



Submitted via the advocates portal on _____.

June 30, 2023

The Honorable Assembly Member Rebecca Bauer-Kahan
 Chair, Assembly Water, Parks, and Wildlife Committee
 1021 O Street, Room 160
 Sacramento, CA 95814

RE: SB 389 (Allen) - Water Rights Verification - Support

Dear Assembly Member Bauer-Kahan,

The Planning and Conservation League (PCL), the sponsors of SB 389, and the undersigned organizations write to express our support for this important legislation.

Unlike other western states, California has a patchwork system for allocating surface water that divides the right to water between statutory water rights issued and regulated by the State Water Resources Control Board (Water Board) or its predecessors under the Water Commission Act of 1913, and water rights recognized prior to act's 1914 effective date. With some exceptions, surface water rights

recognized prior to 1914 are limited to riparian rights, rights derived from ownership of land adjacent to a watercourse, and pre-1914 appropriative rights, rights unrelated to land ownership secured through application of the Gold Rush mining customs of water diversion and delivery to beneficial use.¹

In times of shortage, the priority principle of “first in time, first in right” generally determines the allocation of pre-1914 and post-1914 appropriative rights. In contrast, riparians mutually share shortages with other riparians. The priority of riparian rights over other rights depends upon the date of the land patent for the riparian land. Due to these historical circumstances, riparian rights and pre-1914 appropriative rights typically hold a senior priority to post-1914 appropriative rights and are entitled to satisfaction in times of shortage over the claims of post-1914 rights. And of course, this structure almost entirely lacks recognition of the native peoples that inhabited these lands and used these waters before this colonial system was established.

Neither holders of riparian rights nor pre-1914 appropriative rights require a permit or license from the Water Board. According to one study, self-reported riparian and pre-1914 water claims account for the diversion of over 2.3 million acre-feet of water a year from the Sacramento-San Joaquin Delta watershed.² Because the Water Board does not issue permits or licenses for riparian and pre-1914 appropriative rights, the extent and scope of these rights are poorly understood.

The Water Board presently lacks the tools for promptly investigating and determining whether senior water right claims are inflated or represent the amounts that the claimants have the right to divert and use. Reforms allowing the Water Board to verify these claimed water rights could make water available for more junior water rights holders and for fishery or other beneficial uses of water in times of scarcity.

The Water Code amendment proposed by SB 389 would address this gap in Water Board authority by allowing the Water Board to selectively investigate and determine whether a water right claimant, diverter, or user is diverting or using water under a defensible claim of right. With this authority, the Water Board will have the ability to better manage the system for the benefit of all users, and the ecology of California’s many beautiful streams. We strongly urge your support of SB 389.

We thank you and the Committee for your consideration of these critical and complex issues.

Respectfully,

Matthew Baker
Policy Director
Planning and Conservation League

Elizabeth Dougherty
Director
Wholly H2O

Cody Phillips
Policy Analyst
California Coastkeeper Alliance

Keiko Mertz
Policy Director
Friends of the River

¹ California law also recognizes pueblo rights, rights unique to California law, that are the “paramount right of an American city as successor of a Spanish or Mexican pueblo (municipality) to the use of water naturally occurring within the old pueblo limits for the use of the inhabitants of the city.” Hutchins, *The California Law of Water Rights* (1956) at p. 256.

² Public Policy Institute of California, *Allocating California’s Water: Directions for Reform* (November 2015) at p. 8, n. 18.

Nathan Rangel
Executive Director
California Outdoors

Dr. Charles M. Rockwell
President
Northern California Council, Fly Fishers International

Glen Spain
Acting Executive Director
Pacific Coast Federation of Fishermen's Associations

James Fischer
Policy Coordinator
Climate Reality California Coalition

Betsy Reifsnider
Mono Lake Committee
Sacramento Policy Associate

Melissa Romero
Senior Legislative Manager
California Environmental Voters

Erin Woolley
Policy Advocate
Sierra Club California

Gerald Meral, Ph.D.
Director, California Water Program
Natural Heritage Institute

Ashley Overhouse
Water Policy Advisor
Defenders of Wildlife

Chris Shutes
Executive Director
California Sportfishing Protection Alliance

Janet Cox
President
Climate Action California

Deirdre Des Jardins
Director
California Water Research

Jennifer Clary
California Director
Clean Water Action

Barbara Barrigan-Parrilla
Executive Director
Restore the Delta

Peter Drekmeier
Policy Director
Tuolumne River Trust

Alan Levine
Director
Coast Action Group

Matt Clifford
Staff Attorney
Trout Unlimited

Daniel Barad
Western States Policy Manager
Union of Concerned Scientists

Andy Hattala
Vice Chair and Water Committee Chair
Climate Reality Los Angeles

Kathy Schaeffer
Legislative Coordinator
Climate Reality Project San Fernando Valley

Trygve Sletteland
Founder
Sacramento River Council