

New California law takes aim at injustices in water rights system, but barely

[Kurtis Alexander](#)

San Francisco Chronicle, Updated: Oct. 9, 2023 2:34 p.m.

[Comments](#)



1of2

The Bidwell Bar Bridge at Lake Oroville, a major state reservoir, is seen in April. Gov. Gavin Newsom signed a bill that imposes changes on how water is managed in California.

Carlos Avila Gonzalez/The Chronicle



-
-

[Gov. Gavin Newsom](#) signed a rare piece of legislation this weekend that confronts the problems with California’s deeply entrenched, and often unfair, water rights system.

The new law, SB389, gives state regulators clear authority to investigate the validity of water draws by some of California’s biggest and most privileged water users, many of which have long evaded scrutiny due to their senior — and nearly untouchable — water rights.

The state’s water rights system generally lets those who first claimed water from rivers and creeks, including farm suppliers and cities, to take all the water they want while everyone else gets what’s left over. The enduring hierarchy has been criticized for disadvantaging those who weren’t able to get in early, including indigenous people who were barred from taking part.

But while SB389 marks an unusual, and many would say overdue, update to the system, it’s a small one. The legislation was weakened in the face of opposition, and two other bills that also sought to rein in senior water users this year didn’t make it through the Legislature.

“This is better than getting nothing,” said Tim Stroshane, recently retired policy analyst at Restore the Delta, a Stockton-based group that advocates for equitable water distribution. “I think it can help strengthen the legal basis by which the water board can do its job.”

Many water agencies opposed [SB389 and the other water-rights bills](#) out of concern that changes to the system would undermine the vast and pricey infrastructure, built on longstanding water rights, that sends water across the state.

SB389 was introduced by Sen. Ben Allen, D-Santa Monica, amid uncertainty over how far state regulators could go to investigate the authenticity of a senior right. Because senior rights, meaning those acquired before 1914, predate the creation of the State Water Resources Control Board, legal questions have persisted about whether the state can regulate — and review — these water users.

The city of San Francisco, which initially opposed the legislation, is among California’s many senior water rights holders. The city has claims on the Tuolumne River in the Sierra and gets much of its water from the pristine flows at Hetch Hetchy Reservoir in Yosemite National Park. The San Francisco Public Utilities Commission was not immediately available Monday to clarify its position on the new law.

Old water rights like the city’s can be difficult to document. Being more than a century old, the original paperwork and evidence of historical water use may be gone. At the same time, to ensure legal water use and uphold the water-rights system, regulators need the power to make sure diversions are authorized.

The new law clarifies that the state water board can look into pre-1914 water rights and demand information from water users, which sets the agency up for stripping the water right, should it be found invalid.

The final legislation, though, diluted some of the board’s abilities to investigate a water user. For one, the law doesn’t include an earlier provision that would have allowed regulators to look into the abandonment of a water right, or “forfeiture,” without a conflicting claim to the water. Also, perhaps more significantly, regulators have to show cause for pursuing an investigation.

“It now includes important guardrails to prevent a blanket fishing expedition,” said Kris Anderson, legislative advocate at the influential Association of California Water Agencies, which was against SB389 until changes were made. “We’re happy that we’re able to get to a place where we could remove our opposition.”

Two other pieces of legislation, which joined SB389 in what was viewed as a campaign to take aim at injustices in the water rights system, stalled out this year.

AB1337 sought to codify the state water board’s ability to restrict, or “curtail,” senior water rights holders. It was introduced by Assembly Member Buffy Wicks, D-Oakland.

AB460 sought to streamline the board’s ability to crack down on water rights holders who illegally take water and boost fines to as much as \$10,000 a day. The legislation followed an episode last year on the Shasta River where ranchers flouted curtailment orders, deciding that paying penalties was easier than going without water. It was authored by Assembly Member Rebecca Bauer-Kahan, D-Orinda.

The failed bills could be reconsidered next year.

Reach Kurtis Alexander: kalexander@sfchronicle.com Twitter: [@kurtisalexander](https://twitter.com/kurtisalexander)



[Kurtis Alexander](#) Kurtis Alexander is an enterprise reporter for The San Francisco Chronicle, with a focus on natural resources and the environment. He frequently writes about water, wildfire, climate and the American West. His recent work has examined the impacts of drought, threats to public lands and wildlife, and the nation's widening rural-urban divide.

Before joining the Chronicle, Alexander worked as a freelance writer and as a staff reporter for several media organizations, including The Fresno Bee and Bay Area News Group, writing about government, politics and the environment.