

State Water Resources Control Board

FACT SHEET

Development of Beneficial Use Definitions for Tribal Cultural Use and Tribal Fish Use

1. Purpose of this fact sheet.

The purpose of this fact sheet is to describe the State Water Resources Control Board's (State Water Board) current effort to develop beneficial use definitions related to tribal cultural and fish use and explain what the new definitions would achieve and explain the additional board action that would be required for the beneficial uses to be protected.

2. Development of beneficial uses is vital for protecting water quality.

The State Water Board and nine Regional Water Quality Control Boards (Regional Water Boards) (collectively, Water Boards) administer the Porter-Cologne Water Quality Control Act (Wat. Code, Div. 7, § 13000 et seq.) (Porter-Cologne Act), which establishes a comprehensive statutory program for water quality control. Through the Porter-Cologne Act and the Federal Water Pollution Control Act Amendments of 1972, as amended (33 U.S.C. § 1251 et seq.) (Clean Water Act), the Water Boards have regulatory authority to protect the water quality and the beneficial uses of the State's waters. The Regional Water Boards adopt water quality control plans (basin plans) for all waters within their respective regions which define the beneficial uses applicable within the region, designate beneficial uses of waters located within the region, establish water quality objectives to reasonably protect the beneficial uses, and establish a program of implementation to achieve water quality objectives. "Beneficial uses" pursuant to the Porter-Cologne Act is defined as the uses "of the waters of the state that may be protected against water quality degradation include, but are not necessarily 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." (Wat. Code, § 13050, subd. (f).)¹

3. The proposed State Water Board resolution on tribal beneficial uses.

Initially, during the summer of 2015, and after past and ongoing discussions with tribes and stakeholders, State Water Board staff will develop a resolution which is anticipated to include the following: (1) the current Native American Culture (CUL) beneficial use definition established by the North Coast Regional Water Board; (2) the beneficial use definitions that numerous tribes have proposed relating to tribal tradition and cultural use and tribal fishing; (3) the subsistence fishing definitions that numerous environmental justice organizations have proposed; and (4) the State Water Board's proposed definitions for the aforementioned uses. It is anticipated that the resolution would direct the Water Boards to consider the State Water Board's proposed draft beneficial use definitions and, subsequent to formal consultation with tribes and comments from stakeholders, establish similar beneficial use definitions through a formal statewide or basin planning process. Additionally, the resolution would express the State Water Board's expectation that, subsequent to such formal establishment of the new beneficial use definitions, the Regional Water Boards would begin to

¹ "Beneficial use of water" has a different meaning in water rights law, which is not applicable here. (See Wat. Code, § 100 (defining "beneficial use of water"), and §§ 1240-1244 (discussing the purpose of appropriative water rights and beneficial uses of water).)

consider site-specific beneficial use designations of specific waterbodies within their respective regions for which those uses are existing or attainable.

4. The State Water Board's proposed Statewide Mercury Plan.

Following the adoption of the resolution, it is anticipated that the State Water Board will adopt a Statewide Mercury Plan which would include: (1) mercury water quality objectives (expressed as methylmercury concentration in fish tissue) to apply statewide in waters designated for commercial or sport fishing beneficial uses (COMM); (2) beneficial use definitions for tribal traditional and cultural use and tribal traditional and/or subsistence fishing; and (3) mercury water quality objectives to protect tribal uses of fish. If such water quality objective is established, it would apply to waters only where the applicable use determination is made by the Water Boards.

5. There is a significant distinction between defining beneficial uses and designating beneficial uses of water for a given waterbody.

Defining a beneficial use is distinct from designating beneficial uses made on specific waterbodies:

Defining beneficial uses. In 1972, the State Water Board adopted a uniform list of beneficial uses, including definitions, to be applied throughout all regions of the State, which was updated in 1996. The definitions describe the categories of the State's waters to be protected against water quality degradation. Examples of beneficial use definitions are at:

http://www.waterboards.ca.gov/about_us/performance_report_1314/plan_assess/docs/bu_definitions_012114.pdf.

Designating beneficial uses. The Water Boards should designate uses that are attainable and are currently being attained. "Existing" beneficial uses under the CWA are those uses which were attained in a waterbody on or after November 28, 1975. Waterbodies may have a past beneficial use where such use existed prior to November 28, 1975, but is not currently being attained, or where the use is likely to be attained in the future. The designation of beneficial uses of a water segment should be determined on a site-specific basis. Because designation of beneficial uses generally is made on a site-specific basis, it is typically done by the Regional Water Quality Control Boards for the specific waters within their regions.

The Statewide Mercury Plan would define beneficial uses. As noted above in item 4, the Mercury Control Plan would include the new beneficial use definitions relating to tribal traditional and cultural uses and would not designate specific waters with those newly defined uses. The definitions would be established for statewide use by the Regional Water Boards, which would designate specific waters at a later date.

6. Timeline for beneficial use definition development and future work

In the summer of 2015, State Water Board staff will engage in continued outreach to develop the new proposed beneficial use definitions relating to tribal traditional and cultural use and tribal traditional and/or subsistence fishing which would be set forth in the resolution. The resolution would likely be considered by the State Water Board in the late fall of 2015.

Future work to establish protection of the newly defined beneficial uses: After the resolution is adopted, the beneficial use definitions would need to be established by the Water Boards through the formal planning and public process. It is currently anticipated that the tribal cultural use definitions will be established by the Statewide Mercury Plan (anticipated to be adopted the summer of 2017).

Subsequent to the Statewide Mercury Plan's establishment of the beneficial use definitions, the Regional Water Boards would begin consideration of site-specific beneficial use designations of specific waterbodies where those uses are existing or attainable. Any water quality objectives developed for the protection of tribal uses would apply to waters where the Regional Water Boards have made such specific beneficial use determinations. Additionally, new water quality objectives could be developed in the future to protect those uses.

If you have questions regarding this fact sheet, please contact at Gita Kapahi, Director, Office of Public Participation, at (916) 341-5501 or Gkapahi@waterboards.ca.gov; or Stacy E. Gillespie, Senior Staff Counsel, Office of Chief Counsel, at (916) 341-5190 or SGillespie@waterboards.ca.gov.