

Senate Bill No. 389

Passed the Senate September 12, 2023

Secretary of the Senate

Passed the Assembly September 5, 2023

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2023, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 1051 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 389, Allen. State Water Resources Control Board: investigation 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 authorizes the board to investigate bodies of water, to take testimony in regard to the rights to water or the use of water, and to ascertain whether or not water is appropriated lawfully, as provided. Under existing law, the diversion or use of water other than as authorized by specified provisions of law is a trespass, subject to specified civil liability.

This bill would instead authorize the board to investigate and ascertain whether or not a water right is valid. The bill would authorize the board to issue an information order in furtherance of an investigation, as executed by the executive director of the board, as specified. The bill would authorize a diversion or use of water ascertained to be unauthorized to be enforced as a trespass, as specified.

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

SECTION 1. Section 1051 of the Water Code is amended to read:

1051. (a) The board for the purpose of this division may:

(1) Investigate all streams, stream systems, portions of stream systems, lakes, or other bodies of water.

(2) Take testimony in regard to the rights to water or the use of water thereon or therein.

(3) Investigate and ascertain whether or not water heretofore filed upon or any claimed riparian or appropriative right is valid under the laws of this state.

(b) (1) In furtherance of an investigation authorized pursuant to this section, the board may issue an information order, as executed by the executive director of the board.

(2) The information order may be issued to a water right holder or claimant to provide the following information related to a diversion and use of water:

(A) Information required to be reported pursuant to Part 5.1 (commencing with Section 5100).

(B) Information concerning the basis of the water right claimed.

(C) Information related to the patent date claimed for the place of use, if the claimed right is a riparian right.

(D) Information concerning the notice date of the appropriation and the date of actual delivery of water to beneficial use.

(E) Information concerning prior diversions and use, including direct diversions and diversions to storage.

(3) (A) The information order may be issued to a diverter or user of water to provide information concerning that diverter's prior diversion or use, including direct diversions and diversions to storage, or identification of the person or holder claiming the right under which the water was diverted or used.

(B) Information obtained under this paragraph from a diverter or user who is not the water right holder or claimant shall not be binding on, or treated as an admission by, the water right holder or claimant.

(c) The burden of any order issued under subdivision (b), including costs, shall bear a reasonable relationship to the need for the requested information and the benefits to be obtained from the board receiving that information. In making a request, the board shall do both of the following:

(1) Provide the person to whom the request is directed with a written explanation with regard to the need for the information.

(2) Identify the evidence that supports requiring that person to provide the information.

(d) A diversion or use of water ascertained to be unauthorized may be enforced as a trespass under Section 1052, following notice and opportunity for hearing as required under Section 1052, Section 1055, or Article 2 (commencing with Section 1831) of Chapter 12 of Part 2.

(e) Nothing in this section shall limit any authority held by the board under this code or any other provision of law.

Approved _____, 2023

Governor