

ASSEMBLY THIRD READING

AB 362 (Ramos)

As Amended April 21, 2025

Majority vote

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.

Major Provisions

- 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 the state's water quality policy as it relates to California tribal communities consists 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, 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).
- 5) 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.
- 6) 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.
- 7) Exempts the adoption of TBUs within a water quality control plan from the California Environmental Quality Act.
- 8) 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.

COMMENTS

California is home to the largest Native American population in the country and has 110 federally recognized tribes (U.S. Department of Health and Human Services, 2022) with another 81 groups seeking federal recognition. 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 (U.S. Census Bureau, 2020).

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 eliminating California Indian people" (Akins and Bauer, Jr., 2021).

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 Federal Clean Water Act (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.

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.

The California Water Quality Monitoring Council was established by an MOU in November 2007. 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.

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.

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. 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 public engagement and input, including with representatives of tribal California Native American Tribes.

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 with four of the nine regions having added TBUs to their basin plans and none having yet designed water bodies where TBUs occur.

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 Section 13240) and the federal CWA requires triennial review of water quality control plans [33 USC Section 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.

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."

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."

Arguments in Opposition

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."

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

Significant ongoing costs, likely in the millions of dollars, for the State Water Board and Regional Water Boards to implement the requirements of this bill.

The State Water Board estimates costs of approximately \$12.3 million in ongoing annual staffing costs and \$1 million in annual ongoing contracting costs. Additionally, the State Water Board estimates \$3.3 million in limited-term contracting costs in the first five years, and possibly longer, to support the work of the Regional Water Boards (Waste Discharge Permit Fund and General Fund). Costs would be associated with updating the Bay-Delta Plan and all regional water quality control plans to incorporate tribal water uses and updated water quality objectives, increasing coordination with tribes on a variety of programs and the Monitoring Council, and incorporating tribal ecological knowledge into programs and policies.

VOTES

ASM WATER, PARKS, AND WILDLIFE: 9-0-4

YES: Papan, Alvarez, Ávila Farías, Bennett, Boerner, Caloza, Hart, Celeste Rodriguez, Rogers

ABS, ABST OR NV: Jeff Gonzalez, Bains, Macedo, Tangipa

ASM ENVIRONMENTAL SAFETY AND TOXIC MATERIALS: 5-0-2

YES: Connolly, Bauer-Kahan, Lee, McKinnor, Papan

ABS, ABST OR NV: Ellis, Castillo

UPDATED

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