



# CALIFORNIA WATER BOARDS

## TRIBAL BENEFICIAL USES

### Protecting water quality for Tribal Beneficial Uses

#### Overview

California is home to over 160 Native American Tribes (California Tribes) and has one of the highest Native American populations of any U.S. state. Since time immemorial, California Tribes have used water to support their cultural, spiritual, ceremonial, subsistence, and/or traditional practices.


This document summarizes how the California State Water Resources Control Board and nine Regional Water Quality Control Boards (collectively known as the Water Boards) use their authority to protect the group of beneficial water uses known as “Tribal Beneficial Uses.” It also describes opportunities for California Tribes and the public to engage with the Water Boards in these processes.

#### We hope to:

##### 1) Introduce you to the concepts

- Pages 1-3 provide background information and important terms.

##### 2) Encourage you to get involved

- Pages 3-8 provide information on how to get involved in each step; look for this icon 
- Page 9 summarizes ways to get involved and provides contact information.

##### 3) Tell you more about the regulatory process

- Page 3 includes an overview graphic that shows the steps the Water Boards may take to protect water quality for Tribal Beneficial Uses.
- Pages 3-8 describe Water Boards actions that help protect Tribal Beneficial Uses.

#### What are the Water Boards?

The Water Boards are state agencies whose mission is to preserve, enhance, and restore the quality of California’s water resources and drinking water for the protection of the environment, public health, and all beneficial uses. The Water Boards carry out their water quality protection authority in accordance with the federal Clean Water Act and the California Porter-Cologne Water Quality Control Act.

The Water Boards regulate activities that could lower the quality of surface water (rivers, streams, estuaries, ocean, etc.) or groundwater. Activities that could alter a body of water (i.e. waterbody) could include the release of wastewater, stormwater, or water from construction, factories, or farms. To protect the quality of water and its beneficial uses, the Water Boards establish and implement water quality control regulations at both the state and regional levels.





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### How do the Water Boards protect water quality?

#### Basin plans

The State Water Board creates statewide water quality standards, and the nine Regional Water Boards each adopt water quality control plans known as “basin plans” that apply the statewide policies to the specific water bodies within their region. Basin plans identify water bodies within a region and include (1) beneficial uses and their designations, (2) water quality objectives that must be maintained or achieved to protect these beneficial uses, and (3) implementation programs designed to achieve and maintain the water quality standards.

#### Beneficial uses

There are many ways that people beneficially use and enjoy bodies of water in California. The Porter-Cologne Act identifies some of the beneficial uses of water, such as: recreation (including swimming), municipal and domestic supply (including drinking water), agricultural supply, and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves. Water bodies need to have a designation of a beneficial use to help protect against a decline in water quality for that specific use of water. A waterbody may have other beneficial uses besides just those that are formally designated, but identifying official beneficial uses helps ensure they are formally protected. The designation of beneficial uses is a key initial step towards protecting uses of water by California Tribes and the public.

#### Water quality objectives and implementation plans

Water quality objectives are established for each designated beneficial use. Water quality objectives include the levels of constituents or characteristics (such as temperature, pH, contaminant levels, and more) that must be met to protect the beneficial uses. The basin plans also outline implementation and monitoring programs that are needed to achieve and/or maintain compliance with the water quality objectives.

#### Permit applications

If an individual or entity engages in an activity or proposed activity that could affect California’s surface, coastal, or groundwater quality, in most cases, they will need to apply for a permit from a Regional Water Board. When the Regional Water Board evaluates whether to approve or deny a permit, it assesses if and how the proposed activity could affect water quality for the beneficial uses designated for that specific waterbody.

California Tribes may be authorized by the U.S. Environmental Protection Agency to establish water quality standards for tribal waters. However, this document focuses on processes for protecting water quality for Tribal Beneficial Uses for waterbodies that are under the jurisdiction of the Water Boards.





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### What are Tribal Beneficial Uses?

In 2017, the State Water Board established and defined two beneficial uses unique to California Tribes and a third beneficial use unique to people and communities who engage in subsistence fishing. These beneficial uses were developed in collaboration with California Tribes and the public. Together, these three beneficial uses are generally referred to as “Tribal Beneficial Uses” and are defined as follows:

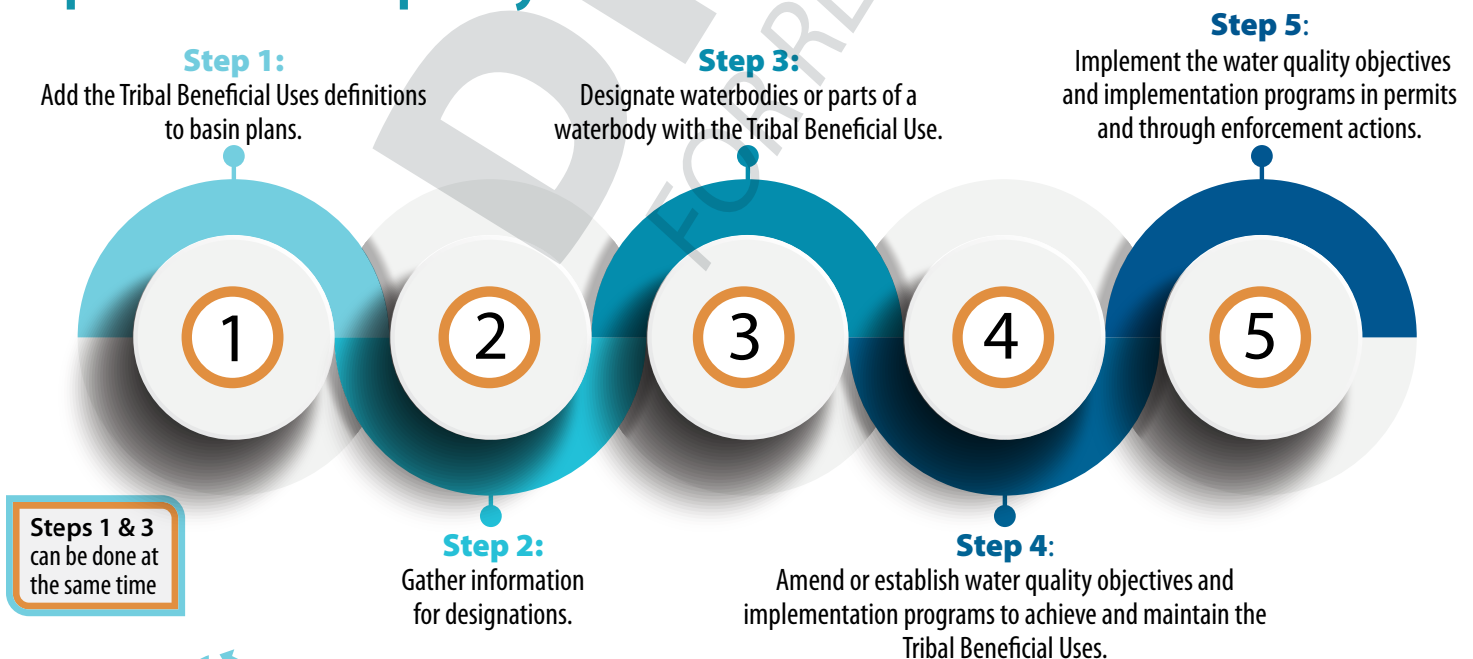
**Tribal Tradition and Culture (CUL):** Uses of water that support the cultural, spiritual, ceremonial, or traditional rights or lifeways of California Native American Tribes, including, but not limited to: navigation; ceremonies; fishing; gathering; or other consumption of natural aquatic resources (including fish, shellfish, vegetation, and abiotic materials).

**Tribal Subsistence Fishing (T-SUB)<sup>1</sup>:** Uses of water involving the non-commercial catching or gathering of natural aquatic resources, including fish and shellfish, for consumption by individuals, households, or communities of California Native American Tribes to meet needs for sustenance.

**Subsistence Fishing (SUB):** Uses of water involving the non-commercial catching or gathering of natural aquatic resources, including fish and shellfish, for consumption by individuals, households, or communities, to meet needs for sustenance.

<sup>1</sup> The SUB beneficial use does not explicitly pertain to “California Native American Tribes,” as that phrase is defined but may, nevertheless, reflect activities of tribal governments as well as tribal members, tribal-focused organizations, and the public. As a result, this document collectively refers to the three beneficial uses as the “Tribal Beneficial Uses.”

### Overview of steps the Water Boards may take to protect water quality for Tribal Beneficial Uses



**Ongoing Step:** Engage with California Tribes and the public.

**Ongoing Step:** Prioritize Tribal Beneficial Uses in triennial reviews.

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### Steps to protect water quality for Tribal Beneficial Uses

Note: Regional Water Boards are semi-autonomous from the State Water Board and may approach this process differently.



#### Ongoing Step: Engage with California Tribes and the public

By engaging with California Tribes and the public, Regional Water Boards learn about the concerns and needs of their region and take that feedback into consideration when making decisions. It is essential that California Tribes and the public share their perspectives and help inform the Regional Water Boards' regulatory processes.

##### GET INVOLVED

- California Tribes and the public can submit letters of support to a Regional Water Board at any time and are highly encouraged to do so during each step.
- California Tribes can request government-to-government consultations or meetings with Regional Water Board staff at any time.
- The public can request meetings with Regional Water Board staff at any time.
- All are encouraged to subscribe to the tribal matters email list for updates at [waterboards.ca.gov/tribal\\_affairs](https://waterboards.ca.gov/tribal_affairs).



#### Ongoing Step: Prioritize Tribal Beneficial Uses in triennial reviews

Every three years, each Regional Water Board is required to review the water quality standards in their basin plan(s). This process is referred to as a "triennial review." Through this public process, each Regional Water Board prioritizes which basin planning projects to work on over the next three years.

Regional Water Boards are not required to prioritize Tribal Beneficial Use projects, and over time, Board members and priorities change. California Tribes and the public are encouraged to participate in as many triennial reviews as possible to help ensure Tribal Beneficial Uses, their designation to waterbodies, and their protection, continue to be prioritized.

##### GET INVOLVED

California Tribes and the public can submit letters of support and verbal comments to a Regional Water Board to request certain projects be prioritized. Letters of support or comments can address specific projects, regions, or waterbodies, or can be more general in nature; either approach is meaningful and helpful.

#### **For example, California Tribes and the public can support prioritizing projects that:**

- Include the Tribal Beneficial Use and their definitions in basin plans.
- Designate waterbodies identified by California Tribes and/or the public as having one or more Tribal Beneficial Uses.
- Establish water quality objectives for the Tribal Beneficial Uses.
- Amend or establish permits related to the protection of the Tribal Beneficial Uses.
- Establish implementation program actions that protect water quality for Tribal Beneficial Uses.

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### Steps to protect water quality for Tribal Beneficial Uses

#### 1 Add the Tribal Beneficial Uses and definitions to basin plans

The State Water Board's definitions of Tribal Beneficial Uses provide a foundation for the Regional Water Boards but did not automatically amend their basin plans or designate these uses to specific waterbodies. Each of the nine Regional Water Boards can choose to add the new Tribal Beneficial Uses and definitions to their respective basin plans. Once the definitions are included in the basin plan, the regions can then designate Tribal Beneficial Uses to waterbodies and move toward protecting those uses of water.

#### GET INVOLVED

- California Tribes can request government-to-government consultations or staff-level informational meetings with a Regional Water Board to discuss adding Tribal Beneficial Use definitions to basin plans.
- The public can request meetings with Regional Water Board staff to discuss this step.
- California Tribes and the public can submit letters of support to encourage the Regional Water Boards to incorporate the Tribal Beneficial Uses definitions into their basin plans.
- All are encouraged to subscribe to the tribal matters email list for updates at [waterboards.ca.gov/tribal\\_affairs](http://waterboards.ca.gov/tribal_affairs).

*Steps 1 through 3 can be done at the same time.*

*All rulemaking information, including letters of support and documentation, becomes part of an administrative record that is available to the public. If a tribe has confidentiality concerns about sharing information or documentation, the tribe should contact Water Boards staff before submitting the information to determine the best way to proceed. For example, if a tribe wishes to maintain confidentiality for a specific time/location of any particular use, the activities can be generally described by the season and waterbody segment rather than the precise time and location.*

#### 2 Gather information for designations

This step can be done at any time and is an ongoing process. Before a Regional Water Board can designate a surface waterbody (e.g., a lake, river, or stream) with a beneficial use, it needs information and documentation to support the designation (e.g., how, when, and for what purpose the waterbody is currently being used or could potentially be used).

Two of the three beneficial uses require a tribe to confirm the designation is appropriate before it can be included in a basin plan: Tribal Tradition and Culture or Tribal Subsistence Fishing.

Regional Water Boards may host events like tribal summits, public meetings, and one-on-one conversations to begin the process of gathering information to designate waterbodies.

#### GET INVOLVED

#### California Tribes can

- Submit letters of support and documentation to a Regional Water Board indicating which waterbodies are appropriate to be designated with one or more of the Tribal Beneficial Use.
- Coordinate with Regional Water Boards on what information to include in a designation request to move to Step 3 faster.
- If possible, provide documentation and/or Traditional Ecological Knowledge that demonstrates the particular Tribal Beneficial Use is occurring. Documentation can include a collection of written narratives; testimonials; a letter from the tribe describing how, when and where the water is used; photos; or other types of documentation and information.

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#### 3 Designate waterbodies or parts of a waterbody with Tribal Beneficial Use.

Regional Water Boards designate waterbodies with specific beneficial uses by adopting a Basin Plan Amendment that identifies the designation.

This step may be subject to the California Environmental Quality Act (CEQA), which includes formal government-to-government consultations with California Tribes and a separate engagement with the public. This step typically takes two years to complete, and sometimes longer for more complicated projects.

#### GET INVOLVED

##### California Tribes and the public can

- Submit letters requesting the Regional Water Board designate a waterbody with a certain Tribal Beneficial Use .
- Request meetings with the Regional Water Board to discuss what to include in a letter.
- Provide letters or public comments on the Basin Plan Amendment(s) and related CEQA documents.
- Give written or verbal comments during public hearings and workshops on the Basin Plan Amendment(s).
- California Tribes can request government-to- government AB-52 consultations to discuss CEQA documents.

*Steps 1 through 3 can can be done at the same time.*



Chumash leader Mati Waiya performs a water blessing ceremony in Malibu, California. PHOTO BY: Carl Costas/California Department of Water Resources

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### Steps to protect water quality for Tribal Beneficial Uses

#### 4 Amend or establish water quality objectives and implementation program

Water quality objectives are the limits or levels of water constituents or characteristics and are established for the reasonable protection of beneficial uses. Water quality objectives can be expressed in numeric or written form. If existing water quality objectives for particular pollutants are not sufficiently protective, Regional Water Boards may need to develop water quality objectives to reasonably support Tribal Beneficial Uses.

Examples of water quality objectives include:

- **Boron Water Quality Objective:**  
Boron concentrations shall not exceed 0.75 mg/L in inland surface waters of the region as a result of controllable water quality factors.
- **Floating Material Water Quality Objective:**  
Waters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses.
- **Subsistence Fishing Water Quality Objective:**  
Waters with the Subsistence Fishing beneficial use shall be maintained free of mercury at concentrations which accumulate in fish and cause adverse biological, reproductive, or neurological effects in people.
- **Tribal Subsistence Fishing Water Quality Objective:**  
The average methylmercury concentrations shall not exceed 0.04 mg/kg fish tissue within a calendar year. The objective applies to the wet weight concentration in skinless fillet from a mixture of 70 percent trophic level 3 fish and 30 percent trophic level 4 fish. As detailed in [Attachment C](#).

To develop water quality objectives, a Regional Water Board will evaluate the activities and could consider the following questions:

- How are tribes or tribal communities using the water?
- Do the activities involve ingestion of water, consumption of aquatic life, or contact with a waterbody?
- What time or season does the activity occur?

A waterbody may already have water quality objectives supporting other beneficial uses similar to the Tribal Beneficial Uses (e.g., fishing or swimming). In that case, the most protective water quality objective will apply.

When a Regional Water Board establishes a new water quality objective, an implementation program to achieve that objective must describe required actions, a timeline for those actions, and the monitoring necessary to determine compliance with the objective.

If the water quality does not meet the condition established by a water quality objective, the State Water Board lists the waterbody as “impaired” on the California Clean Water Action section 303(d) list. Total maximum daily loads (TMDLs) or other programs of implementation are then established to achieve the water quality objective.

#### GET INVOLVED

##### California Tribes and the public can

- Request that water quality objectives and implementation programs be amended or developed for water quality concerns or pollutants.
- Provide letters or verbal comments and participate in meetings on the Basin Plan Amendment(s) and related CEQA documents to help ensure water quality objectives and actions are enough to protect how the water is being used.

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### Steps to protect water quality for Tribal Beneficial Uses

#### 5 Follow the implementation program

##### Implementation programs

Implementation programs describe actions to achieve the water quality objectives, a timeline for those actions, and the monitoring necessary to determine compliance with the water quality objective. In accordance with the implementation program, the Water Boards incorporate the water quality objective and implementation program in the permits it issues. The Water Boards may also take enforcement actions, encourage voluntary actions, and coordinate with other agencies to protect water quality for Tribal Beneficial Uses.

The main ways Regional Water Boards implement actions to meet water quality objectives is through permits, orders, and other actions for discharges and potential discharges.

##### Permits

Many permits already exist. To protect Tribal Beneficial Uses, the Regional Water Board may need to amend an existing permit or establish a new permit.

Permits can include elements like waste discharge requirements, waivers of waste discharge requirements, water quality certifications, waste discharge prohibitions, and cleanup orders. Permits often include water monitoring and reporting requirements.

##### Enforcement

If permit requirements are violated, a Regional Water Board may take enforcement actions. Enforcement can include fines, a supplemental environment project to offset water quality impacts, or even referral to a district attorney or the attorney general.

Constraints on money, time, and resources affect Regional Water Board enforcement actions, which impacts how beneficial uses are protected.

In addition to the Regional Water Boards' enforcement actions, California Tribes and other federal or state agencies can take their own actions to enforce their own laws and requirements to help protect water quality.

#### GET INVOLVED

##### California Tribes and the public can

- Provide letters or verbal comments to specify which activities and/or permits could impact Tribal Beneficial Uses.
- Provide letters or verbal comments when a Regional Water Board considers adopting or amending a permit or taking other actions to protect how that water is used.
- Provide letters or verbal comments when a Regional Water Board considers taking enforcement actions.
- Lead or assist with outreach and education campaigns for California Tribes and the public.
- Perform water quality monitoring to help inform enforcement actions.



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### Overview of how to **GET INVOLVED**



- California Tribes and the public can submit letters of support to a Regional Water Board at any time and are highly encouraged to do so during each step.
- California Tribes can request government-to-government consultations or update meetings with a Regional Water Board at any time.
- The public can request meetings with Regional Water Board staff at any time.
- All are encouraged to subscribe to the tribal matters email list for updates

### For more information

[www.waterboards.ca.gov](http://www.waterboards.ca.gov)

**Tribal Affairs Website:**

[waterboards.ca.gov/tribal\\_affairs](http://waterboards.ca.gov/tribal_affairs)

**Tribal Beneficial Uses Website:**

[waterboards.ca.gov/tribal\\_affairs/regional\\_tbu\\_updates](http://waterboards.ca.gov/tribal_affairs/regional_tbu_updates)

**Regional Water Board Tribal Coordinators Contacts:**

[waterboards.ca.gov/tribal\\_affairs/beneficial\\_uses.html](http://waterboards.ca.gov/tribal_affairs/beneficial_uses.html)

**Subscribe to the Tribal matters email:**

[waterboards.ca.gov/tribal\\_affairs](http://waterboards.ca.gov/tribal_affairs)

**State Water Board Tribal Liaison Contact:**

916.341.5229

[Tribal-Liaison@waterboards.ca.gov](mailto:Tribal-Liaison@waterboards.ca.gov)

**We look forward to hearing from you!**