

April 3, 2023

The Honorable Ben Allen
California State Senate
1021 O St, Suite 6610
Sacramento, CA 95814

RE: Letter in Opposition of SB 389 - (Allen)

Dear Senator Allen,

On behalf of the Turlock Irrigation District (TID), we regrettably write in opposition to SB 389, which would 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.

TID is the first publicly owned irrigation district in the state and is one of only four today that provides irrigation water and power to residential, commercial, industrial and agricultural customers within its service area. TID has been serving retail electric customers since 1923. TID provides safe, low-cost, reliable energy to a growing customer base of almost 240,000 home, farm, business, industrial and municipal users within a 662-square-mile service area. TID serves approximately 4,700 irrigation customers covering approximately 150,000 acres of prime, Central Valley farmland.

TID possesses and exercises a mix of riparian, pre-1914, and post-1914 appropriative water rights for a number of different beneficial uses. TID water rights date as far back as 1871. As a widely-recognized good actor in the water rights regulatory arena, TID reports diligently and transparently to the State Water Board a number of regular filings, including annual licensee reports for post-1914 water rights, annual statements of diversion and use for pre-1914 water rights and enhanced reporting periodically, as determined by the State Water Board during emergency curtailment. The state is also in already possession of historical documentation, filings and other materials that authenticate TID's water right claims.

While SB 389's overarching intention is to ensure water right claimants are in fact diverting what they have the right to divert and use, it includes concerning provisions that unjustly expand the authority of the State Water Board and subject water diverters to potentially costly and resource intensive investigations including ultimately, a State Water Board initiated adjudication of all water right claimants in an entire watershed.

SB 389 would authorize the State Water Board to investigate and determine the scope and validity of any water right claim. It should be noted that the State Water Board already possesses broad authorities to administer the water rights priority system, including Water Code Section 1051 of the Water Code which authorizes the State Water Board to investigate stream systems, and Sections 2500-2900 authorize the State Water Board to determine all rights to water of a stream system.

In any proceeding to evaluate a basis of a water right, the water right holder would have the burden of proving by a preponderance of evidence the elements of the basis of right. The bill would also require the water right holder to submit substantial amounts of evidence to defend their claimed water right. The bill does not require the State Water Board to have a basis for investigating water rights, and the lack of details about the process for a hearing is also concerning. Additionally, the forfeiture element of this bill differs from common law forfeiture. The authority envisioned in this bill would result in a severe diminishment of people's water rights and would negatively impact a water agency's ability to plan for the future.

It is because of these concerns and reasons that TID must oppose SB 389. Should you have any questions regarding these comments, please contact Josh Weimer, External Affairs Manager at jmweimer@tid.org or (209) 883-8361.

Regards,

A handwritten signature in cursive script that reads "Michelle Reimers".

Michelle Reimers
General Manager