



September 14, 2023

The Honorable Gavin Newsom  
Governor of California  
1021 O Street, Suite 9000  
Sacramento, CA 95814

**RE: Please Sign SB 389 (Allen) - Water Rights Verification**

Dear Governor Newsom,

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

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.<sup>1</sup>

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.<sup>2</sup> 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 for your consideration of these critical and complex issues.

Respectfully,

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Planning and Conservation League

Cody Phillips  
Policy Analyst  
California Coastkeeper Alliance

Walter "Redgie" Collins  
Legal and Policy Director  
Cal Trout

Elizabeth Dougherty  
Director  
Wholly H2O

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<sup>1</sup> 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.

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

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