

CONCURRENCE IN SENATE AMENDMENTS

AB 2218 (Katra)

As Amended July 2, 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.

Senate Amendments

- 1) Provide that a dispute between a California Native American tribe and a state agency regarding said state agency's implementation of this bill shall be brought before the Governor's Office of Tribal Affairs for mediation before the state agency's action is challenged in court. During mediation over the dispute, the state agency's action shall be stayed.
- 2) Require the Office of Tribal Affairs to convene a meeting between a tribe and state agency involved in a dispute within 30 days of a dispute being referred to the office.
- 3) Require the Office of Tribal Affairs to gather information on the dispute for no more than 60 days following the meeting described in #2, above. Provide the Office of Tribal Affairs has 30 days following the gathering of information to reach reconciliation.
- 4) Provide that reconciliation occurs when a state agency and tribe are able to reach a mutually agreeable resolution on the matter subject to mediation.
- 5) Provide that a tribe may withdraw from mediation at any point if the tribe believes the state agency is not acting in good faith.
- 6) Provide that if a state agency and tribe do not reach reconciliation within 30 days of the date the Office of Tribal Affairs concludes gathering information, the state agency's action shall be stayed for an additional 60 days. If at the end of that 60-day period a state agency and tribe still have not achieved reconciliation, the Office of Tribal Affairs shall issue a letter documenting the exhaustion of administrative remedies.

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 Resources Control Board (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 § 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 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); Department of Water Resources (DWR), and the Department of Fish and Wildlife.

The Governor's Office of Tribal Affairs is responsible for overseeing and implementing effective government-to-government consultation between the administration and California tribes on policies that affect California tribal communities. Led by the Tribal Affairs Secretary, the Office of Tribal Affairs serves as a direct link between California tribes and the Governor, advises the Governor and executive administration officials, facilitates communication and consultation between tribes and state agencies, reviews and provides recommendations on state legislation and regulations affecting tribes and formulates and implements the administration's Native American policy priorities. This bill tasks the Office of Tribal Affairs with mediating disputes between state agencies and California tribes over the implementation of this bill. This bill is silent on what happens if this administrative remedy is exhausted without a resolution, but presumably either party would be allowed to turn to the courts to address the dispute.

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 addressing 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 Association of California Water Agencies (ACWA) argues this bill "threatens to disrupt water management actions and water deliverability across California with potentially significant fiscal and operational implications for the State" by subjecting several state agencies to a "new and poorly defined standard under the Water Code." ACWA further contends that this bill requires implementation of a policy without clear guidance and lacks legal guardrails. In addition, ACWA asserts that the requirement for mediation added by amendments taken in the Senate are insufficient as this provision allows "a tribe to withdraw from mediation at any point if it determines that the state is not engaging in good faith." Finally, ACWA maintains that this bill overlooks existing tribal consultation policies and imposes "complex and potentially legally challenging mandates" without identifying where existing consultation policies fall short thereby subjecting state agency actions to "endless litigation and delay."

FISCAL COMMENTS

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

- 1) The State Water Board estimates ongoing costs of \$6.25 million annually (General Fund) for dedicated tribal coordinators and support staff within the Regional Water Boards and major programs of the State Water Board to better coordinate with tribes. According to the State Water Board, the additional staffing would be needed to ensure that the more extensive consultation, engagement, and potential mediation can be performed within existing programmatic and legal deadlines. In addition, an unknown amount of annual contracting costs would be required in furtherance of this work.
- 2) The Governor's Office of Land Use and Climate Innovation (LCI) estimates ongoing costs of \$1.3 million each year for the first two years and \$1.2 million annually thereafter (General Fund) to coordinate and collaborate with the other agencies listed in the bill and work to

ensure all LCI guidance documents, policies, and grant guidelines are updated to reflect the new policy as well as identify and provide new technical assistance such as model ordinances or other best practices. These monies would also be used to provide dedicated technical support for many smaller or under-resourced tribes. Additionally, the financial and technical assistance program would ensure ongoing interagency coordination on tribal consultation and facilitation; provide tribal capacity support to enhance tribal expertise and compensation for tribal participation; provide policy and technical support to tribes; support tribal mapping and data analysis that adheres to tribal data sovereignty for the identification of priority water rights; and participate in the new process for administrative remedies.

- 3) The Governor's Office of Tribal Affairs estimates ongoing costs of \$935,000 annually (General Fund) to handle mediation preparation and information gathering, assist with mediation, potentially verify tribal cultural claims, and handle administration/intake/notetaking.
- 4) DWR reports that without clarity on the bill's duties and programs, it is unable to provide a fiscal estimate but expects this bill to have a financial impact due to the requirement to provide tribes with financial assistance. DWR costs are unknown, but would likely be significant related to the costs of expanded water rights proceedings, among other things.
- 5) Unknown but potentially significant ongoing costs for the California Natural Resources Agency and all its departments, conservancies, boards, commissions, and councils as well as the Delta Stewardship Council to implement the provisions of this bill.

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

ASSEMBLY FLOOR: 57-0-23

YES: Addis, Aguiar-Curry, Ahrens, Alvarez, Arambula, Ávila Farías, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Caloza, Carrillo, Connolly, Elhawary, Fong, Gabriel, Garcia, Gipson, Mark González, Haney, Harabedian, Hart, Irwin, Jackson, Kalra, Krell, Lee, Lowenthal, McKinnor, Muratsuchi, Nguyen, Ortega, Pacheco, Papan, Patel, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Ransom, Michelle Rodriguez, Rogers, Schiavo, Schultz, Sharp-Collins, Solache, Soria, Stefani, Valencia, Ward, Wicks, Wilson, Zbur, Rivas

ABS, ABST OR NV: Alanis, Bains, Castillo, Chen, Davies, DeMaio, Dixon, Ellis, Flora, Gallagher, Jeff Gonzalez, Hadwick, Hoover, Johnson, Lackey, Macedo, Patterson, Celeste Rodriguez, Blanca Rubio, Sanchez, Ta, Tangipa, Wallis

UPDATED

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