

Date of Hearing: May 1, 2019

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1304 (Waldron) – As Amended April 22, 2019

**SUBJECT:** Water supply contract: Native American tribes.

**SUMMARY:** Allows a water district to enter into a contract with a Native American tribe to receive water deliveries from an infrastructure project on tribal lands. Specifically, **this bill:**

- 1) Allows a water district, as defined, to enter into a contract with a Native American tribe to receive water deliveries from an infrastructure project on tribal lands.
- 2) Clarifies that the bill's provisions do not apply to a groundwater infrastructure project, and do not determine or alter water rights.

**EXISTING LAW:**

- 1) Provides for the establishment and operations of various water districts.
- 2) Defines "water district" to mean any district or other political subdivision, other than a city or county, a primary function of which is the irrigation, reclamation, or drainage of land or the diversion, storage, management, or distribution of water primarily for domestic, municipal, agricultural, industrial, recreation, fish and wildlife enhancement, flood control, or power production purposes. Provides examples of such-defined water districts.
- 3) Describes the formation, organization, powers and purposes, and financial structure of water districts.
- 4) Defines "California Native American tribe" to mean a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission.

**FISCAL EFFECT:** None

**COMMENTS:**

- 1) **Native American Tribes.** The United States has a unique legal and political relationship with Native American tribes (referred to as "Indian tribes" in federal law), as provided by the Constitution of the United States, treaties, court decisions, and Federal statutes. The United States government recognizes 573 Indian tribes as sovereign governments. Due to this status, federally recognized tribes are not subject to state and local laws and regulations, except for those required under compacts negotiated with the State of California that provide for authority to conduct gaming activity on Indian lands. Federal law defines Indian lands to mean all lands within the limits of any Indian reservation, and any lands title to which is either held in trust by the United States for the benefit of any Indian tribe, or individual, or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power. There are 109

federally recognized Native American tribes in California, as well as approximately 50 federally non-recognized Native American tribes.

- 2) **Water District Contracts.** Water districts are local government entities responsible for the production, storage, transmission, and distribution of water for irrigation, domestic, industrial, and municipal purposes. They can include irrigation districts, county water districts, California water districts, and water storage districts. Water districts may enter into a contract with a number of state and federal agencies for the lease or sale of any surplus water or use of surplus water, for use either within or without the district.
- 3) **Human Right to Water.** In 2012, California became the first state to enact a Human Right to Water law [AB 685 (Eng), Chapter 524, Statutes of 2012]. Public policy continues to be focused on the right of every human being to have safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitation. Water supply, contaminants, costs of treatment and distribution systems, the number and nature of small public water systems, especially in disadvantaged communities, and many other factors will continue to challenge progress in addressing the Human Right to Water.
- 4) **Bill Summary and Author's Statement.** This bill allows a water district to enter into a contract with a Native American tribe to receive water deliveries from an infrastructure project on tribal lands.

According to the author, "Water in Southern California is not affordable or sustainable. It is still estimated that more than one million Californians do not have access to clean drinking water in their homes and the cost of water for agriculture, businesses and homeowners is amongst the highest in the nation. Agriculture is cutting down groves and shutting down operation due to lack of affordable water. California continues to invest in groundwater recharge, storm water and recycled water infrastructure, desalination, improved conveyance, and local drought resilience and flood control, yet water storage facilities are lacking and do not meet the needs of California long-term growth. This bill is intended to provide an additional source of water."

- 5) **Prior Legislation.** AB 1361 (Eduardo Garcia and Waldron), Chapter 449, Statutes of 2017, authorizes a municipal water district, until January 1, 2023, to apply to a local agency formation commission (LAFCO) to extend water service to Indian lands and prohibits the LAFCO from denying the application. The bill additionally authorizes the LAFCO to impose conditions on the municipal water district with regard to the extension of service.
- 6) **Committee Amendment.** In order for the Legislature to retain oversight of this new authority, the Committee may wish to consider amending the bill to include a five-year sunset date.
- 7) **Arguments in Support.** None on file.
- 8) **Arguments in Opposition.** Desert Water Agency writes, "The Ninth Circuit recently held that the Tribe has a federally reserved water right in the groundwater underlying the Tribe's reservation. *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District, et al.*, 849 F.3d 1262 (9th Cir. 2017). Under the reserved rights doctrine, when Congress or the President reserves land for a federal reservation, such as an Indian reservation, Congress or

the President impliedly reserves sufficient water to fulfill the purposes of the reservation, in the minimum amounts necessary to fulfill the reservation purposes. *Winters v. United States*, 207 U.S. 564 (1908); *Cappaert v. United States*, 426 U.S. 200 (1976). Since a federal reserved water right is based on federal law, the right is not subject to regulation or control under state law. The doctrinal basis for an Indian tribe's reserved water right is often referred to as the 'Winters doctrine.'

"Desert Water Agency believes the authority proposed by AB 1304 is contrary to Federal law. The Agency appreciates the author's intent to narrow the scope of the bill through recent amendments, but the amendments fail to mitigate the fundamental issue that confronts the bill."

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

None on file

##### **Opposition**

Desert Water Agency

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