Indigenous Environmental Justice: Context and Cases

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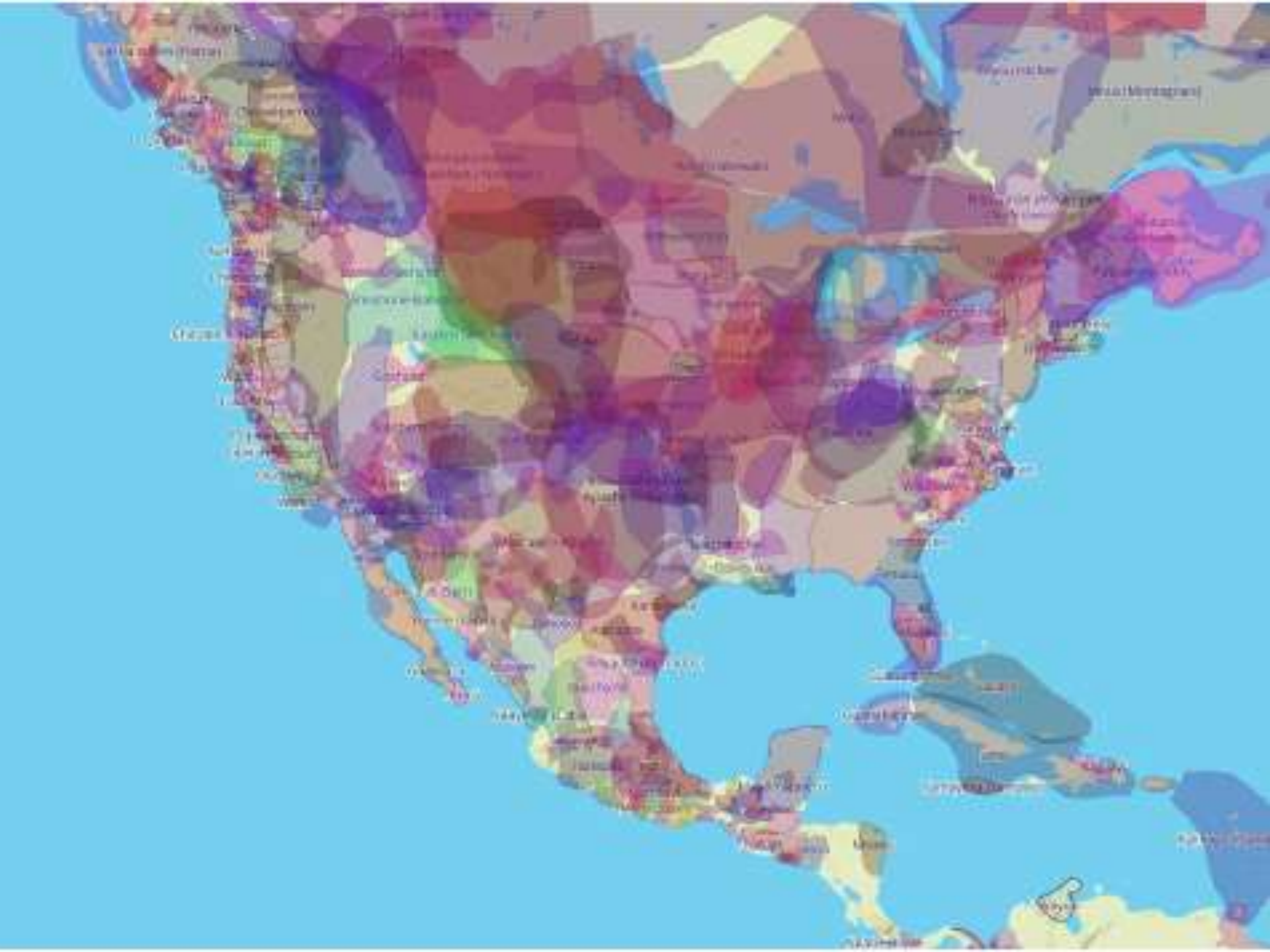


EJ: Facing colonial legacies

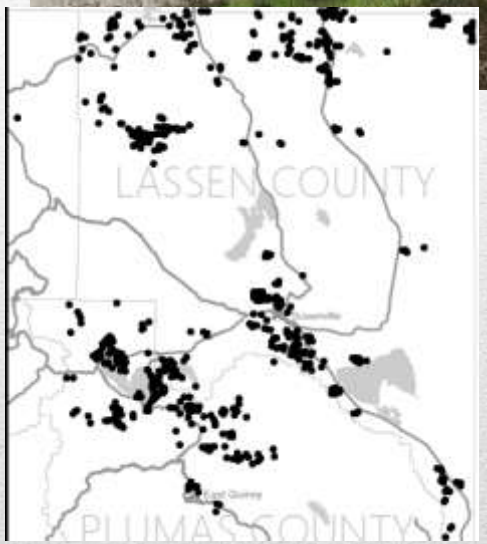
- Disruption of Indigenous land tenure
  - Broken treaties, “encroachment,” allotment, violent land seizure, government-led removal and land re-distribution

…and all that Indian land tenure includes

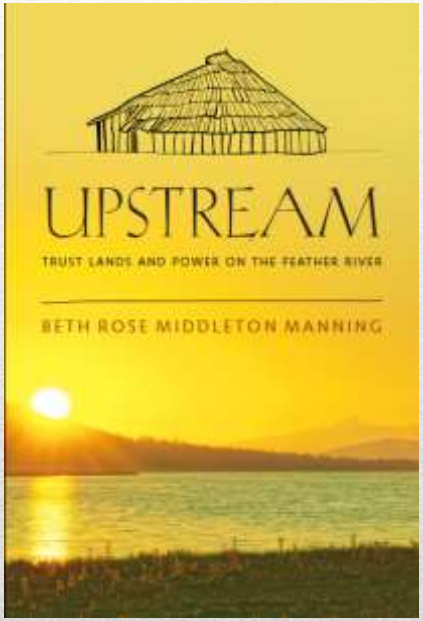
  - Relationship, responsibility, stewardship, identity
- Continued denial of Indigenous rights and responsibilities to tend homelands has real consequences
  - Indigenous people today are still criminalized for exercising their responsibilities to care for their homelands
  - Indigenous peoples face health issues stemming from lack of access and/or contaminations

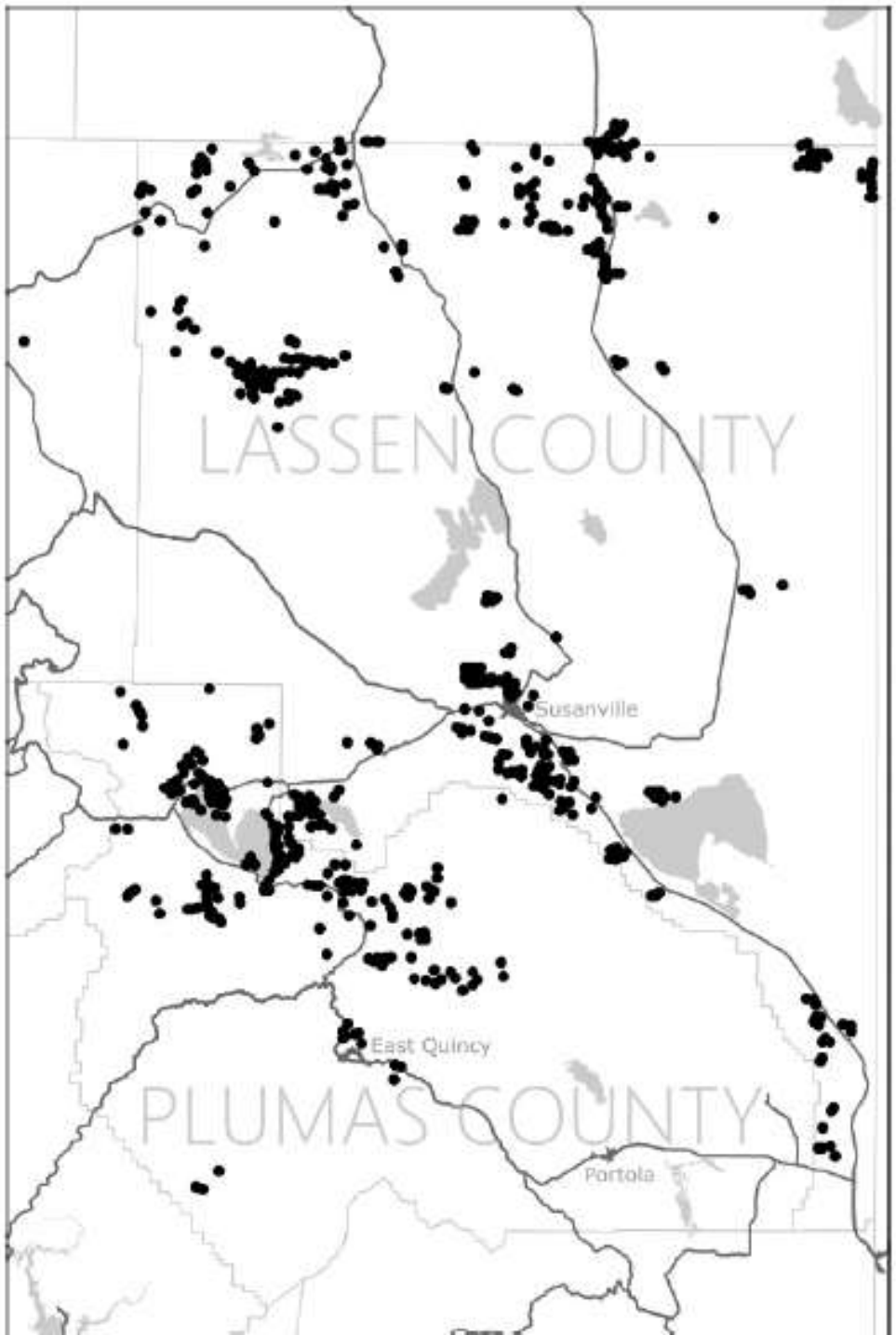
CA IEJ Context

- Specific research on the history of tribal lands and waters, link to contemporary exclusions in policy and practice
- Research on contaminants, their sources, and how to address them
- Advocacy to address land restitution, land/water cleanup, co-management



Education & Empowerment: Research and Advocacy





Individual Indian Allotments in Plumas and Lassen counties, California
Cartography by Michelle Tobias

(5—151.)

INDIAN ALLOTMENT APPLICATION FOR LANDS OUTSIDE OF ANY INDIAN RESERVATION.

(Act February 8, 1887, Stat. 24, p. 388, as amended by act February 28, 1891, Stat. 26, p. 794.)

United States Land Office,

Susanville Cal
March 27" 1894

APPLICATION No. 163

I, John Jenkins, being an Indian of the Big Meadows tribe, do hereby apply to have allotted my minor child Goodseener Jenkins age 16 years, under the provisions of the fourth section of the act of Congress, approved February 8, 1887 (Stat. 24, p. 388), as amended by act of February 28, 1891 (Stat. 26, p. 794), the ¹ SW¼ of SE¼
~~SE¼ of SW¼ Sec 15~~
~~E½ of NW¼ of Sec~~ 22
Tp 27 N R 8 E MDM

Patd to Western Power Co.

This land is Valuable only for grazing purposes.

containing 160 acres.

John his mark Jenkins

Witnesses:
W P Hall
L A Rosebrry

United States Land Office,

Susanville Cal.
March 27 1894

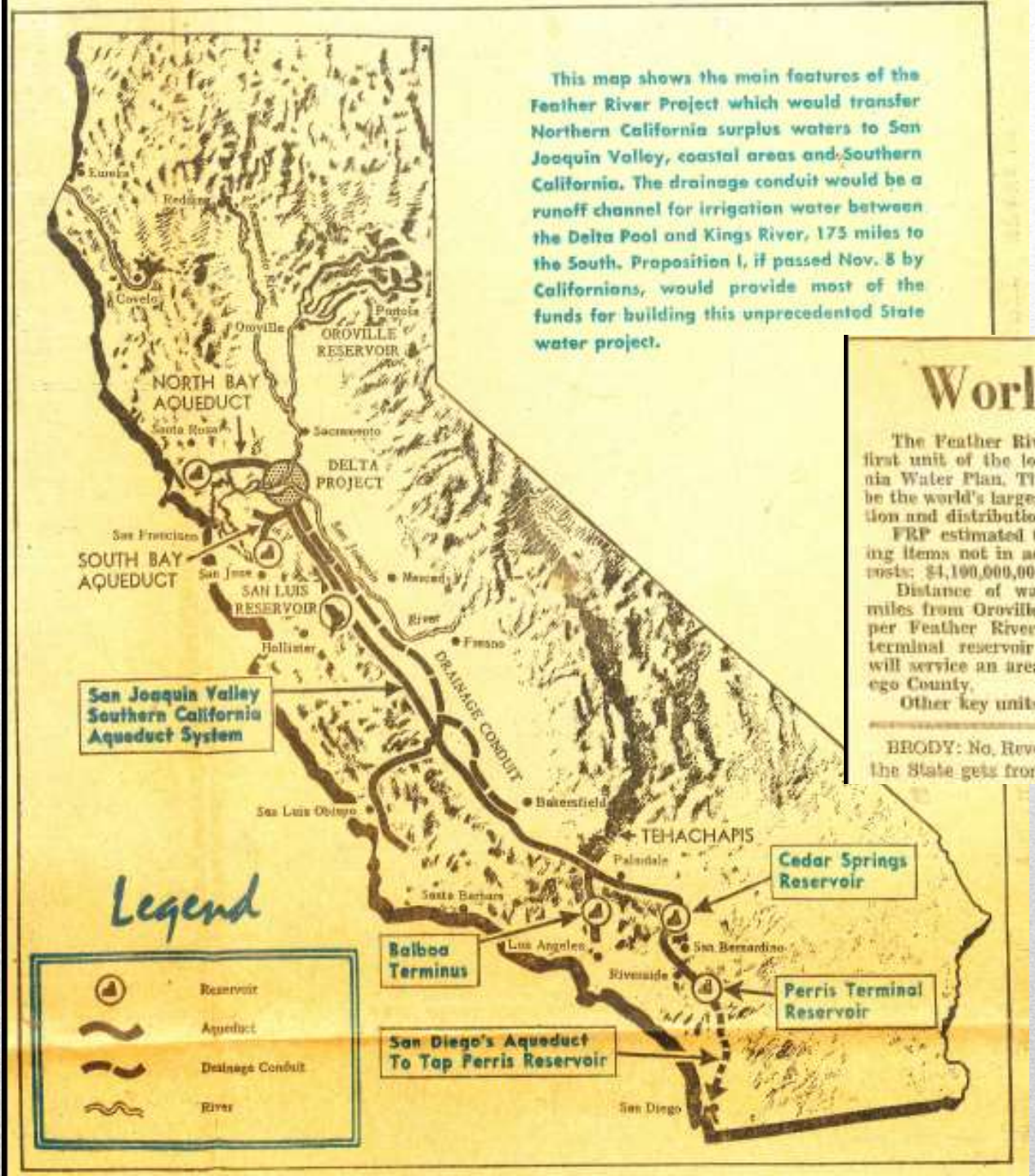
I, L A Rosebrry, Register of the Land Office, do hereby certify that the above application is for Surveyed lands, and that there is no prior valid adverse right to the same.

L A Rosebrry
Register.

¹ Insert "to me, as the head of a family" or "to me, as a single person over eighteen years of age," or "to my minor child"

Big Meadows dam construction 1925 (Huber, WRCA)


LAKE ALMANOR
Great
Western's
YOLO
SONOMA
STOCKTON
PETALUMA
San Francisco



World's Largest System

The Feather River Project is the first unit of the long-range California Water Plan. The FRP alone will be the world's largest water conservation and distribution system.

FRP estimated total cost, including items not in actual construction costs: $1,100,000,000.

Distance of water transfer: 740 miles from Oroville Dam on the upper Feather River to an aqueduct terminal reservoir at Perris which will service an area down to San Diego County.

Other key units: The great aqueduct system, with branches at north and south ends of San Francisco Bay; the Delta Pool (convergence point of northern rivers) San Joaquin Valley-Southern California Aqueduct, with East and West Branches serving Southern California.

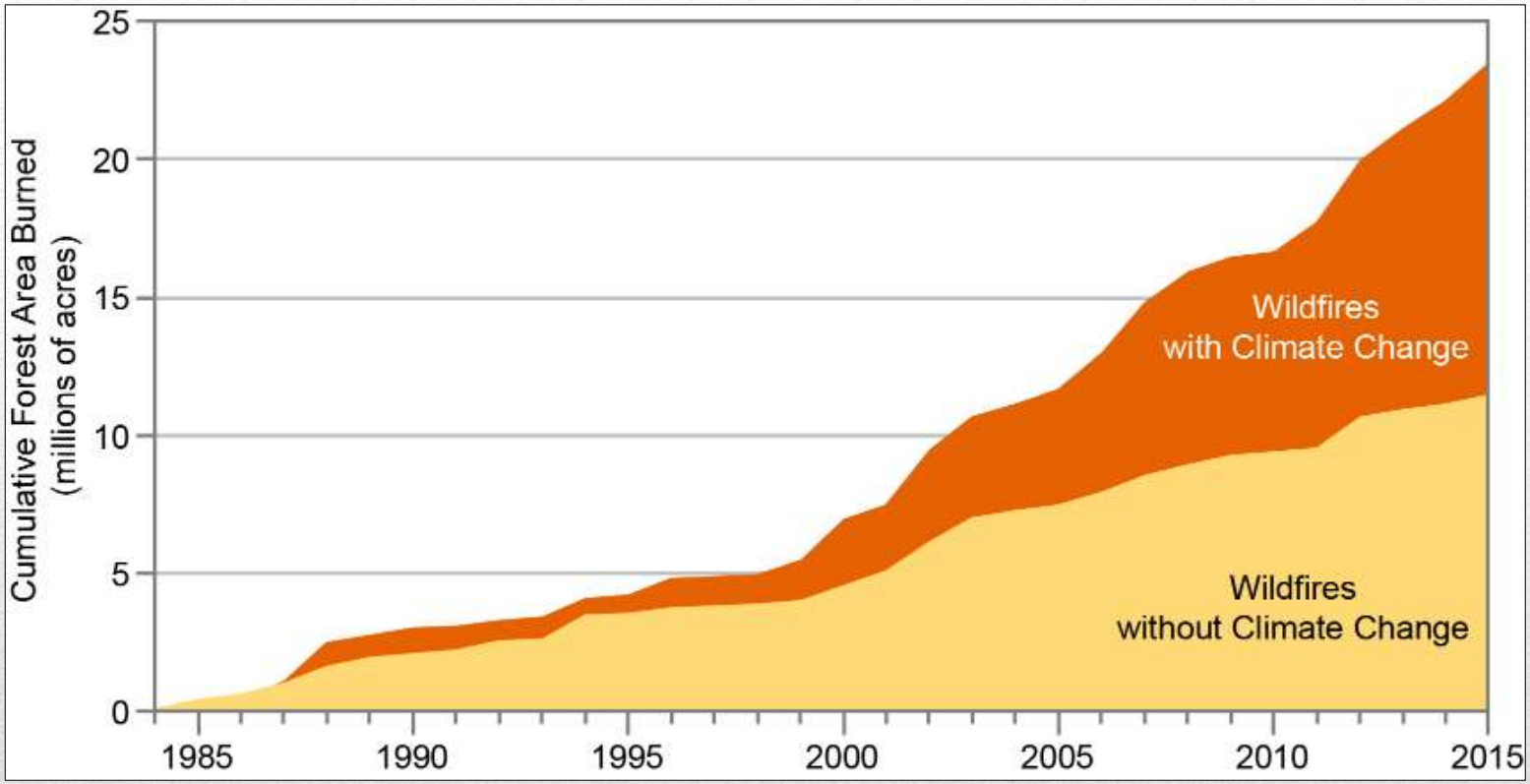
Also San Luis Reservoir, a state-Federal unit to impound water in San Joaquin Valley for storage and flow regulation; master levees, drainage and hydroelectric facilities and pumping plants.

BRODY: No. Revenues the State gets from wa- cern in the North where they want the dam to

Q.—Now, any final word, Governor?

Left: Maidu Summit Board Chair Ben Cunningham, Sr. (Maidu), planting and tending seedlings; *Right:* UCD ESP alum Ellen Sanders-Raigosa (Nomlaki) with Reina Rogers (Tohono O'odham), NRCS Tribal Liaison (retired) and Maidu Summit volunteer

- Students and collaborators grow the plants from seed and may also assist with site prep (raking, burning, preparing soil) and tending after planting
- Goal to have students and collaborators make a respectful contribution to long-term, tribal community-led work



Abatzoglou, J.T. and A.P. Williams, 2016: Impact of anthropogenic climate change on wildfire across western US forests. *Proceedings of the National Academy of Sciences of the United States of America*, **113** (42), 11770-11775.

A century of fire suppression and active exclusion of Indigenous land stewardship has contributed to increasing risk of catastrophic fire.

- Leading academic and practitioner science shows the effectiveness of cultural burning for increasing habitat, raising the water table, improving ecosystem health, reducing the risk of catastrophic fire, and other co-benefits
- Some of the many resources on the science of cultural burning:
  - Marks-Block T, F Lake, L Curran. 2019. Effects of understory fire management treatments on California Hazelnut, an ecocultural resource of the Karuk and Yurok Indians in the Pacific Northwest. Forest Ecology and Management 450.
  - David, A.T., J.E.,Asarian, F. Lake, 2018. Wildfire Smoke Cools Summer River and Stream Temperatures. Water Resources Research 54, 7273–7290.
  - Hankins, D. 2017. Restoring Indigenous Prescribed Fire to California Oak Woodlands. General Technical Report PSW-GTR-251, pp. 123-129.
  - Hankins, D. 2018. Ecocultural Equality in the Miwko꞉ Waali꞉ . San Francisco Estuary and Watershed Science 16(3).
  - Lake F., V. Wright, P. Morgan, M. McFadzen, D. McWethy, C. Stevens-Rumann. 2017. Returning Fire to the Land: Celebrating Traditional Knowledge and Fire. *J. of Forestry* 115(5): 343-353.
  - Long, Jonathan W.; Anderson, M. Kat; Quinn-Davidson, Lenya; Goode, Ron W.; Lake, Frank K.; Skinner, Carl N. 2016. Restoring California black oak ecosystems to promote tribal values and wildlife. Gen. Tech. Rep. PSW-GTR-252.
  - Aldern, Jared, and Ron Goode. 2014. These Stories Hold Water: Learning and Burning in North Fork Mono Homelands. Decolonization: Indigeneity, Education, and Society 3(3)

Cultural Burning

Ron Goode (N Fork Mono) meadow restoration work within the Sierra National Forest (LandLessons.org)

- The field course and public workshops require extensive collaboration, supportive funding, committed organizers
- Guiding Principles include:
  - Hands-on learning
  - Recognizing Indigenous expertise
  - Reciprocity
- Learning outcomes:
  - Ecological importance of fire
  - Policy context for cultural burning
  - Cross-cultural relationship building for land stewardship

Education and Cultural Burning: "Keepers of the Flame"

Winter 2018: North Fork Mono Elder Ron Goode leading a group of UCD students in a burn to reinvigorate the health of basketry plants.

Winter 2020: Dunlap Mono weavers Gladys McKinney, Julie Tex, and Florence Dick work with community members, faculty, and students, to harvest and process sourberry and redbud.

- Equity and engagement in the 30x30 initiative: application of policy and practice to support Indigenous land stewardship (including burning), linking the Apology in EO N15-19 to land policy
- Expansion of application of cultural and subsistence beneficial uses of water throughout the State

State IEJ projects/ issues

Implementation overview

- State Water Board defines beneficial use categories
- Regional Water Boards designate specific water bodies with beneficial uses
- Water quality objectives specify level of protection to protect a beneficial use (if needed), and place limits on pollutants (these can be developed regionally or statewide)

Examples of BUs

Agricultural Supply

Aquaculture

Preservation of biological habitats of special significance

Cold freshwater habitat

Commercial and sport fishing

Estuarine habitat

Freshwater replenishment

- Shellfish harvesting
- Navigation
- Hydropower generation
- Marine habitat
- Groundwater recharge
- Municipal and domestic supply
- Industrial process supply
- Non-contact water recreation

- Tribes sent letter to the SWRCB in July 2013, stating that existing beneficial uses did not protect their cultural uses or tribal subsistence fishing practices
- Review, consultation, development of language 2013-2015
- 2/16/16 SWRCB adopted Resolution directing staff to develop proposed beneficial uses categories pertaining to tribal traditional and cultural uses, tribal subsistence fishing, and subsistence fishing by other cultures:

Tribes

The State Water Board recognizes the importance of identifying and describing beneficial uses unique to California Native American tribes. Tribes have cultural practices and ways of life that they wish to preserve and pass on to future generations. Changes to California's waters, along with new sources of contamination and pollution to those waters, which are part of their native heritage, present distinctive challenges to the tribes and their members. In many of these areas, tribal members are unaware of issues with water quality and the dangers they may present. Providing beneficial use categories and descriptions designed to protect Native American uses of waters is an important step in ensuring that tribes have the opportunity to continue to practice their culture.

Process Overview

Shilling's Tribal Fish Use Study

- Objective: quantify tribal fish consumption throughout the state, in order to adjust water quality standards (which set pollution discharge limits) to protect tribal members
  - The hire the rate of consumption, the lower the pollution limit; the lower the rate of consumption, the higher the pollution limit
- Modeled after a tribal fish use study conducted in Oregon by the Columbia River Inter-Tribal Fish Commission (CRIFTC) in 1994: Oregon DEQ had estimated consumption at 20-30g/day; actual tribal consumption was over 140 g/day
- Two surveys (historical and contemporary fish use), found widespread, culturally important harvesting and consumption, albeit impacted by development and species decline

Uses of water that support the cultural, spiritual, ceremonial, traditional rights and/or lifeways of California Native American Tribes, including, but not limited to: navigational activities, and fishing, gathering, and/or consumption of natural aquatic resources, including fish, shellfish, vegetation, and materials, as supported by California Native American Tribes.

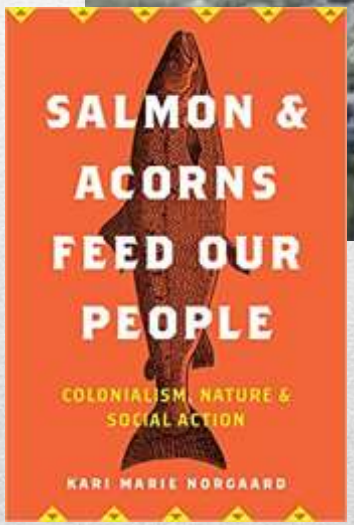
Tribal Traditional & Cultural Use

Uses of water that support the catching or gathering of natural aquatic resources, including fish and shellfish, by California Native Americans, for consumption by individuals, households, and/or communities to meet fundamental needs for sustenance.

Tribal Subsistence Fishing Use

How/where will BUs be applied?

- Conduct studies to make the case for the application of BUs to waterways
- Regional Water Boards designate BUs to waterways
- Data-based water quality objectives may need to be developed to protect BUs
- No new regional water boards (aside from Region 1, whose categories recognizing cultural use pre-dated the state recognition) have adopted T-SUB and T-CUL
- Region 5 is interested in exploring this process and applying the Tribal BUs to water bodies in its jurisdiction



- Tribal BUs are a key tool; a way to insert tribal values into the water quality regulatory process
- Tribes use new BUs to argue for expanded water quality– not only seasonal, with previous BUs focused on habitat for a fish that migrates, but also year-round b/c use, access, is continuous
  - Susan Corum of Somes Bar quoted in Norgaard 2019: *Look, every month of every year, the water needs to be good. Every month, every year. Every minute of every day, this place needs to be rock solid. Because what they'll do is they'll chart, if all they're going off of is salmon…life cycles, then normally the only times they're worried about is June to August or September. So you can pollute the [river] the rest of the year and nobody cares. So this says to them, you have to protect it all year round.*

Beneficial uses

Remaining concerns

- Lack of staff/ departments to do the data gathering work to support the protection of tribal values and interests (i.e,. the living river)
- Length of time to introduce, investigate, and call for the designation of BU; length of time required for study of the River, impairments, species, human exposure pathways, etc.– pollution can continue in this time!
- Once the BU is in place and the accompanying water quality objective is established, with the TMDL approved, what about enforcement?

IEJ Interventions

- Education
  - Hands-on learning guided by respect, reciprocity
  - Acknowledge racism and settler colonial violence embedded in accepted institutions
- Policy
  - What are the barriers to the development of Indigenous-led projects and/or the application of traditional methods for land restoration? What are the opportunities? Where are the policy levers?
  - What are the incentives to land repatriation/ rematriation? What are the barriers? What policy levers will enable removing barriers and increasing incentives?
- Research
  - Assessing barriers
  - Monitoring impacts
  - Contributing to Indigenous-led policy change and projects

Thank you

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