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# Reforming California's Inequitable Water Rights System

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STATE OF CALIFORNIA  
DEPARTMENT OF PUBLIC WORKS  
DIVISION OF WATER RESOURCES

License for Diversion and Use of Water

LICENSE 1387 PERMIT 67 APPLICATION 138

THIS IS TO CERTIFY, That Carmichael Irrigation District of Carmichael, California, *has made proof to the satisfaction of the Division of Water Resources of California of a right to the use of the waters of American River in Sacramento County tributary of Sacramento River*

for the purpose of irrigation and domestic uses under Permit 67 of the Division of Water Resources and that said right to the use of said waters has been perfected in accordance with the laws of California, the rules and regulations of the Division of Water Resources and the terms of the said permit; that the priority of the right herein confirmed dates from September 18, 1915; that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to the amount actually beneficially used for said purposes and shall not exceed fifteen (15) cubic feet per second from January 1st to December 31st of each season provided, however, that in case of rotation the equivalent of such continuous flow allowance for any thirty day period may be diverted in a shorter time if there be no interference with other vested rights.

The point of diversion of such water is located within Lot 123 of Carmichael Colony and being within the NE<sup>1</sup> of Section 22, T 9 N, R 6 E, M.D.B.&M.

A description of the lands or the place where such water is put to beneficial use is as follows:

Within the boundaries of Carmichael Irrigation District consisting of 3100 acres as shown on map filed on November 3, 1915, with the State Water Commission, now the Division of Water Resources, and being within projected U. S. Government Sections 14, 15, 16, 20, 21, 22, 28, 29 and 32, T 9 N, R 6 E, M.D.B.&M.

The right to the diversion and use of the water aforesaid hereby confirmed is restricted to the point of diversion herein specified and to the lands or place of use herein described.

# What is a Water Right?

- A right to divert water and apply it to beneficial use: domestic, irrigation, municipal & industrial (M&I), mining, power, recreation, fish & wildlife, stockwatering, aquaculture, frost protection, water quality (not flood control)
- Usufructuary right
- Property right, not a contract

# New Water Rights Created for the Gold Rush



Hydraulic mining drives the creation of a new type of water right that allowed water to be moved far from rivers: the Appropriative Rights Doctrine.

**“First in time, first in right”**

Water Commission Act of 1913 creates the first permitting system for water rights in CA.

# Why Reform of Water Rights is Needed

- Who holds water rights, and who was excluded?
- Does the State know how many water rights have been issued, for how much water?
- Does the water rights system protect the environment and ensure safe drinking water for all Californians?

# Who Was Excluded from Claiming Water Rights in the 19<sup>th</sup> and 20<sup>th</sup> Centuries

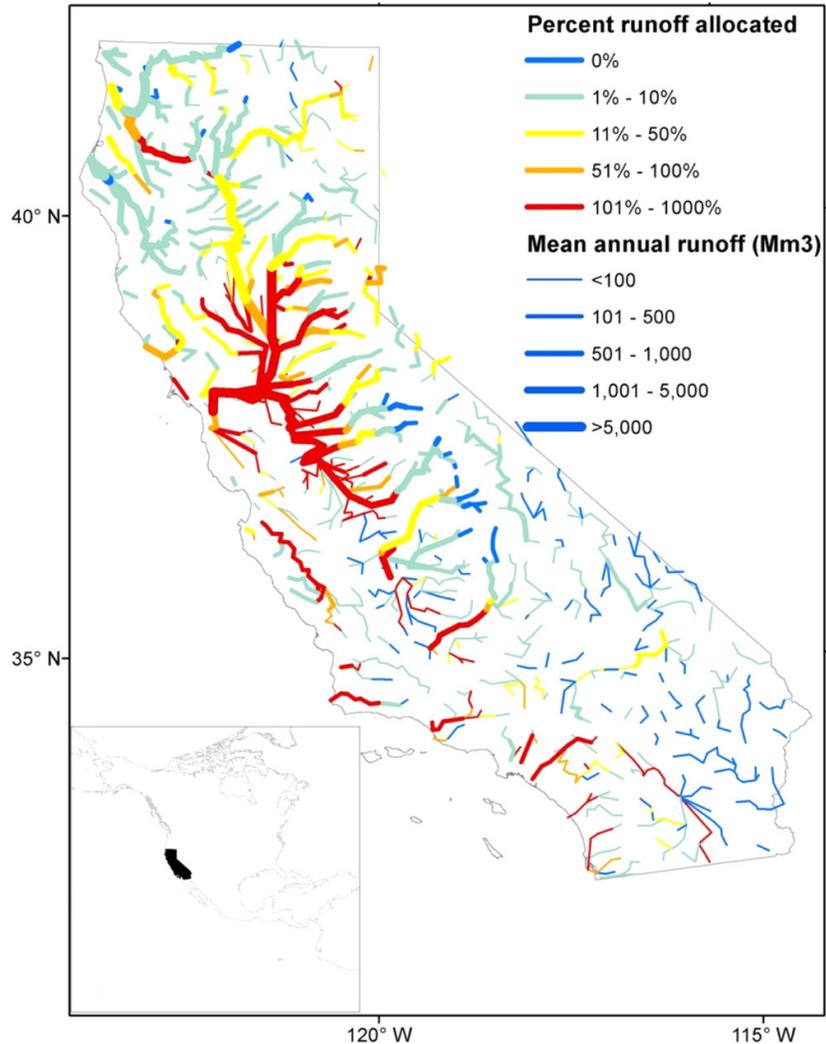


California Indian Library Collections

From its earliest days, California systematically disenfranchised traditional landowners and created legal prohibitions for many to own land and water rights, including:

- California Land Claims Act of 1851
- The State Constitution was amended in 1879 limits ownership of land to noncitizens of “the white race or African decent”
- Alien Land Law of 1913
- Racial covenants and other restrictions

# California Has Promised More Water Rights than there is Water



**There are very few water rights that require keeping water flowing in rivers and to protect the environment, but there are regulations that do so.**

# Solutions: Using California's Constitutional Prohibition on Waste and Unreasonable Use

## **Cal. Const., Art. X, § 2 (1928)**

It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or water course in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water. Riparian rights in a stream or water course attach to, but to no more than so much of the flow thereof as may be required or used consistently with this section, for the purposes for which such lands are, or may be made adaptable, in view of such reasonable and beneficial uses; provided, however, that nothing herein contained shall be construed as depriving any riparian owner of the reasonable use of water of the stream to which the owner's land is riparian under reasonable methods of diversion and use, or as depriving any appropriator of water to which the appropriator is lawfully entitled. This section shall be self-executing, and the Legislature may also enact laws in the furtherance of the policy in this section contained.

# What Happens When There Isn't Enough Water to Satisfy all Water Rights?

## **Historically**

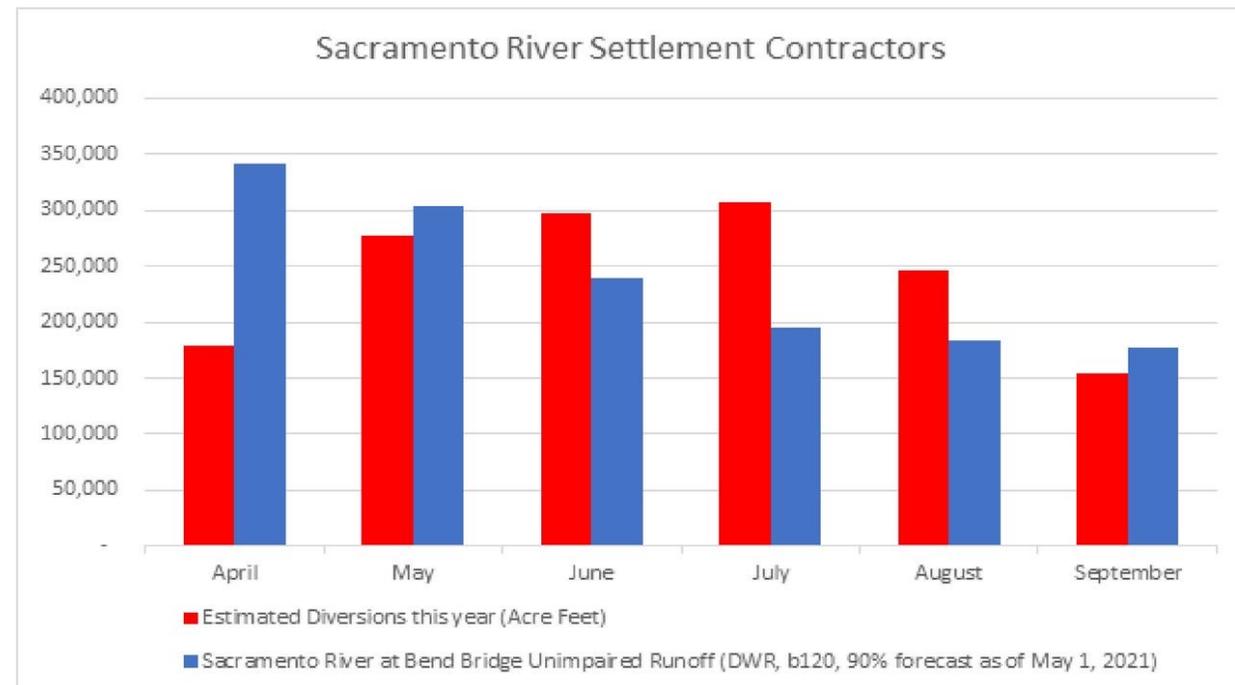
- Curtail junior water rights following the rule of priority (“First in Time, First in Right”), even if that leaves more junior water rights without safe drinking water.
- State Water Board has to provide notice of curtailments before they can be enforced.
- If there are no instream water rights or minimum streamflow requirements, diversions can completely dry up the river.

## **State Water Board's Emergency Curtailment Regulations**

- Exempt water diversions for human health and safety from curtailment order, even if they hold junior water rights.
- In theory, this provides quicker notice and enforcement of curtailments.
- Establishes instream flows to protect salmon and prohibit diversions that violate these minimum flow requirements.

# Reforming Unreasonable Water Supply Contracts of the State and Federal Water Projects

San Joaquin River Exchange Contractors			
Year	Water Diversions	San Joaquin River Flows	Percentage of River Flow
2022	656,717	1,075,000	61%
2021	656,717	521,853	<b>126%</b>
2020	875,623	886,706	<b>99%</b>
2019	875,623	2,734,772	32%
2018	875,623	1,348,979	65%
2017	875,623	4,395,400	20%
2016	875,623	1,301,252	67%
2015	656,717	327,437	<b>201%</b>
2014	569,155	509,635	<b>112%</b>
2013	875,623	856,626	<b>102%</b>
2012	875,623	831,656	<b>105%</b>



# Who Decides: State Water Resources Control Board



# Potential Water Rights Reforms

- Require consideration of climate change in granting new water rights (enacted into state law in 2022, regulations to be developed).
- Authorize the State Water Board to regulate all water rights and improve reporting of water diversions to streamline enforcement of water rights curtailments, and establish effective penalties to deter violations.
- Prioritize water diversions necessary for human health and safety, and instream flows for the environment, over other water diversions, including diversions by senior water rights holders.
- Reform water supply contracts through litigation and negotiations.
- Establish and protect Tribal water rights (including *Winter* reserved rights) and establish Tribal and Subsistence beneficial uses.