ASSEMBLY FLOOR ALERT

AB 2218 (Kalra) – OPPOSE

AB 2218 threatens to disrupt water management actions and water deliverability across California with potentially significant fiscal and operational implications to the State. The bill's provisions subject all actions undertaken by the California Natural Resources Agency and all its departments, conservancies, boards, commissions, and councils; the State Water Resources Control Board and its Regional water quality control boards; Delta Stewardship Council; and Office of Land Use and Climate Innovation to a new and poorly defined standard under the Water Code.

ESTABLISHES AND REQUIRES IMPLEMENTATION OF A POLICY WITHOUT CLEAR GUIDANCE

AB 2218 would establish an enforceable policy within the Water Code without clear guidance on when it applies or how compliance would be determined. The bill provides no measurable outcomes or clear criteria for determining whether a state agency has adequately addressed past inequities through its development of policies, plans, permitting, regulations, or financial assistance.

LACKS LEGAL GUARDRAILS

Ultimately, the subjective determination of whether a state agency adequately implemented the policy in AB 2218 would only be resolvable through litigation. Senate amendments added a mediation process to the bill but allows a tribe to withdraw from mediation at any point if it determines that the state is not engaging in good faith. During the mediation process, the state action under dispute would be stayed. This requirement fails to legally protect state agencies and permit applicants under the existing water rights system and exposes them to increased litigation, project delay, and financial challenges.

OVERLOOKS EXISTING STATEWIDE EFFORTS

AB 2218 imposes complex and potentially legally challenging mandates but does not provide examples of challenges encountered with implementing existing tribal consultation and engagement policies. It is unclear how AB 2218 will interact with existing statutory and regulatory requirements under the Water Code and if it will supersede current and ongoing efforts. Without clear limits on when a dispute triggers mediation, the goals of this bill are subjective and create uncertainty for the state with delays to water management actions and water deliverability and further impacting water reliability.

AB 2218 goes far beyond recognizing the historic injustices wrought upon California's Native American tribes. It will subject the state's land use, water, wildlife, and resource decisions to endless litigation and delay.

The author has not amended the bill to address these issues. Amendments taken in the Senate heightened concerns about the bill, raising significant questions about its implications and prospects.

We urge your "NO" vote on AB 2218