



1231 Eleventh Street
P.O. Box 4060
Modesto, CA 95352
(209) 526-7373

March 21, 2023

The Honorable Dave Min
Chair, Senate Committee on Natural Resources and Water
1021 O St, Suite 2100
Sacramento, CA 95814

**RE: SB 389 - (Allen) State Water Resources Control Board: determination of water right —
OPPOSE**

Dear Senator Min,

On behalf of the Modesto Irrigation District (MID), we write in respectful opposition to SB 389 (Allen), which would authorize the State Water Resources Control Board (State Water Board) to investigate the basis for any water right and require that a water right holder provide information supporting its water right before a hearing is held to determine the validity of the water right.

Since 1893, MID has been providing surface water from the Tuolumne River to one of the most productive regions of the Central Valley in accordance with several pre-1914 and post-1914 water rights. Currently, we provide irrigation water to more than 3,000 accounts within a 160 square-mile irrigation service area that encompasses approximately 60,000 acres of farmland. Since 1994, MID has delivered approximately 844,000 acre-feet of high-quality treated surface water to the City of Modesto whereby significantly reducing the City's once sole reliance on groundwater from the Modesto Sub-basin. Current law allows the State Water Board to 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. Authorizing the State Water Board to investigate the diversion and use of water under a riparian right, pre-1914 right, or other basis of right, and shifting the burden of proof on the water right holder, is an unjustified expansion of State Water Board that treats diverters as unlawful actors unless they can prove otherwise to the State Water Board.

Additionally, the provision of the bill that would allow the State Water Board to conclude water rights have been forfeited in the absence of a conflicting claim would disrupt settled law, create uncertainty over property rights, and discourage water conservation efforts. Courts in this state have long recognized there is no policy reason for finding a forfeiture until an alternative use has been asserted, as the purpose of the forfeiture doctrine is to free unused water for beneficial use. If no other beneficial use has been asserted, there is no reason to find a forfeiture. MID also opposes SB 389 because it would require compiling technical reports beyond simple diversion records, which would be incredibly time-consuming and costly for diverters and should not be required simply because the State Water Board is interested in the basis of one's right. Finally, MID opposes SB 389 because it is unclear what due process would be provided or guaranteed to a water right claimant.

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 troubling 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.



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For these reasons, the Modesto Irrigation District must oppose SB 389. Should you have any questions regarding these comments, please contact District staff: Dana Ferreira, Regulatory Analyst at dana.ferreira@mid.org.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Ed Franciosa', is written over a light blue, stylized background graphic that resembles a water drop or a leaf.

Ed Franciosa, P.E.
General Manager

CC: Chair & Members, Senate Natural Resources and Water Committee
The Gualco Group, Inc.