

Date of Hearing: April 29, 2025

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Damon Connolly, Chair

AB 362 (Ramos) – As Amended April 21, 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), after January 1, 2026, to define tribal beneficial uses in their water quality control plans and, where applicable, adopt water quality standards to achieve reasonable protection of tribal water uses into water quality control plans. Exempts the adoption of tribal water uses within a water quality control plan from the requirements of the California Environmental Quality Act (CEQA). Specifically, **this bill:**

- 1) Provides that, in addition to any other policies regarding water quality, the 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 program; and,
 - b) State agencies should make resources available for tribal co-management of aquatic resources within traditional and current tribal lands.
- 2) Requires any project or regulatory program subject to approval by the State Water Board or Regional Water Boards to, within an environmental review pursuant to CEQA (Division 13 commencing with Section 21000 of the Public Resources Code), and in any findings and declarations presented for State Water Board or Regional Water Board approval, describe, with both quantitative and qualitative information, how the project or regulatory program will impact tribal water uses.
- 3) Requires, on or before December 1, 2026, and every two years thereafter, the State Water Board, to publish a report on implementation of this bill on its internet website.
- 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 California tribal communities.
- 5) Requires, on or before January 1, 2027, the State Water Board to propose and solicit tribal consultation and public comment 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.
- 6) Authorizes, representatives of California tribal communities to be included on the California Water Quality Monitoring Council (Monitoring Council).
- 7) Requires the Monitoring Council to formulate recommendations to achieve and maintain tribal water uses through State Water Board and Regional Water Board regulatory action and

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

- 8) Requires, on or before December 1, 2026, the California Environmental Protection Agency and the Natural Resources Agency to amend the memorandum of understanding to incorporate participation from California tribal communities in the actions of the Monitoring Council. The methods of participation may include membership on the Monitoring Council, creation of a tribal water quality council, and consultation with California tribal communities.
- 9) Requires factors to be considered by a Regional Water Board when establishing water quality objectives to include:
 - a) Consultations with California tribal communities; and,
 - b) Environmental justice considerations.
- 10) Exempts the adoption of tribal water uses within a water quality control plan from the requirements of CEQA.
- 11) Requires each Regional Water Board, upon the next triennial review of a water quality control plan, after January 1, 2026, to define tribal beneficial uses in its water quality control plan and, where applicable, adopt water quality standards to achieve reasonable protection of tribal water uses into water quality control plans.
- 12) Provides that the Legislature finds and declares all of the following:
 - 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

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 (WC) § 13000, et seq.)
- 3) Defines "beneficial uses" of waters of the state that may be protected against quality degradation to include, but not be limited to, 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. (WC § 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. (WC § 13144)
- 5) Requires, on or before December 1, 2007, CalEPA and the Natural Resources Agency to enter into a memorandum of understanding (MOU) for the purposes of establishing the Monitoring Council. Requires the State Water Board to administer the Monitoring Council. (WC § 13181)
- 6) Delegates to California's Regional Water Boards the ability to adopt water quality standards within their region of jurisdiction. (WC § 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. (WC § 13269, et seq.)
- 8) Creates CEQA which provides a process for evaluating the environmental effects of applicable projects undertaken or approved by public agencies. (Public Resources Code (PRC) § 21050)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the 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. AB 2614 would establish statewide tribal beneficial water uses which would ensure all California tribes can benefit from water quality management plans that would place cultural uses on equal footing with other uses."

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 the Clean Water Act (CWA). The federal CWA establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. Under the CWA, the United States Environmental Protection Agency (US 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.

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 the Natural Resources Agency to establish the Monitoring Council. The MOU requires the boards, departments, and offices within CalEPA and the Natural Resources Agency 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.

This bill: AB 362 requires, on or before December 1, 2026, CalEPA and the Natural Resources Agency to amend the memorandum of understanding to incorporate participation from California tribal communities in the actions of the Monitoring Council. The methods of participation may include membership on the Monitoring Council, creation of a tribal water quality council, and consultation with California tribal communities.

State Water Board resolution regarding tribal water uses: In 2016, the State Water Board adopted Resolution 2016-0011, which directs staff to develop proposed beneficial uses pertaining to tribal traditional and cultural use, tribal subsistence fishing, and subsistence fishing. The resolution includes the following declarations:

- "Beneficial uses are the cornerstone of water quality protection. The Porter-Cologne Act provides that the beneficial uses of the state's waters to be protected against degradation include, but are not limited to, '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.' (WC, § 13050 (f));
- "Of the nine Regional Water Boards, only the North Coast Regional Water Board's basin plan explicitly lists (at p. 2-3.00) a beneficial use that pertains to the cultural and traditional rights of indigenous people."; and,
- "The State Water Board recognizes the importance of identifying and describing beneficial uses unique to California Native American tribes, in addition to subsistence fishing by other cultures or individuals."

In addition, the resolution contains a list of actions taken by the State Water Board, including directions for:

- "...State Water Board staff to develop proposed beneficial use categories, including definitions, pertaining to tribal traditional and cultural use, tribal subsistence fishing use, and subsistence fishing use by other cultures or individuals"; and,
- "...State Water Board staff to consider the beneficial uses presented in Attachment A when developing the aforementioned proposed beneficial use categories."

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."

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. There are an array of beneficial uses including, but not limited to: recreation, navigation, and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves.

Tribal beneficial uses of water: Tribal beneficial uses 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. Tribal Beneficial Uses can also be referred to as cultural uses of water.

California Native American Tribes use California's surface waters in a manner unique to tribal culture, tradition, ceremonies, and lifeways. Tribal Beneficial Uses provide a way to adequately protect certain uses of water that directly relate to Native American cultures. In some cases, the levels of waste allowed to be released into California waters (discharge requirements) or existing water quality standards may not adequately protect Tribal Beneficial Uses. To account for this, in 2017 the State Water Board identified and described beneficial uses unique to California Native American Tribes, in addition to subsistence fishing by other cultures or individuals.

In some cases, current discharge requirements may not adequately protect the new beneficial uses. Examples include the timing of the application of aquatic herbicides so that they do not

interfere with cultural practices and reducing bioaccumulative pollutants to levels that are protective of a high rate of fish consumption.

In establishing the beneficial use definitions (Resolution 2016-0011), the State Water Board provided the following direction:

"The [Regional Water Boards] shall use the beneficial uses to the extent such activities are defined in a water quality control plan after June 28, 2017... For a [Regional Water Board] to designate the Tribal Tradition and Culture or Tribal Subsistence Fishing beneficial uses in a water quality control plan for a particular waterbody segment and time(s) of year, a California Native American Tribe must confirm the designation is appropriate."

Tribal beneficial uses under each Regional Water Board: Although the State Water Board established the Tribal Beneficial Uses in 2017, 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. However, incorporating the Tribal Beneficial Uses into the Basin Plan does not designate any specific waterbodies. For Tribal Beneficial Uses to be memorialized in a region and for waterbodies to be protected, there are several basin-planning actions a Regional Water Board could take, including:

- Add one or more of the beneficial use definitions to the Basin Plan;
- Designate one or more water bodies with one or more of those beneficial uses; and,
- Add one or more of the beneficial use definitions to the Basin Plan and designate one or more water bodies with one or more of those beneficial uses.

California Environmental Quality Act (CEQA): CEQA generally requires state and local government agencies to inform decision makers and the public about the potential environmental impacts of proposed projects, and to reduce those environmental impacts to the extent feasible. If a project subject to CEQA will not cause any adverse environmental impacts, a public agency may adopt a brief document known as a negative declaration. If the project may cause adverse environmental impacts, the public agency must prepare a more detailed study called an Environmental Impact Report (EIR). An EIR contains in-depth studies of potential impacts, measures to reduce or avoid those impacts, and an analysis of alternatives to the project. A key feature of the CEQA process is the opportunity for the public to review and provide input on both negative declarations and EIRs.

This bill: AB 362 seeks to improve the protections for tribal beneficial uses of water within the state water quality control laws. Specifically, the bill requires the Regional Water Boards, after January 1, 2026 to define tribal beneficial uses in their water quality control plans and, where applicable, adopt water quality standards to achieve reasonable protection of tribal water uses into water quality control plans. Additionally, the bills exempts the adoption of tribal water uses within a water quality control plan from the requirements of CEQA. AB 362 also requires the State Water Board, as well as the Monitoring Council to involve tribal communities when administering state water policy. While the State Water Board has made efforts to involve tribal communities in the development of state water policy, that effort has been taking some time and it's reasonable to speed up the adoption of tribal beneficial uses of water within each Regional Water Board.

Arguments in support: According to the Santa Rose Rancheria Tachi-Yokut Tribe,

"As California takes steps to repair legacies of injustice and improve collaborative relationships with tribal governments, giving tribal water uses equal legal importance with other water uses is a tangible way to make good on legislative and policy commitments to tribes.

AB 362 defines TBU's [tribal beneficial uses for water] and requires the State and Regional Water Board to enact and enforce water quality criteria to ensure TBUs are achieved. In addition, it mandates tribal consultation on TBU implementation, including water quality monitoring and habitat co-management.

California's tribal sovereignty and water stewardship goals require new approaches to existing programs. We need to enshrine TBU's in law to ensure that tribes' water practices are protected in regulations and that tribes have an equal seat at the table for watershed protection."

Arguments in opposition: According to a coalition of organizations writing as oppose unless amended:

"AB 362 is a reintroduction of AB 2614 from 2024, which many of the signatories' expressed concerns with. We appreciate the author's stated intent of this bill - to ensure that tribal beneficial uses and the voices of California tribal communities are considered in the development of water quality objectives, policies, and standards. However, while some aspects of this bill would advance the involvement of tribal communities in the development of water quality control plans, several aspects go far beyond the stated intent and could be used to compel a substantial redistribution of water in a manner that could have serious statewide consequences.

We appreciate that the author and sponsors of this bill have expressed a willingness to work with signatories to this letter and that the author's recent amendments removed the previously proposed definition of tribal water uses. We are committed to continuing to work with the author and sponsors to seek constructive solutions and believe our proposed amendments outlined below would maintain the author's previously stated intent.

This bill would include legislative findings that would elevate tribal water uses over all other beneficial uses of water. This provision should be removed from the bill.

The bill would exempt adoption of tribal water uses within water quality control plans from CEQA. This limitation in public process is highly problematic. We strongly recommend removing this section from the bill.

This bill would require any project or regulatory program subject to approval by the State Water Board or a regional board, within CEQA, and in any findings and declarations presented for State Water Board or regional board approval, to describe, with both quantitative and qualitative information, how the project or regulatory program would impact tribal water uses. This section should be removed from the bill.

For these reasons, absent substantive amendments, the undersigned organizations oppose AB 362 and respectfully request your "NO" vote when it is heard in the Assembly Environmental Safety and Toxic Materials Committee."

Double-referral: This bill was referred to the Assembly Water Parks and Wildlife Committee where it was heard on April 8th and passed by a vote of 9-0.

Related Legislation:

- 1) AB 2614 (Ramos, 2024). Would have defined tribal water uses and required this definition to be used by state agencies in place of previously used definitions for tribal traditional cultural uses and tribal subsistence uses. 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.
- 2) 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.

REGISTERED SUPPORT / OPPOSITION:

Support

Audubon California
 Blue Lake Rancheria Tribe of California
 Buena Vista Rancheria of Me-wuk Indians
 California Environmental Voters
 California Indian Environmental Alliance
 Clean Water Action
 California Nations Indian Gaming Association
 Colfax Todds Valley Consolidated Tribe of The Colfax Rancheria
 Defenders of Wildlife
 Friends of The River
 LA Jolla Band of Luiseno 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 California
 Sierra Consortium

Soboba Band of Luiseno Indians
Suscol Intertribal Council
The Climate Reality Project, Orange County Chapter
The Climate Reality Project, California State Coalition
The Climate Reality Project, Los Angeles Chapter
The Climate Reality Project, San Diego Chapter
The Climate Reality Project, San Fernando Valley CA Chapter
The Sierra Fund
Tribal Alliance of Sovereign Indian Nations
Union of Concerned Scientists
Water Climate Trust
Wilton Rancheria

Opposition

Coachella Valley Water District
Association of California Water Agencies
California Chamber of Commerce
California Farm Bureau
California Municipal Utilities Association
El Dorado Irrigation District
Regional Water Authority
Solano County Water Agency
State Water Contractors
Valley Ag Water Coalition

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