

ASSEMBLY THIRD READING

AB 2218 (Kalra)

As Amended April 16, 2026

Majority vote

SUMMARY

Declares it is statewide policy to recognize and address the wrongs inflicted upon California Native American tribes regarding access to, and control over, water by state-sanctioned acts of termination, removal, and assimilation and directs relevant state agencies to take steps to implement this policy.

Major Provisions

- 1) Recognizes that the state sanctioned over one century of depredations and prejudicial policies against California Native Americans and apologizes to all California Native Americans for the violence, mistreatment, and neglect inflicted upon them.
- 2) Declares that the state government shall support California Native Americans to maintain cultural and linguistic traditions, practice ecosystem stewardship, and engage in good faith government-to-government consultations with all California Native American tribes regarding policies that may affect them.
- 3) Declares it is statewide policy to recognize the inequities regarding access to, and control over, water caused by state-sanctioned acts of termination, removal, and assimilation inflicted upon all California Native American tribes and address these inequities through financial assistance, protection of tribal water uses, consultation on water projects, plans, and policies, and incorporation of indigenous knowledge to restore and protect ecosystems.
- 4) Requires the State Water Resources Control Board (State Water Board), Regional Water Quality Control Boards (Regional Water Boards), the Natural Resources Agency and all its departments, conservancies, boards, commissions, and councils, the Delta Stewardship Council (DSC), and the Office of Land Use and Climate Innovation (LCI) to implement the statewide policy declared by this bill.
- 5) Requires the State Water Board, when investigating the basis of a water right, to consult with a California Native American tribe, when requested, whose ancestral territory includes the water body where the water right is claimed.

COMMENTS

California is home to the largest Native American population in the country and has 109 federally recognized tribes with several other groups seeking federal recognition. According to 2020 U.S. Census data, 631,016 Californians identify as "American Indian" or "Alaska Native"; when including the Californians that identify as "American Indian" or "Alaska Native" in combination with another race or ethnicity, the number of Native Americans in California increases to 1.4 million residents. Very few Native Americans live on their ancestral lands in California today. This is due to the repeated efforts of Spanish, Mexican, Russian, and U.S. governments to subdue and displace Indigenous peoples: "All four colonial nations sponsored policies that uprooted Indigenous People and communities from the lands in which they were created, and all four deployed violence, in the form of slavery, genocide, and an administrative

state bent on eliminating California Indian people" (Akins and Bauer, 2021, 3). Lands legally controlled by tribes in California today result from presidential executive order, federal statute, or action by tribes and tribal members themselves to purchase land. Water rights were not often appropriately accounted for in the protection of tribal lands. Governor Newsom issued Executive Order (EO) N-15-19 on June 19, 2019 containing a formal recognition of California's exploitation of, violence towards, and destruction of tribal communities and a formal apology on behalf of the State of California. The EO: 1) recognizes that the state historically sanctioned over a century of depredations and prejudicial policies against California Native Americans; 2) commends and honors California Native Americans for persisting, carrying on cultural and linguistic traditions, and stewarding and protecting this land we now share; and 3) apologizes on behalf of the citizens of the State of California to California Native Americans for the many instances of violence, maltreatment, and neglect California inflicted on tribes.

Similarly, Governor Brown issued EO B-10-11 on September 19, 2011 that recognizes and reaffirms the inherent right of Native American tribes to exercise sovereign authority over their members and territories, establishes the Governor's Tribal Advisor position within the Governor's Office, reaffirms the state's commitment to working with tribes, and encourages all state agencies, departments, and boards to communicate and consult with California Native American tribes and provide an opportunity for meaningful input into the development of legislation, regulations, rules, and policies on matters that may impact tribal communities. During its August 18, 2020 meeting, the State Water Board publicly acknowledged that the historical effects of institutional racism must be confronted throughout government, and it directed staff to develop a priority plan of action. The State Water Board's Racial Equity Team held public and employee listening sessions to help develop a draft resolution. After receiving public comment and making various changes, the State Water Board adopted Resolution 2021-0050 Condemning Racism, Xenophobia, Bigotry, and Racial Injustice and Strengthening Commitment to Racial Equity, Diversity, Inclusion, Access, and Anti-Racism (Racial Equity Resolution) on November 16, 2021. The Racial Equity Resolution affirms the State Water Board's commitment to racial equity and directs staff to undertake a variety of actions to achieve racial equity throughout all Water Board programs and activities. The Racial Equity Resolution, among other findings and provisions, acknowledges and "condemns acts of racism, xenophobia, bigotry, white supremacy, and institutional and systemic racism; adopts racial equity, diversity, and inclusion as core values; and acknowledges the role of government agencies—including the Water Boards—in redressing racial inequities and dismantling institutional and systemic racism." In addition, it "reaffirms [the State Water Board's] commitment to improving communication, working relationships, and co-management practices with all California Native American Tribes, including seeking input and consultation on the Water Boards' rules, regulations, policies, and programs to advance decisions and policies that better protect California's water resources. The State Water Board recognizes [its] parallel relationship to the people [it] serves and values tribes' traditional ecological knowledge and historic experience with managing California's water resources since time immemorial."

The State Water Board's and Regional Water Boards' have a tribal consultation policy that affirms their commitment to strengthening and sustaining government-to-government relationships with both federally and non-federally recognized California Native American tribes. The intent of this policy is to guide State Water Board and Regional Water Board staff to engage with California Native American Tribes through timely and meaningful consultation and collaboration on actions that may have an impact to tribal lands, tribal interests and/or tribal cultural resources consistent with the mission of the State Water Board and Regional Water

Boards. The policy establishes statewide general guidelines for tribal consultations across the Water Boards. The State Water Board tribal consultation policy builds upon EO B-10-11 and is similar to the Environmental Protection Agency (CalEPA)'s 2015 policy on "Consultation with California Native American Tribes" (updated in 2020). Among other provisions, the State Water Board's tribal consultation policy adopts the definition of "consultation" in Government Code Section 65352.4 "as the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement. Consultation between government agencies and Native American tribes shall be conducted in a way that is mutually respectful of each party's sovereignty. Consultation shall also recognize the tribes' potential needs for confidentiality with respect to places that have traditional tribal cultural significance."

In addition, many of the agencies affected by this bill have adopted policies, programs, directives, and executive orders to improve tribal consultation and collaboration and the state's communication and working relationship with tribes in recent years. These include the Governor's Office of Tribal Affairs; CalEPA's tribal affairs program; the Department of Toxic Substances Control, the Department of Pesticide Regulation, the Office of Environmental Health Hazard Assessment, the Air Resources Board; California Natural Resources Agency's tribal affairs program, tribal consultation policy, and tribal nature-based solutions program; various tribal programs and initiatives led by the Department of Parks and Recreation (such as those related to tribal co-management of land); DWR, and the Department of Fish and Wildlife.

According to the Author

California Native American Tribes have lived on this land since time immemorial, developing a deep and comprehensive understanding of its ecological systems. This includes its watersheds, around which indigenous communities have cultivated highly diverse cultural and culinary practices. Unfortunately, colonization, historic land seizures, and other state-sanctioned actions have deprived Tribes of the water resources and management practices that support their communities. While many state agencies, including [DWR], have made efforts to rectify these inequities, their work remains vulnerable to legal challenges. [This bill] addresses this issue by establishing a state policy of recognizing and correcting water-related inequities perpetrated against the Indigenous People of California, giving the state the statutory backing it needs to respectfully and effectively address generations of injustice.

Arguments in Support

The Shingle Springs Band of Miwok Indians is a co-sponsor of this bill and writes that it "acknowledges the historic injustices experienced by California Native American Tribes and seeks to center Tribal equity within California's water policy framework." Shingle Springs notes that "the development of California's water rights system occurred alongside the dispossession of Indigenous peoples from our ancestral lands and waterways, resulting in profound cultural, ecological, and public health consequences that continue today." Shingle Springs argues that this bill "represents an important step toward addressing this legacy of injustice" and "advances a forward-looking vision rooted in fairness, accountability, and collaboration." The Karuk Tribe is the other co-sponsor of this bill and argues that this bill "provides a legal basis and framework for identifying inequities and taking corrective action within existing authorities." The Karuk Tribe maintains that such a legal framework for correcting past harms is necessary given that "California's water rights system, based on the 'first in time, first in right' principle has historically overlooked the true first inhabitants of this land and original water users, California Native Americans. This complete oversight, coupled with state-sponsored actions that removed

Native Americans from their lands and their waters has systematically excluded Tribal Nations from crucial decision-making processes concerning our state's waterways."

Arguments in Opposition

The California Municipal Utilities Association (CMUA) opposes this bill and contends that it has an expansive scope that creates uncertainty in implementation. CMUA argues that many terms and phrases in this bill need to be defined in order to create more certainty regarding the bill's impact: "terms such as 'inequities,' 'compensation,' 'replacement of benefits lost,' and 'legal recognition of rights' are not defined. Paired with the requirement to 'consider and incorporate,' these terms are incredibly problematic." Finally, CMUA maintains that this bill has implications far beyond just water policy:

Although this bill proposes text to the Water Code, the scope of its application may reach far beyond "water-related" decisions. The inclusion of "relevant agencies" may suggest that this policy is to be considered by many agencies beyond those that work within the Water Code, for example, the Department of Fish and Wildlife, the Public Utilities Commission, the Department of Education, the Department of Corrections and Rehabilitation, the Department of State Hospitals, etc. Should this policy be considered by all government agencies? As written, this policy may be as far-reaching as to impact housing, healthcare, or government decisions.

The Association of California Water Agencies (ACWA) has taken an "oppose unless amended" position on this bill, arguing that it is vague, expansive, ambiguous, and lacks legal guardrails. ACWA states "it is unclear how exactly an agency would be expected to implement this policy. Without clear standards, guardrails, or limits, this bill could expose state agencies and permit applicants to an increase in litigation, project delay, and financial challenges." ACWA seeks amendments that:

...replace the current remedial framework — compensation, legal recognition of rights, and replacement of benefits lost — with language that reflects the State Water Board's [Racial Equity] Resolution, including improved consultation, meaningful government-to-government engagement, and access to safe, clean drinking water. We further request the addition of definitional provisions that identify which agencies are subject to the mandate, the process that agencies must follow to identify inequities, and an explicit savings clause confirming that nothing in the bill modifies, impairs, or supersedes any existing water right, permit, or license issued under the Water Code. Finally, we request the inclusion of language explicitly stating that nothing in this bill would create new causes of action or incur additional responsibility [for] legal users of water or any public water system.

FISCAL COMMENTS

According to the Assembly Appropriations Committee, this bill has the following fiscal impact:

- 1) The State Water Board estimates ongoing annual General Fund costs of \$5.3 million for about 21 new staff to serve as dedicated tribal coordinators within the Regional Water Boards and in the State Water Board's major programs to better coordinate with tribes. The State Water Board additionally anticipates it will need contracting dollars of an unknown amount and notes that if other tribal engagement bills are enacted this session, the boards may be able to merge staffing and contracting costs for multiple bills.

- 2) The Sierra Nevada Conservancy (SNC) notes its tribal engagement team (which is currently 1.5 staff) is at capacity and cannot absorb the additional workload created by this bill. SNC asserts it would need between one and two analysts (low- to mid-hundreds of thousands of dollars annually) to implement this bill (General Fund). DSC estimates ongoing annual General Fund costs of approximately \$185,000 for one staff services manager II or similar position to implement the bill. The Bay Conservation and Development Commission (BCDC) estimates ongoing annual General Fund costs of about \$170,000 for one supervisor position (to serve as BCDC's tribal liaison) to develop robust tribal consultation policies and practices for its permitting work. The Ocean Protection Council anticipates minor and absorbable costs.
- 3) LCI notes that if it is not required to establish a new financial assistance program, it would incur annual General Fund costs of \$431,000 for two years (for one analyst for two years and one senior environmental scientist) followed by ongoing annual General Fund costs of \$246,000 (for the one senior environmental scientist) to coordinate and collaborate with the other agencies listed in the bill, ensure all LCI guidance documents, policies, and grant guidelines are updated to reflect the new policy, identify and provide technical assistance such as model ordinances or other best practices, provide dedicated technical support for smaller or under-resourced tribes (to, for example, translate water data into land-use policy impacts), and other related tasks. If LCI must create and administer an ongoing financial assistance program, its ongoing General Fund costs would be closer to \$1.2 million annually.

The Legislative Analyst's Office recently warned of General Fund structural deficits of around \$35 billion per year in the 2027-28 fiscal year and ongoing.

VOTES

ASM ENVIRONMENTAL SAFETY AND TOXIC MATERIALS: 5-0-2

YES: Connolly, Bauer-Kahan, Lee, McKinnor, Papan

ABS, ABST OR NV: Ellis, Castillo

ASM WATER, PARKS, AND WILDLIFE: 9-0-4

YES: Papan, Alvarez, Ávila Farías, Bennett, Boerner, Caloza, Hart, Muratsuchi, Rogers

ABS, ABST OR NV: Jeff Gonzalez, Alanis, Bains, Gallagher

ASM APPROPRIATIONS: 11-0-4

YES: Wicks, Aguiar-Curry, Calderon, Caloza, Fong, Mark González, Krell, Pacheco, Pellerin, Sharp-Collins, Solache

ABS, ABST OR NV: Hoover, Dixon, Ta, Tangipa

UPDATED

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