 and riparian rights are exempted from the same level of scrutiny given to their post-1914 counterparts. As most information about the extent of early water rights is self-reported, the state lacks comprehensive data for current-day decision-making.

California water law continues to follow the "First in Time, First in Right" approach when addressing cutbacks in times of shortage. Without sufficient data about diversion and use under pre-1914 and riparian rights, the State Water Board is unable to make fully informed decisions when approving diversion applications and enforcing reduced usage.

As reported by the Los Angeles Times, in recent testimony before the State Assembly, members of the nonpartisan Public Policy Institute of California (PPIC), "urged the Legislature to clarify that the State Water Board has the authority to enforce and curtail all water rights, including the oldest 'senior' water rights, called riparian rights and pre-1914 rights."

In the face of climate change and the increasing prevalence of drought, it is critical that the State of California has thorough and up-to-date data for assessing water availability for all holders in a watershed. An accurate determination of water rights requires verification of a watershed's diversions or use, including those of senior water right holders not governed by the permitting system in the Act.

#### SOLUTION

To address critical gaps in authority, SB 389 provides information-gathering and enforcement tools that allow the State Water Board to align a watershed's reported demand with the diversions and use authorized under California law, thus more accurately determining water availability for all beneficial uses. Specifically, SB 389 grants the State Water Board the ability to investigate individual water right claimants to verify their basis of right, request relevant information from claimants, and issue a ruling on the claim. Additionally, the bill requires the burden of proof be placed on the claimant, and clarifies that a determination of forfeiture would not require evidence of a competing claim.

#### SUPPORT

Planning and Conservation League (Sponsor)  
California Climate Reality Coalition  
California Coastkeeper Alliance  
California Environmental Voters (formerly CLCV)  
California Outdoors  
California Sportfishing Protection Alliance  
California Water Research  
Climate Action California  
Defenders of Wildlife  
Friends of the River  
Mono Lake Committee  
Natural Heritage Institute  
Northern CA Council, Fly Fishers International  
Sierra Club California  
Wholly H2O

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