

AMENDED IN SENATE APRIL 27, 2023

SENATE BILL

No. 389

Introduced by Senator Allen

February 9, 2023

An act to add Article 6 (commencing with Section 1860) to Chapter 12 of Part 2 of Division 2 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 389, as amended, Allen. State Water Resources Control Board: determination of water right.

Existing law establishes the State Water Resources Control Board within the California Environmental Protection Agency. Existing law provides generally for the appropriation of water. Existing law provides that it is the intent of the Legislature that the state take vigorous action to enforce the terms and conditions of permits, licenses, certifications, and registrations to appropriate water, to enforce state board orders and decisions, and to prevent the unlawful diversion of water.

This bill ~~would~~ *would, upon specified findings*, authorize the State Water Resources Control Board to investigate the diversion and use of water from a stream system to determine whether the diversion and use are based upon appropriation, riparian right, or other basis of right, as specified. *The bill would authorize the state board to adopt regulations to implement these provisions.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 6 (commencing with Section 1860) is
2 added to Chapter 12 of Part 2 of Division 2 of the Water Code, to
3 read:

4
5
6

Article 6. Determination of Basis of Right

7 1860. ~~The~~ Upon a finding that there is reason to believe that
8 the information would protect the public interest or further the
9 state board's responsibilities under Section 2 of Article X of the
10 California Constitution or the public trust doctrine, the state board
11 may investigate the diversion and use of water from a stream
12 system to determine whether the diversion and use are based upon
13 appropriation, riparian right, or other basis of right.

14 1861. In furtherance of an investigation authorized pursuant
15 to Section 1860, the state board may issue an information order to
16 a water right claimant, diverter, or user to provide technical reports
17 or other information related to a diversion and use of water,
18 including, but not limited to, all of the following:

19 (a) Information in addition to any information required to be
20 reported pursuant to Part 5.1 (commencing with Section 5100).

21 (b) Information related to the basis of the water right claimed.

22 (c) Information related to the patent date claimed for the place
23 of use.

24 (d) Information related to the notice date of the appropriation
25 and the date of actual delivery of water to beneficial use.

26 (e) Information related to prior diversions and use, including
27 direct diversions and diversions to storage.

28 (f) Information related to the diversions and use of transferred
29 water.

30 1862. After notice and opportunity for hearing, the state board
31 may issue a decision or order determining the diversion and use
32 basis of right, including the authorized scope of the diversion and
33 use, or may issue a decision or order determining that the diversion
34 and use is not authorized under any basis of right.

35 1863. In determining under this article whether a holder of an
36 appropriative water right has forfeited the right or any portion of
37 the right pursuant to Sections 1240 and 1241, the state board is
38 not required to find the existence of a conflicting claim by any

1 water right holder within the stream system during the period of
2 forfeiture.

3 1864. In any state board proceeding to determine a diversion
4 and use basis of right under this article, the water right claimant,
5 diverter, or user shall have the burden of proving by the
6 preponderance of evidence the elements of the basis of right.

7 1865. Nothing in this article shall limit the authority of the
8 state board to issue any decision or order, or to take any other
9 action authorized by law.

10 1866. *The state board may adopt regulations to implement this*
11 *article.*

O