
SENATE COMMITTEE ON NATURAL RESOURCES AND WATER

Senator Henry Stern, Chair

2021 - 2022 Regular

Bill No: AB 379 **Hearing Date:** July 13, 2021
Author: Gallagher
Version: April 29, 2021
Urgency: No **Fiscal:** Yes
Consultant: Dennis O'Connor

Subject: Wildlife conservation: conservation lands

BACKGROUND AND EXISTING LAW

Existing law:

- 1) The Wildlife Conservation Law of 1947 establishes the Wildlife Conservation Board (WCB) in the Department of Fish and Wildlife (DFW). Among other things, the WCB is required to the board to investigate, study, and determine the areas in the state that are most suitable for certain wildlife-related purposes.
- 2) Authorizes the WCB to make grants or loans to nonprofit organizations, local governmental agencies, federal agencies, and state agencies for various purposes in connection with fish and wildlife habitats.
- 3) Authorizes the WCB to authorize the DFW to, among other things:
 - a) Lease degraded potential wildlife habitat real property to nonprofit organizations, local governmental agencies, or state and federal agencies, and
 - b) Acquire former wildlife habitat real property and restore and sell the real property to private owners, local governmental agencies, or state departments and agencies. Such sale agreements must contain a reversion if the real property sold or exchanged is not maintained as wildlife habitat. The agreement containing the reversion shall be set forth in any conveyance transferring any real property, interest in real property, or option subject to this section.”
- 4) Authorizes the DFW, with the approval of the WCB, to enter into agreements with any other department or agency of this state, any local agency, or nonprofit organization, to provide for the construction, management, or maintenance of the facilities authorized by the WCB. Existing law further authorizes such entities to construct, manage, or maintain those facilities pursuant to the agreement.
- 5) Authorizes the DFW to enter into contracts for fish and wildlife habitat preservation, restoration, and enhancement with public and private entities, and to grant funds for fish and wildlife habitat preservation, restoration, and enhancement to public agencies, and nonprofit entities, whenever the department finds that doing so would assist in meeting its duty to preserve, protect, and restore fish and wildlife.
- 6) Authorizes various agencies to acquire land for purposes related to conservation. Further law prohibits, with specified exceptions, conservation lands from being sold to another owner, or having possession and control transferred to another agency,

unless specified actions occur. Also requires proceeds from the sale or transfer of conservation lands to be used solely for certain purposes, including the acquisition of wildlife habitat to further the purposes of the Wildlife Conservation Law of 1947.

- 7) Defines “California Native American tribe” as a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission.

The contact list includes federally recognized California Native American tribes and nonfederally recognized California Native American tribes

Executive Actions:

- 1) Executive Order B-10-11 was signed by Governor Brown on September 19, 2011. Among other things, that order:
 - a) Created the position of Tribal Advisor within the Office of the Governor to oversee and implement effective government-to-government consultation between the Administration and Tribes on policies that affect California tribal communities, and shall:
 - b) Established as policy of the Administration that every state agency and department subject to the Governor’s executive control to encourage communication and consultation with California Indian Tribes. Agencies and departments are required to permit elected officials and other representatives of tribal governments to provide meaningful input into the development of legislation, regulations, rules, and policies on matters that may affect tribal communities.
- 2) Executive Order N-15-19 was signed by Governor Newsom on June 18, 2019. Among other things, that order reaffirmed and incorporated by reference the principles outlined in Executive Order B-10-11.
- 3) On September 25, 2020, Governor Newsom issued a Statement Of Administration Policy on Native American Ancestral Lands. Among other things, that statement:
 - a) Summarized Executive Orders B-10-11 and N-15-19.
 - b) Established as the policy of the administration to encourage every State agency, department, board and commission subject to the Governor’s executive control to seek opportunities to support California tribes’ co-management of and access to natural lands that are within a California tribe’s ancestral land and under the ownership or control of the State of California, and to work cooperatively with California tribes that are interested in acquiring natural lands in excess of State needs.

PROPOSED LAW

This bill would authorize DFW and the WCB to enter into agreements with and make grants or loans to California Native American tribes for various conservation purposes in

the same manner as they can with other local agencies and other parties. Specifically, this bill would:

- 1) Authorize DFW, with approval from WCB, to also:
 - a) Enter into agreements with a California Native American tribe to manage facilities on preserved lands to achieve the conservation objectives for which the real property or water rights were acquired.
 - b) Lease degraded potential wildlife habitat real property to California Native American tribes.
 - c) Acquire former wildlife habitat real property, including riparian habitat real property, restore and sell the real property, or any interest therein, to California Native American tribes, if a written and recorded agreement is first secured to keep and maintain the real property as wildlife habitat in perpetuity. The agreement shall contain a reversion if the real property sold or exchanged is not maintained as wildlife habitat. The agreement containing the reversion shall be set forth in any conveyance transferring any real property, interest in real property, or option subject to this section.
 - d) Enter into agreements with any California Native American tribe, to provide for the construction, management, or maintenance of the facilities authorized by the board.
- 2) Authorize DFW to also:
 - a) Enter into contracts for fish and wildlife habitat preservation, restoration, and enhancement with California Native American tribes whenever DFW finds that the contracts will assist in meeting its duty to preserve, protect, and restore fish and wildlife.
 - b) Grant funds for fish and wildlife education, public use and access, and habitat preservation, restoration, and enhancement to California Native American tribes, whenever DFW finds that the grants will assist it in meeting its duty to preserve, protect, and restore fish and wildlife.
- 3) Authorize WCB to award grants or loans to California Native American tribes for restoration or protection of fish and wildlife resources and for the development of compatible public access facilities on preserved lands.
- 4) Authorize the sale of conservation lands by WCB, the Department of Parks and Recreation (DPR) or a state conservancy to a California Native American tribe for purposes of conservation management, public access, historic preservation, protection or biological enhancement of conservation lands.
- 5) Make other conforming changes.

ARGUMENTS IN SUPPORT

According to the author, “Native American Tribes have a history and culture which is deeply connected to the land which their tribes occupy. It is time for California to take action and reflect this connection by allowing tribes, with their rich traditions of ecological knowledge, to oversee wildlife conservation land.”

ARGUMENTS IN OPPOSITION

Stand Up For California! writes, “While the State is understandably taking long-overdue steps to increase equity for long-marginalized California Tribes, Stand Up is concerned that there has not been adequate analysis or discussion on the complexities of how federal law affects these efforts.” “The bill fails to address how the state will retain its jurisdiction over lands taken into trust once a Tribe has fee title. Similarly, contracting with a federally-recognized tribe is quite different from contracting with any public or private entity. This is an important consideration that does not appear to have been addressed in previous analyses of the bill.”

COMMENTS

Protection of State Interests. The Resources Agency asserts they work well with the tribes and, when the situation calls for it, tribes agree to the appropriate legal provisions to ensure the State’s interests are properly protected. This can include conditioning grants, etc., upon the tribe providing a limited waiver of its sovereign immunity.

WCB asserts it has two main points of recourse if land were to not be utilized as agreed upon during the granting process or if lands were transferred into a federal trust.

- WCB through the grant process would have recourse against a tribes if land is not managed consistent with the terms of the grant agreement, including requiring repayment of state funds.
- The Federal land trust process (ITA/Indian Trust Act) has a Public Agency review/comment period for lands being moved into trust. The Department and/or WCB could raise concerns during that process that the lands were granted to the tribe and were designated for certain purposes in the grant agreement.

Related bills

The committee received a conflict notice regarding this bill, AB 148 (Committee on Budget), and SB 148 (Committee on Budget and Fiscal Review). Chaptering amendments may become necessary.

AB 923 (Ramos) would codify the state’s efforts to consider impacts to tribes and require state agencies to consult with tribes when state actions may impact a tribe. It was not heard in Asm. Appropriations at the request of the author.

SB 712 (Hueso) would impose requirements on local governments regarding comments on fee-to-trust applications by California federally recognized tribes.

SUGGESTED AMENDMENTS: None

SUPPORT

Butte Environmental Council
California Alliance With Family Farmers
California Nations Indian Gaming Association
California Native Plant Society
Defenders of Wildlife
Dry Creek Rancheria Band of Pomo Indians
Federated Indians of Graton Rancheria
Habematolel Pomo of Upper Lake
Karuk Tribe
Midpeninsula Regional Open Space District
Pala Band of Mission Indians
Santa Rosa Rancheria Tachi Yokut Tribe
Sustainable Conservation
United Auburn Indian Community

OPPOSITION

Stand Up for California

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