

Date of Hearing: April 8, 2025

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Diane Papan, Chair

AB 362 (Ramos) – As Amended April 2, 2025

**SUBJECT:** Water policy: California tribal communities

**SUMMARY:** Requires the State Water Resources Control Board (State Water Board) and the Regional Water Quality Control Boards (Regional Water Boards), when approving a project or regulatory program, to describe how that project or regulatory program would impact tribal water uses and to incorporate tribal uses of water into water quality control plans. Specifically, **this bill:**

- 1) Adds “tribal water uses” (TBUs) to the list of beneficial uses under the statutory definition of “beneficial uses.”
- 2) Allows a California tribal community that elects not to publicly disclose its tribal water uses to confidentially disclose them to the State Water Board or a Regional Water Board.
- 3) Provides that policies of the state with respect to water quality, as it relates to California tribal communities, consist of both of the following:
  - a) Tribal ecological knowledge should be valued and incorporated into regulatory and management programs; and
  - b) State agencies should make resources available for tribal co-management of aquatic resources within traditional and current tribal lands.
- 4) Requires any project or regulatory program, subject to approval by the State Water Board or a Regional Water Board, to—within an environmental review under the California Environmental Quality Act (CEQA)—describe, with both quantitative and qualitative information, how the project or regulatory program will impact tribal water uses.
- 5) Requires the State Water Board to publish a report on the implementation of #3 and #4, above, on or before December 1, 2026 and every two years thereafter.
- 6) Requires the State Water Board, during the process of formulating or revising state policy for water quality control, to consult with and carefully evaluate the recommendations of California tribal communities.
- 7) Requires, on or before January 1, 2027, the State Water Board to propose, and solicit tribal consultation and public input on, water quality standards to achieve reasonable protection of tribal water uses into the water quality control plan for the San Francisco Bay and Sacramento-San Joaquin Delta watershed (Bay-Delta Plan).
- 8) Requires the memorandum of understanding (MOU) between the California Environmental Protection Agency (CalEPA) and the Natural Resources Agency (NRA) that establishes the California Water Quality Monitoring Council (Monitoring Council) to describe the means by which the Monitoring Council will formulate recommendations to achieve and maintain tribal water uses through State Water Board and Regional Water Board regulatory actions

and other programs, including but not limited to, co-management of habitat restoration and management programs and consultations within California tribal communities.

- 9) Requires, on or before December 1, 2026, the Cal/EPA and NRA to amend the MOU to incorporate participation from California tribal communities in the actions of the Monitoring Council.
- 10) Requires Regional Water Boards, when establishing water quality objectives, to additionally consider the following factors:
  - a) Consultations with California tribal communities; and
  - b) Environmental justice considerations.
- 11) Exempts the adoption of TBUs within a water quality control plan from CEQA.
- 12) Requires, upon the next triennial review of a water quality control plan after January 1, 2026, each Regional Water Board to define TBUs in its water quality control plan and, where applicable, adopt water quality standards for the reasonable protection of tribal water uses into water quality control plans.
- 13) Makes the following findings and declarations:
  - a) California tribal communities have special ties to the bodies of water that have sustained their people, who have suffered from genocide, disease, displacement, and discrimination dating back to European colonization, and therefore tribal water uses must be protected through the statewide program for the control of the quality of all the waters of the state and
  - b) Allowing for tribal water uses should be a primary factor in determining the highest water quality that is reasonable in all regulatory decisions.

**EXISTING LAW:**

- 1) Establishes the federal Clean Water Act (CWA) to regulate discharges of pollutants into the waters of the United States and regulate quality standards for surface waters (33 United States Code (USC) §§ 1251 *et seq.*).
- 2) Pursuant to the Porter-Cologne Water Quality Control Act (Porter-Cologne), prohibits the discharge of pollutants to surface waters unless the discharger obtains a permit from the State Water Board (Water Code §§ 13000 *et seq.*)
- 3) Provides that beneficial uses of waters of the state include, domestic, municipal, agricultural and industrial supply, power generation, recreation, aesthetic enjoyment, navigation, and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves [Water Code § 13050 (f)].
- 4) Requires the State Water Board, during the process of formulating or revising state policy for water quality control, to consult with, and carefully evaluate the recommendations of, concerned federal, state, and local agencies (Water Code § 13144).

- 5) Requires, on or before December 1, 2007, CalEPA and the NRA to enter into an MOU for the purposes of establishing the Monitoring Council. Requires the State Water Board to administer the Monitoring Council (Water Code § 13181).
- 6) Delegates to California's Regional Water Boards the ability to adopt water quality standards within their region of jurisdiction (Water Code § 13240).
- 7) Requires a Regional Water Board to prescribe requirements for any proposed discharge, existing discharge, or material change in an existing discharge, except discharges into a community sewer system, with relation to the conditions existing in the disposal area upon or receiving waters into which the discharge is made or proposed. Specifies that requirements that implement any relevant water quality control plans have been adopted and take into consideration the beneficial uses to be protected, water quality objectives, other waste discharges, and the need to prevent nuisance (Water Code §§ 13269 *et seq.*).

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

**COMMENTS:**

- 1) **Purpose of this bill.** According to the author: "California tribes have been fighting to preserve their way of life since the beginning of California's history. The state and tribes have been working hand in hand to correct injustices and heal historical trauma. Laws have been passed mandating consultation and preservation of tribal sacred sites and cultural resources. However, tribes cannot maintain their ways of life without access to the plants and animals sustained by healthy rivers and lakes." The author asserts this bill will "ensure all California tribes can benefit from water quality management plans that would place cultural uses on equal footing with other uses."
- 2) **Background.** California is home to the largest Native American population in the country and has 110 federally recognized tribes<sup>1</sup> with another 81 groups seeking federal recognition.<sup>2</sup> According to 2020 U.S. Census data, 631,016 Californians identify as "American Indian" or "Alaska Native"; when including the Californians that identify as "American Indian" or "Alaska Native" in combination with another race or ethnicity, the number of Native Americans in California increases to 1.4 million residents.<sup>3</sup>

Very few Native Americans live on their ancestral lands in California today. This is due to the repeated efforts of Spanish, Mexican, Russian, and U.S. governments to subdue and displace indigenous peoples: "All four colonial nations sponsored policies that uprooted Indigenous People and communities from the lands in which they were created, and all four deployed violence, in the form of slavery, genocide, and an administrative state bent on

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<sup>1</sup> U.S. Department of Health and Human Services, Indian Health Service. (2022, Jan 28). List of Federally-Recognized Tribes in CA. <https://www.ihs.gov/california/index.cfm/tribal-consultation/resources-for-tribal-leaders/list-of-federally-recognized-tribes-in-ca/>.

<sup>2</sup> Center for Families, Children & the Courts. (2012, Jan). Frequently Asked Questions: Indian Tribes and Tribal Communities in California. <https://www.courts.ca.gov/documents/TribalFAQs.pdf>.

<sup>3</sup> U.S. Census Bureau. (2020, Aug 12). Race and Ethnicity in the United States: 2010 Census and 2020 Census. <https://www.census.gov/library/visualizations/interactive/race-and-ethnicity-in-the-united-state-2010-and-2020-census.html>.

eliminating California Indian people.”<sup>4</sup>

The federal government sent three commissioners to California to negotiate treaties with California tribes in 1851. These commissioners negotiated 18 treaties with 139 tribes that would have set aside 7.5 million acres for Indian use and granted other rights to Native Californians; however, when President Fillmore submitted the treaties to the U.S. Senate for ratification in February 1852, senators from California objected and the U.S. Senate rejected the treaties during a secret session. The U.S. Senate then placed the treaties in its archive, concealing the existence of these treaties from the public for more than 50 years.<sup>5</sup> In 1903, the federal government sent another Indian agent to California to settle Indians on reserved lands. By that time, however, many tribes no longer lived on their ancestral lands, so small plots of land were established for Indian families.

Lands legally controlled by tribes in California today result from presidential executive order, federal statute, or action by tribes and tribal members themselves to purchase land. Water rights were not often appropriately accounted for in the protection of tribal lands.

Water is essential for all life and, like other groups across the globe, “quite often, Indigenous People chose to live on or near bodies of water.”<sup>6</sup> In addition, many tribes strongly believe that water is an interconnected element that flows through all spaces in tribal communities. This stems from their own Indigenous Knowledge Systems (IKS); these systems are tribes own skills, perceptions, ideologies, and experiences. One component of IKS is Traditional Ecological Knowledge, the relationship between the people and the direct contact with the environment.<sup>7</sup> For example, water holds importance with regard to farming which provides sustenance for community members, fishing which also provides sustenance, and ceremonial use for healing. Some tribal communities’ creation stories include water, some which share that water sources like springs and underground waterways are pathways which connect the ancestors from the past to the present.<sup>8</sup>

*Federal Clean Water Act (CWA):* The Federal Water Pollution Control Act of 1948 was the first major U.S. law to address water pollution. The law was amended in 1972 and became commonly known as CWA. The federal CWA establishes the basic structure for regulating discharges of pollutants into the waters of the U.S and regulating quality standards for surface waters. Under the CWA, the U.S. Environmental Protection Agency (U.S. EPA) has implemented pollution control programs, including setting wastewater standards for industrial facilities, as well as setting water quality standards for all contaminants in surface waters. The CWA made it unlawful to discharge any pollutant from a point source into navigable waters without a permit.

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<sup>4</sup> Akins, D. and Bauer, Jr., W. (2021). *We Are the Land: A History of Native California*. Oakland: University of California Press, p. 3.

<sup>5</sup> U.S. National Park Service. (2004, Nov 17). A History of Native American Indians in California 1849-1879. [https://www.nps.gov/parkhistory/online\\_books/5views/5views1c.htm](https://www.nps.gov/parkhistory/online_books/5views/5views1c.htm).

<sup>6</sup> Akins, D. and Bauer, Jr., W. (2021). *We Are the Land: A History of Native California*. Oakland: University of California Press, p. 16.

<sup>7</sup> U.S. Department of Interior, Bureau of Indian Affairs. (n.d.). Traditional Ecological Knowledge. <https://www.bia.gov/bia/ots/dfwfm/bwfm/fuels-management/traditional-ecological-knowledge>.

<sup>8</sup> Larned, S. M. (2018) Water is Life: The Native American Tribal Role in Protecting Natural Resources. *Environmental and Earth Law Journal*, Vol. 8, 57-58.

*State regulation of water pollution.* The State Water Board is responsible for administering the federal CWA and California's Water Quality Act (Porter-Cologne), enacted in 1969, which set up the statewide structure for water quality control. Porter-Cologne designates the State Water Board as the water pollution control agency for all purposes stated in the CWA, and it authorizes the State Water Board to exercise any powers that the federal CWA delegates to the State. The State Water Board and Regional Water Boards are charged with preventing and reducing water pollution in rivers, streams, lakes, beaches, bays, and groundwater.

*California Water Quality Monitoring Council.* In November 2007, an MOU was signed by the Secretaries of CalEPA and NRA to establish the Monitoring Council. The MOU requires the boards, departments, and offices within CalEPA and NRA to integrate and coordinate their water quality and related ecosystem monitoring, assessments, and reporting.

The Monitoring Council is required to develop specific recommendations to improve the coordination and cost-effectiveness of water quality and ecosystem monitoring and assessment, enhance the integration of monitoring data across departments and agencies, and increase public accessibility to monitoring data and assessment information. While the Monitoring Council may recommend new monitoring or management initiatives, it aims to build on existing efforts to the greatest extent possible.

*Beneficial uses of water.* Beneficial uses are goals the State Water Board designates to ensure Californians have access to the highest water quality and can use it for maximum benefit. Beneficial uses are defined in the California Code of Regulations. Examples of beneficial uses include recreation, navigation, and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves.

*TBUs.* TBUs are a group of beneficial uses that can help protect activities specific to Native American cultures and their uses of California waters, including the consumption of non-commercial fish or shellfish. TBUs can also be referred to as cultural uses of water.

*State Water Board resolution regarding TBUs.* In 2016, the State Water Board adopted Resolution 2016-0011, which directs staff to develop proposed beneficial use definitions pertaining to tribal traditional and cultural use, tribal subsistence fishing, and subsistence fishing. The State Water Board's resolution specifies (in Attachment A) the following beneficial uses, as proposed by tribes, tribal representatives, and environmental justice representatives:

- “California Indian Tribal Traditional and Cultural Use: Uses of water that supports the cultural, spiritual and traditional rights and lifeways of California Indian Tribes. This includes but is not limited to: fishing, gathering, and safe consumption of traditional foods and materials, as defined by California Indian Tribes, for subsistence, cultural, spiritual, ceremonial and navigational activities associated with such uses;”
- “California Indian Tribal Subsistence Fishing Use: Uses of water that supports the gathering and distribution of natural aquatic resources, including fish and shellfish, to meet traditional food needs of California Tribal individuals, households and

communities for personal, family and community consumption, and for traditional and/or ceremonial purposes;” and

- “Subsistence Fishing: Uses of water that support the non-commercial catching or gathering of natural aquatic resources, including fish and shellfish, by individuals for the personal consumption by individuals and their households or communities, to meet fundamental needs for sustenance due to cultural tradition, lack of personal economic resources, or both.”

Following the adoption of Resolution 2016-0011, the State Water Board updated the statewide Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California to incorporate three TBUs: tribal tradition and culture, tribal subsistence fishing, and subsistence fishing. This was accomplished through the adoption of Resolution 2017-0027 on May 2, 2017. The definitions of TBUs referenced in Resolution 2017-0027 were developed after robust public engagement and input, including with representatives of tribal California Native American Tribes.

*Water Quality Control Plans/Basin Plans.* These terms are used interchangeably and are the foundation for the Regional Water Boards’ water quality regulatory programs and are regulatory references for meeting the state and federal requirements for water quality control. They provide a plan of action designed to preserve and enhance water quality and require public participation. Each Regional Water Board has its own Basin Plan(s). Basin Plans contain:

- Beneficial use definitions;
- Designated beneficial uses for both surface and ground water bodies in the basin;
- Water quality objectives to protect those beneficial uses;
- Implementation plans that describe the actions necessary to achieve water quality objectives; and
- Descriptions of the surveillance and monitoring activities needed to determine regulatory compliance and assess the health of the water resources.

The nine Regional Water Boards are required to develop and adopt Basin Plans. The Regional Water Boards review their Basin Plans every three years and determine a list of basin-planning priority projects (a process known as the “triennial review”).

*TBUs under each Regional Water Board.* Resolution 2017-0027 also directs the Regional Water Board to use these TBUs “to the extent the Regional Water Boards describe such uses in a water quality control plan after the effective date” of the resolution. The nine Regional Water Boards must initiate and complete a basin-planning process for the beneficial uses to be incorporated into their respective basin plans. This is a multi-step process that includes adding TBU definitions to the basin plan, identifying water bodies within the basin where tribal uses are occurring, establishing water quality objectives to protect those TBUs (e.g., standards for levels of contaminants in a given water body), developing an implementation plan to achieve the water quality standards, and following the implementation program. An

important part of this process is engaging tribes in the region to determine what and where (i.e., in what river, lake, or stream) TBUs are occurring. According to the State Water Board's Tribal Affairs website, the nine Regional Water Boards are at different stages in this process:

Table 1 – Status of incorporation into Basin Plans by Regional Water Board.

<b>Regional Board</b>	<b>Add TBU definitions to Basin Plan</b>	<b>Designate waterbodies or parts of water bodies with TBUs</b>	<b>Establish water quality objectives and implementation programs for TBUs</b>	<b>Implementation</b>
Region 1 – North Coast	In progress	Not started	Not started	Not started
Region 2 – San Francisco	In progress	Gathering information	Not started	Not started
Region 3 – Central Coast	In progress	Not started	Not started	Not started
Region 4 – Los Angeles	Completed	Gathering information	Not started	Not started
Region 5 – Central Valley	Completed	Gathering information	Not started	Not started
Region 6 – Lahontan	Completed	Gathering information	Not started	Not started
Region 7 – Colorado River	In progress	Not started	Not started	Not started
Region 8 – Santa Ana	In progress	Not started	Not started	Not started
Region 9 – San Diego	Completed	Gathering information	Not started	No started
Bay-Delta Plan	In progress	Not started	Not started	Not started

As an example, the Lahontan Regional Water Boards designated “tribal tradition and culture,” “subsistence fishing,” and “tribal subsistence fishing” as beneficial uses in its basin plan in September 2020 via Resolution No. R6T-2020-0057. This was a first step, but to realize protection of these beneficial uses, the Lahontan Regional Water Board initiated a process to engage tribes in the region, including the Mono Lake Kootzaduka’a Tribe, and identify waterbodies where these beneficial uses occur. Having completed that, the Lahontan Regional Water Board scheduled a meeting on November 13, 2024 to consider amendments

to the Lahontan Basin Plan to designate TBUs for Mono Lake and related water bodies; however, this meeting was cancelled and has not yet been re-scheduled.

*Bay-Delta Plan.* This Basin Plan is distinct given the importance of the Bay-Delta waterbody to the entire state. Observing the ecological decline of the Bay-Delta in the late 1970's, the State Water Board exercised its authority under Porter-Cologne and CWA to preempt the Regional Water Board and be the lead in setting water quality standards for the waterbody. The process for the current update commenced in 2009. Though state law requires that a water quality control plan be "periodically reviewed" (Water Code § 13240) and the federal CWA requires triennial review of water quality control plans [33 USC § 1313(c)], the State Water Board has been unable to comply with these requirements for periodic or triennial review of the Bay-Delta Plan for various reasons. This bill requires the State Water Board to propose, and solicit tribal consultation and public input on, water quality standards to protect TBUs under the Bay-Delta Plan by January 1, 2027.

*Civil rights investigation regarding Bay-Delta Plan update.* The U.S. EPA Office of External Civil Rights Compliance (OERC) notified the State Water Board in August 2023 that it was opening a formal civil rights investigation in response to a complaint from this bill's sponsor and some of its supporters. The complaint alleges that the State Water Board's failure to update Bay-Delta water quality standards discriminates against members of Native Tribes and Black, Asian and Latino persons residing in and around the San Francisco Bay/Sacramento-San Joaquin Delta watershed, particularly the South Stockton community. Furthermore, the complaint alleges that the State Water Board has intentionally excluded local Native Tribes and Black, Asian, and Latino residents from participation in the policymaking process associated with the Bay-Delta Plan. This investigation is ongoing.

- 3) **Arguments in support.** The Shingle Springs Band of Miwok Indians (Shingle Springs Band) is the sponsor of this bill. The Shingle Springs Band maintains that this is an important bill "as California takes steps to repair legacies of injustice and improve collaborative relationships with tribal governments, giving tribal water uses equal importance with other water uses is a tangible way to make good on legislative and policy commitments to tribes. In addition, [this bill] would advance streamlined water quality protections at both the state and regional level by removing environmental impact analysis requirements prior to developing numeric water quality standards."
- 4) **Oppose unless amended.** The Association of California Water Agencies (ACWA) has taken an "oppose unless amended" position on this bill. ACWA maintains that this bill goes well beyond the author's stated intent – to ensure TBUs and tribal voices are considered in the development of water quality policy – and "could be used to compel a substantial redistribution of water in a manner that could have serious statewide consequences." ACWA objects to the CEQA exemption for adopting TBUs into water quality control plans in this bill because it limits the ability of interested parties to weigh in and does not allow any assessment of impacts: "this limitation in public process is highly problematic and this section should be removed from the bill."
- 5) **Recent amendments.** Recent amendments to this bill were taken at the request of this Committee to address concerns with the previous version of this bill raised by the Committee. As these amendments occurred after the Committee's position letter deadline, it



is unclear whether the recent amendments change any group's or individual's position on this bill.

- 6) **Dual-referral.** This bill has also been referred to the Assembly Committee on Environmental Safety and Toxic Materials.
- 7) **Related legislation.** AB 2614 (Ramos) of 2024 would have defined TBUs in statute and designated them as a beneficial use of water. Would have required the State Water Board and the Regional Water Boards, when approving a project or regulatory program, to describe how that project or regulatory program would impact tribal water uses and to incorporate tribal uses of water into water quality control plans. AB 2614 was held in the Assembly Appropriations Committee.

AB 2108 (Robert Rivas), Chapter 347, Statutes of 2022, requires the State Water Board and the Regional Water Boards to make programmatic findings on potential environmental justice, tribal impact, and racial equity considerations when issuing regional or reissuing statewide waste discharge requirements or waivers of waste discharge requirements. Requires the State Water Board and Regional Water Boards to engage communities impacted by proposed discharges of waste throughout the waste discharge planning, policy, and permitting process.

AB 2936 (Quirk) of 2022 would have required the State Water Board to complete the update of the Bay Delta Plan by December 31, 2023, and places a moratorium on new water right permits resulting in increased diversions in the Bay-Delta watershed if the update is not completed by January 1, 2024. AB 2639 failed passage on the Assembly Floor 34-26.

## REGISTERED SUPPORT / OPPOSITION:

### Support

Shingle Springs Band of Miwok Indians (sponsor)  
 Blue Lake Rancheria Tribe of California  
 Buena Vista Rancheria of Me-Wuk Indians  
 California Environmental Voters  
 California Indian Environmental Alliance  
 Colfax Todds Valley Consolidated Tribe of the Colfax Rancheria  
 Defenders of Wildlife  
 Friends of The River  
 La Jolla Band of Luiseño Indians  
 Los Angeles Waterkeeper  
 Morongo Band of Mission Indians  
 Pala Band of Mission Indians  
 Restore the Delta  
 San Francisco Baykeeper  
 Santa Rosa Rancheria Tachi Yokut Tribe  
 Santa Ynez Band of Chumash Indians  
 Save California Salmon  
 Shingle Springs Band of Miwok Indians  
 Sierra Club  
 Sierra Consortium

Suscol Intertribal Council  
The Sierra Fund  
Water Climate Trust  
Wilton Rancheria

**Oppose Unless Amended**

Association of California Water Agencies  
California Chamber of Commerce  
California Farm Bureau  
California Municipal Utilities Association  
Regional Water Authority  
State Water Contractors  
Valley Ag Water Coalition

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