

Date of Hearing: April 10, 2019

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 274 (Mathis) – As Amended March 18, 2019

**SUBJECT:** Water treatment facility: State Water Resources Control Board: grant.

**SUMMARY:** Appropriates \$20,000,000 from the General Fund to the State Water Resources Control Board (SWRCB) in order for the SWRCB to provide a grant of \$20,000,000 to a joint powers authority (JPA). Specifically, **this bill:**

- 1) Appropriates \$20,000,000 from the General Fund to the SWRCB for the purpose of improving water treatment.
- 2) Requires the SWRCB to provide a grant of \$20,000,000 to a JPA composed of the Tule River Tribe (Tribe) and the City of Porterville (City) for a water treatment facility to be operated by the JPA.

**EXISTING LAW:**

- 1) Establishes the SWRCB to provide for the orderly and efficient administration of the water resources of the state.
- 2) Declares to be the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.
- 3) Provides, under the California Safe Drinking Water Act, for the operation of public water systems and imposes on the SWRCB various responsibilities and duties, including the authorization to:
  - a) Order consolidation with a receiving water system where a public water system or a state small water system, serving a disadvantaged community, as defined, consistently fails to provide an adequate supply of safe drinking water, as specified; and,
  - b) Order the extension of service to an area that does not have access to an adequate supply of safe drinking water so long as the extension of service is an interim extension of service in preparation for consolidation, as specified.
- 4) Authorizes the SWRCB to establish the Water and Wastewater Loan and Grant Program, to the extent funding is made available, to provide funding to eligible applicants for specified purposes relating to drinking water and wastewater treatment.
- 5) Allows, pursuant to the Joint Exercise of Powers Act, two or more public agencies by agreement to jointly exercise any power common to the contracting parties, as specified, if authorized by their legislative or other governing bodies.

**FISCAL EFFECT:** This bill is keyed fiscal.

**COMMENTS:**

- 1) **Bill Summary and Author's Statement.** This bill appropriates \$20,000,000 from the General Fund to the SWRCB in order for the SWRCB to provide a grant of \$20,000,000 to a JPA comprised of the Tule River Tribe and the City of Porterville for a water treatment facility to be operated by the JPA.

According to the author, "The City of Porterville has been plagued with water crisis after water crisis. This bill seeks to further efforts to provide clean drinking water to the City of Porterville."

This bill is sponsored by the Tule River Tribe.

- 2) **JPA's.** JPAs have existed in California for nearly 100 years, and were originally created to allow multiple local governments in a region to pool resources to meet common needs. The Joint Exercise of Powers Act authorizes state and local public agencies to create and use a joint powers agreement, which is a legal document that allows the contracting parties to exercise powers that are common to all of the contracting parties. A joint powers agreement can be administered by one of the contracting agencies, or it can be carried out by a new, separate public entity. Joint powers agreements are an attractive tool for local governments because they facilitate more efficient service provision through collaboration, and they allow local entities to issue bonds without voter ratification. Current law authorizes JPAs to jointly exercise any power common to the contracting parties, if authorized by their legislative or governing body.

AB 307 (Nestande), Chapter 266, Statutes of 2011, changed the definition of "public agency" for purposes of JPAs to include federally recognized Indian tribes. This bill prohibited any JPA that includes a federally recognized Indian tribe from having the authority to authorize or issue bonds pursuant to the Marks-Roos Local Bond Pooling Act of 1985, unless the public improvements to be funded by the bonds will be owned and maintained by the JPA or one or more of its public agency members, and the revenue streams pledged to repay the bonds derive from the JPA or one or more of its public agency members.

- 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) **Tule River Tribe.** The Tribe is a federally recognized tribe and sovereign nation located in central California. The Tule River Tribe Reservation (Reservation) is located about 15 miles from the city of Porterville, covers about 85 square miles, and has more than 1,900 Tribal Members. The Tribe operates the Eagle Mountain Casino (Casino), which is currently located on the Reservation.

The Tribe suffers from a lack of sufficient and reliable potable water supply to serve the Reservation, as well as high unemployment rates. The lack of water supply has caused the

wells on the Reservation to often run dry for up to a week at a time during the summer months. The Tribe is currently engaged in Water Rights settlement negotiations with the United States to confirm federally reserved water rights in an effort to secure permanent self-sustaining homeland for the Tribe. The lack of water availability has forced the Tribe to place a moratorium on residential development on the Reservation. Relocating the Casino to the nearby City of Porterville, where the Tribe has ancestral ties, will allow the Tribe to allocate the water supply the Casino is currently using to other development on the Reservation to meet the Tribe's housing needs.

As part of the relocation project, the Tribe intends to develop a tertiary wastewater treatment plant (Water Plant) under a development agreement with the City. Under the development agreement, the Tribe would be responsible for constructing the Water Plant. The Water Plant will meet the needs of the Casino project and also provide recycled water to the Porterville Sports Complex (Sports Complex), which is currently using potable water for irrigation. Replacing potable water use at the Sports Complex will help address the City's water supply shortage and reduce overall potable water demands within the City. Under the proposed development agreement between the Tribe and the City, the Tribe will use its own funds to construct the Water Plant, which the Tribe anticipates will cost upwards of \$6-7 million dollars. The Water Plant will produce recycled water from the City's wastewater system for the relocated Casino and will replace potable water currently used for irrigating the Sports Complex. The Tribe and the City plan to enter into an agreement to form a JPA, which will own and operate the Water Plant. The JPA may issue bonds backed by revenues from the sale of recycled water. The bond proceeds will be used to reimburse the Tribe, in part, for the upfront cost of constructing the Water Plant; however, reimbursement is not guaranteed. Additional funding from the state will help to secure initial funds for the project.

- 5) **City of Porterville.** The City of Porterville (City) is a charter city located in Tulare County and has a population of over 59,000. The City has a large Latinx<sup>1</sup> population, and its economy is a mix of agri-business, light industry, and commercial enterprise. The City relies solely on groundwater for supplying municipal water to its residents.

The recent five-year drought heavily impacted the City because of its reliance on groundwater and domestic wells. In addition, the unincorporated community of East Porterville, adjacent to the City, came to be known as "Ground Zero" of the drought after a majority of East Porterville households lost access to potable water when their groundwater wells went dry. In response to this crisis, the California Department of Water and Resources (DWR) joined the Governor's Office of Emergency Services and the SWRCB, in cooperation with the City, Tulare County, and community organizations to create and enact the East Porterville Water Supply Project in January 2016. The East Porterville Water Supply Project connects East Porterville homes to the City's municipal water supply at no cost to the participating community members. According to the DWR website, 755 homes have been connected to a safe, reliable water supply as part of the project.

- 6) **Previous Legislation.** AB 1884 (Maze, 2008) would have permitted the Tule River Tribal Council, as the governing body of the Tule River Indian Reservation, to enter into a joint

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<sup>1</sup> Latinx is the gender-neutral alternative for the words Latino or Latina (<https://www.merriam-webster.com/dictionary/Latinx>).

powers agreement with the City of Porterville, the County of Tulare, or both for the purpose of developing approximately 1,200 acres of land in the vicinity of the Porterville Airport.

AB 954 (Mathis, 2015) would have established a program to provide funding for local agencies to offer low-interest loans and grants to eligible applicants for projects that provide access to drinking water or wastewater treatment.

AB 339 (Mathis), Chapter 439, Statutes of 2017, extended the ability of the SCWRB to fund projects addressing an urgent drinking water need from the Cleanup and Abatement Account.

- 7) **Arguments in Support.** The Tule River Tribe, the sponsor of the bill, states, “The Tribe seeks your support in obtaining funding for the construction of the Water Plant. The Water Plant will allow potable water be used for its highest best use in the Porterville area while ensuring the City and Tribe may use recycled water for their respective projects.”
- 8) **Arguments in Opposition.** None on file.
- 9) **Double referral.** This bill was heard in the Environmental Safety and Toxic Materials Committee on March 26, 2019, and passed with an 8-0 vote.
- 10) **Two-Thirds Legislative Approval.** This measure requires the approval of two-thirds of the membership of each house in the Legislature.

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

##### **Support**

Tule River Tribe [SPONSOR]

##### **Opposition**

None on file

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