

'Improvised, spotty and belated': Will California reform its oversight of water rights?

Los Angeles Times, 06/05/23

California's complex system of water rights took shape starting in the mid-1800s, when settlers saw the state's water as abundant and free for the taking — a time when a Gold Rush prospector could stake claim to river flows simply by nailing a notice to a tree.

Today, California's oldest and most senior water rights — called riparian and pre-1914 rights — have been passed along to thousands of agricultural landowners, irrigation districts and urban water suppliers that claim control of roughly one-third of the water that is diverted from the state's rivers and streams.

But increasingly, California water regulators are struggling to manage supplies for 39 million residents, agriculture and the environment as climate change warps the hydrologic cycle and brings longer-lasting and more severe droughts. Legal experts say the way the state manages this antiquated system is in dire need of reform. Among other problems, they say, current law prevents officials from verifying whether claims of senior water rights are valid, ordering those water users to reduce usage, or imposing fines that are large enough to penalize those who flout the rules.

Three bills gaining momentum in the Legislature are seeking to change that, even as they draw heated opposition from water agencies and agricultural groups.

“These bills show that the Legislature is taking a serious look at bringing more comprehensive and consistent regulation to water rights — and empowering the State Water Resources Control Board to do the job California needs it to do,” said Nell Green Nylen, a senior research fellow at the UC Berkeley School of Law's Wheeler Water Institute.

Green Nylen is part of a group of legal experts who recently published a state-funded report outlining recommendations for legislative and policy changes to improve oversight and management of the water rights system. She said the bills in the Legislature would partially address some of their recommendations, while still leaving some “concerning gaps in the state's ability to manage water scarcity.”

One bill — AB 1337, introduced by Assemblymember Buffy Wicks (D-Oakland) — would clarify that the State Water Board has authority to issue a curtailment order for all diverters, including senior rights holders. The legislation was drafted in response to a recent decision by an appeals court, which sided with water agencies in the Sacramento-San Joaquin River Delta that had challenged the state's authority to order cuts. In its decision, the court suggested it's up to the Legislature to determine whether it's time to update the law.

Another measure approved by the Senate, SB 389, would give the State Water Board the authority to investigate and verify whether the claims of senior rights holders are valid and accurate.

“They’ve got to have more tools at their disposal to better understand the rights system as it exists,” said Sen. Ben Allen (D-Santa Monica), who introduced the proposal.

California’s existing water rights allocate far more water than is available in an average year, Allen noted, and state water regulators are tasked with making the system work through increasingly intense droughts.

The change would help the water rights system function the way it’s supposed to, “before we run out of time to fix it,” Allen said.

Another bill, AB 460, would strengthen the State Water Board’s enforcement powers to stop illegal water diversions and would sharply increase fines for violators.

The bill is intended to prevent the sort of violations that occurred in August in the Shasta River watershed, when farmers and ranchers who belong to the Shasta River Water Assn. defied a curtailment order for eight days and diverted more than half the river’s flow, flouting requirements aimed at protecting salmon. The State Water Board fined the association the maximum amount for the violation: \$4,000, which worked out to about \$50 for each of its members.

The case led to widespread calls for larger fines and stronger enforcement powers.

“If we have scofflaws out there taking water that is not theirs, then it really messes up the entire system,” said Assemblymember Rebecca Bauer-Kahan (D-Orinda), who introduced the bill.

The bill would give the State Water Board the authority to issue temporary orders to stop the illegal taking of water, and would increase fines for violations to up to \$10,000 per day, plus \$2,500 per acre-foot of water diverted. (An acre-foot is 325,851 gallons, or enough to cover one acre a foot deep.)

Some environmental groups and tribes have called for a major overhaul of the state’s water rights, arguing that the current system was built on a foundation of violence against Native people, the taking of land from tribes, and systemic racism that long prevented people of color from securing water rights.

Supporters of the reform proposals in the Legislature say the bills aren’t meant to radically change the existing system, but rather to make a dysfunctional system work.

“These modest changes are a first step in retrofitting the water rights system for the 21st century challenges ahead,” said Amanda Fencl, a senior climate scientist for the Union of Concerned Scientists. She said the measures offer critical updates to enable the State Water Board “to make informed and timely water management decisions and build climate resilience for the future.”

The proposals are facing opposition from many water agencies and groups representing the agriculture industry.

The three bills “all create increased uncertainty in the water supply, which would make it harder for growers to plan — and could result in fewer planned acres of food grown,” said

Gail Delihant, senior director of California government affairs for Western Growers, which represents more than 1,500 crop growers, packers and shippers.

Delihant said the measures represent “attempts to destabilize the water rights system in California.”

Also opposing the bills is the Assn. of California Water Agencies, or ACWA, which represents about 460 public agencies that deliver water to cities and farms. Kristopher Anderson, a legislative advocate for ACWA, said the bills “present a foundational change in the way California’s water rights system is implemented, managed, and enforced.”

“They would authorize the State Water Board to impose punitive penalties on even law-abiding water right holders, curtail water rights in any year, and strip entities of their water rights,” Anderson said. “This package of legislation would create significant uncertainty, and lead to unintended consequences, for not just water right holders themselves, but communities and businesses across the state that depend on a reliable water supply.”

Anderson said water agencies that belong to the association agree that higher fines are necessary to deter violations, such as those that occurred on the Shasta River last year. But he and other opponents argued the proposal is overly broad and goes beyond what is necessary.

In a letter opposing Wicks’ bill, representatives of dozens of water districts and agriculture industry groups said they support proposals to “modernize administration” of the water rights system by improving how the state collects and manages data, and by deploying more stream gages, among other steps. They argued that as it stands, the proposal “threatens to remake the way water rights are managed in California by employing a top-down approach that would override decades of successful collaborative water management practices.”

State officials are working on a project to modernize California’s water rights information system by digitizing about 7 million pages of paper records. But officials have said that even those extensive records in many cases don’t include original documents that show proof of pre-1914 water rights, which were grandfathered in under the 1913 Water Commission Act. That act established a permit process for rights from then on.

In a February meeting, state officials said there are currently about 2,600 riparian and pre-1914 water rights claims in the San Joaquin River watershed, and more than 3,900 rights claims in the Sacramento River watershed. The rights are held by various entities and individuals, among them agencies that supply cities and agricultural irrigation districts supplying farms that produce nuts, cotton, rice and other crops.

In their recent report, Green Nylén and other water law researchers recommended various changes to establish what they say would be a fair and effective framework for curtailing water rights. They said that the Legislature should clarify, among other things, that the State Water Board has broad authority to order curtailments for all diverters, including those with the oldest rights.

The researchers said the State Water Board “needs to implement curtailments on a regular basis, not only in times of extreme crisis or only in certain watersheds.” They noted that other Western states routinely curtail water rights in this way.

“Drought response has been improvised, spotty and belated,” said Dave Owen, a professor at UC College of the Law in San Francisco.

“If you talk to people at the board, they will bluntly tell you they're incredibly frustrated with their inability to gather information that they think they need. And then there are anemic enforcement mechanisms,” Owen said. “We just have this huge mismatch between major problems, big expectations for the agency and a fairly weak set of implementation tools. And it just means that we sort of default to the status quo. We default to improvisation or we default to letting people just kind of do what they want with water — unless it is so egregiously obvious that there is a problem that we have to step in.”

Michael Kiparsky, director of the Wheeler Water Institute at the UC Berkeley School of Law, said it's vital that state officials look ahead now to improve how the system functions to respond to the next drought.

"Our system for water administration in California just doesn't work," Kiparsky said. "It doesn't work because the state doesn't have the tools it needs to do the basics. Those basics include figuring out who should have the right to divert water from rivers and streams at any particular time, and telling those who should not be diverting water that they can't. It's a very basic function."

California drought update: How dry is the state ahead of summer's scorching temps?

The Sacramento Bee, 06/01/23

Meteorologists forecast that June will bring above-normal temperatures to California, which could worsen the state's remaining drought. According to the National Oceanic and Atmospheric Administration, there's a 33% to 50% chance weather in California will be hotter than usual for this time of the year. NOAA outlooks show "equal" chances of above-normal, near-normal or below-normal rainfall for June. Meaning, according to the National Weather Service, there's no clear indication of how much rain the state could receive. One thing is for certain: parts of California will scorch this summer.

According to previous Bee reporting, Northern California could see more intense heat waves this summer. "Heat can exacerbate drought, and hot, dry conditions can, in turn, create wildfire conditions," the Center for Climate and Energy Solutions wrote on its website. The heightened risk of fires this season is in lower-elevation grasslands, as moisture from winter storms is drying up faster than in the mountains, which saw record snow this year. More vegetation in these areas can be fuel for flames.

In Sacramento, according to the National Weather Service, temperatures will reach a high of 92 degrees on Saturday and 93 degrees on Sunday. The weather is predicted to settle into the mid-to-low 80s early next week.

IS CALIFORNIA STILL IN A DROUGHT?

According to the U.S. Drought Monitor, California is roughly 95% drought-free after a winter of record-breaking rain and snow. The state is free of "severe," "extreme," and "exceptional" drought conditions for more than seven weeks in a row. The entire Central Valley, Central Sierra, Foothills, Northern California, the coast and most of Southern California have exited drought conditions. As of Thursday, portions of three out of 58 counties, or roughly 4.6% of the state, are in "moderate" drought. In May, eight counties or nearly 8% remained in drought.

The majority of the desert region is drought-free except for "moderate" conditions in parts of Inyo, Riverside and San Bernardino counties. Nearly 704,800 people remain in drought areas, according to a Thursday update from the U.S. Drought Monitor — an improvement over nearly 736,000 in May and 5 million in March. Meaning, whether the drought is over depends on where you are and the status of your water agency's supply. Roughly 29% of the state remains abnormally dry for the second week in a row.

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Inadvertent Disclosure of Water Right Account Information for Rights in the Delta Watershed

California Water Boards, 06/08/23

The State Water Resources Control Board (State Water Board or Board) recently became aware of an incident that may impact the privacy of information entered into the Report Management System (RMS) or Water Right Form and Survey Submittal Portal (Survey Portal).

Login information for the RMS and Survey Portal was inadvertently placed on a file server accessible to individuals outside the Board. The posting occurred in the course of litigation regarding the drought emergency regulations for the Sacramento-San Joaquin Delta (Delta) watershed. With this login information, an individual may have been able to access a water right holder's name, phone number, email, address, and reports submitted to the RMS or Survey Portal by the water right holder. Upon learning of this incident, the Board immediately restricted access to the two systems for all users and reset access credentials for all potentially affected water rights and claims in the Delta watershed.

There is no indication that the disclosed information has been accessed, shared or used in any unauthorized way.

The Board is sending two letters to potentially affected water right holders and claimants in the Delta watershed in the coming weeks. The first letter will provide additional information related to the disclosure and the second letter will inform users how to securely access the RMS and Survey Portal.

The Board takes its responsibility to protect the personal information of right holders seriously and regrets any difficulty caused by this incident. It is reviewing and updating its internal procedures and protocols to ensure safeguards are in place to prevent a similar incident in the future.

Additional information related to this incident will also be available in a notice posted to the California Attorney General's webpage at: <https://oag.ca.gov/privacy/databreach/list>.

If you need assistance or have questions, please contact Division of Water Rights staff by phone at: (916) 341-5431, or by email to: rms@waterboards.ca.gov.

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California Announces \$288 Million for Drought and Flood Projects

Office of Governor Gavin Newsom, 06/08/23

WHAT TO KNOW: 44 projects will receive \$217 million to increase water supply reliability, expand new water storage and conservation, and protect against flooding. And, \$71 million will help respond to local drought impacts. These are critical investments that will make California more resilient to drought and flooding.

Governor Gavin Newsom has advanced an unprecedented \$8.5 billion worth of investments to conserve, store, and deliver more water to California communities. Recent investments have also focused on protecting Californians from historic flooding. Today, California announced over a quarter of a billion dollars for projects throughout the state to continue accomplishing these goals.

The Department of Water Resources (DWR), through the Urban Community Drought Relief Grant program, has awarded over \$217 million to 44 projects that will help communities strengthen drought resilience and better prepare for future dry conditions – helping advance efforts outlined in Governor Newsom’s strategy to adapt California’s water supply for a hotter and drier future. These investments focus on:

Flood Risk Management/Groundwater Recharge

- In San Joaquin County, Stockton East Water District will receive \$12.2 million to divert water from the New Hogan Reservoir for groundwater recharge and drinking water purposes. In Fresno County, the City of Fresno will receive \$5.2 million to make improvements to the existing Leaky Acres Basin to maximize the capture of surface water during flood events.
- The Los Angeles County Department of Public Works will receive \$10.5 million to reinforce the Santa Anita dam and remove sediment, providing additional storage capacity for downstream groundwater recharge in the Santa Anita Spreading Grounds. The project will increase the County’s ability to recharge with stormwater, adding over 2,000 acre-feet of new storm water resources to the groundwater basin annually. The project was previously visited by Vice President Kamala Harris, U.S. Senator Alex Padilla and California Natural Resources Secretary Wade Crowfoot in January during record-setting rains.

Improved Water Supply Reliability

- In Ventura County, the Casitas Municipal Water District will receive \$3.6 million to develop a deep extraction well to provide an estimated additional 8,000 acre-feet per year of new water supply. In Santa Clara County, the City of Morgan Hill will receive \$4 million to construct a new 850,000-gallon aboveground steel water supply reservoir.
- In Santa Cruz County, the San Lorenzo Valley Water District will receive \$4.5 million to replace nine leaking water storage tanks with six fire-resistant steel tanks, to significantly increase the district’s current storage capacity from 160,000 to 720,000

gallons. This funding will help to rebuild the district's infrastructure, much of which was destroyed during the 2020 CZU Lightning Complex Fire.

Recycling Water

- In Fresno County, the Fresno Unified School District will receive \$540,000 to support two projects benefiting a local elementary and middle school to irrigate with recycled water. In Alameda County, the Zone 7 Water Agency will receive \$300,000 to construct an automated self-service recycled water fill station to provide a permanent, year-round source of water for irrigation and other uses for many residents with expanded operating hours.
- In Los Angeles County, the Los Angeles Department of Water and Power will receive \$4.5 million to upgrade the Dominguez Gap Seawater Intrusion Barrier to use 100 percent recycled water.

Water Conservation/Yard Transformation

- In San Bernardino County, the San Bernardino Valley Municipal Water District will receive \$2.6 million to install water-efficient fixtures in single-family and multifamily homes in targeted disadvantaged community areas to improve indoor water efficiency. The district will also replace turf with drought tolerant landscaping in homeowner association areas and mobile home parks to reduce outdoor water use.
- In Stanislaus County, the City of Modesto will receive \$2.3 million to replace 17.79 acres of non-functional turf grass with drought tolerant landscaping at 21 parks for an estimated water savings of over 54 acre-feet annually.
- The Metropolitan Water District of Southern California will receive \$30 million to implement a turf replacement program available to all of its member agencies serving a combined 19 million Californians, and will save up to 4,050-acre feet of water per year by converting an estimated 30 million square-feet of non-functional turf to water-efficient landscaping.

Additionally, in May the Administration dedicated \$71 million to address drinking water shortages, species protection, and populations particularly impacted by drought. This includes:

- **\$10 million** to provide immediate and near-term financial and technical support to help small communities whose water supplies have been impacted by drought.
- **\$55 million** to address dry wells by providing hauled water and well repair and replacement.
- **\$500,000** to fund stream gages and well transducers for use in Clear Lake to better understand the relationship between streamflow, well pumping, and water use. This funding will support the threatened Clear Lake hitch.
- **\$500,000** for a contract to investigate groundwater/stream water interactions in the Clear Lake region. This funding will support the threatened Clear Lake hitch.
- **\$5 million** to provide direct relief grants for small-scale and historically underserved farmers.