

Comment Summary and Responses

Comment Deadline: May 14, 2020 By 12:00 Noon

An Amendment to the Water Quality Control Plan for the Lahontan Region to Add Definitions for Three New Beneficial Uses - Tribal Tradition and Culture (CUL), Tribal Subsistence Fishing (T- SUB), and Subsistence Fishing (SUB)

List of Commenters:

Comment Reference	Organization	Representative
1	Los Angeles Department of Water and Power (LADWP)	Katherine Rubin
2	California Indian Environmental Alliance (CIEA)	Sherri Norris
3	Clean Water Action	Andria Ventura

Response to Comments:

No.	Author	Comment	Response
0.1	Multiple	The State Water Resources Control Board (State Water Board) received three comment letters regarding its consideration of approval of this amendment to the Water Quality Control Plan for the Lahontan Region (Basin Plan) to incorporate the Tribal and Subsistence Fishing Beneficial Uses (CUL, T-SUB, SUB) definitions. None of the comments were raised before the Lahontan Water Board and no explanation was provided as to why the commenter was unable to raise the specific comment before the Lahontan Water Board.	<p>The State Water Board’s Notice of Opportunity to Comment concerning this Basin Plan amendment clearly stated that any person submitting a comment “must include either a statement that each of the comments was timely raised before the Lahontan Water Board, or an explanation of why the commenter was unable to raise the specific comment before the Lahontan Water Board.”</p> <p>The comment letters from California Indian Environmental Alliance and Clean Water Action are asking the State Water Board to approve the amendments, so it would not have been necessary or appropriate to submit those comments to the Lahontan Water Board. The portions of the comment letter from Los Angeles Department of Water and Power (LADWP) that request that guidance be developed prior to adoption of the definitions, that changes be made to the definitions, that assert that there are impacts associated with adopting the definitions, and that request additional stakeholder meetings prior to</p>

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			<p>the adoption of the definitions could and should have been raised before the Lahontan Water Board, but were not. The State Water Board is therefore not required to consider these comments from LADWP, but responses are provided below.</p>
<p>1.1</p>	<p>Los Angeles Department of Water and Power</p>	<p>In February 2017, LADWP submitted comments to the State Water Board regarding its proposed <i>Part 2 of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California – Tribal and Subsistence Fishing Beneficial Uses and Mercury Provisions</i> and requested more information, including guidance for implementation. The State Board adopted the beneficial use definitions without providing the requested guidance.</p> <p>LADWP continues to be concerned that the addition of the three new beneficial use definitions is not accompanied by a guidance document to implement and assign the beneficial uses to waterbodies through the Lahontan Region. LADWP continues to request that draft guidance be developed and that a stakeholder comment period be held on this guidance prior to adopting the three proposed beneficial use definitions. The development of the guidance would clarify the scope of the beneficial uses and would illustrate the extent to which the beneficial uses will be applied. Further, LADWP believes that this guidance will help stakeholders through the region better understand and anticipate potential impacts to</p>	<p>See response to Comment No. 0.1. This comment was not timely raised before the Lahontan Water Board nor was an explanation of why the commenter was unable to raise the specific comment provided.</p> <p>Designation of beneficial uses is not part of the Lahontan Water Board Basin Plan amendment under review.</p> <p>In 2017, LADWP submitted to State Board a comment on <i>Part 2 of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California – Tribal and Subsistence</i> requesting additional guidance. The State Water Board did not commit to develop any guidance at that time, but will continue to evaluate whether additional statewide direction is warranted for beneficial use designations. To the extent that implementation issues that LADWP are concerned with arise with specific proposed designations, the State Water Board strongly encourages LADWP to submit any concerns with those proposed designations directly to the appropriate Regional Water Board at that time.</p>

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		<p>their activities with the implementation of the beneficial uses.</p> <p>LADWP understands that the Regional Board intends to designate these new beneficial uses under a future, separate Basin Plan amendment process with input from California Native American Tribes and the subsistence fishing communities, but, as stated, guidance for this implementation should be developed prior to the adoption of these definitions.</p>	
1.2	Los Angeles Department of Water and Power	<p><u>Language used to define new Beneficial Uses should be clarified.</u> On p. 2 of the Proposed Amendments to Chapter 2 of the Lahontan Basin Plan, the Tribal Tradition and Culture Beneficial Use (CUL) is defined as follows:</p> <p><i>“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, or fishing, gathering, or consumption of natural aquatic resources, including fish, shellfish, vegetation, and materials.”</i></p> <p>LADWP recommends that the State Board list some of the “traditional rights” and “lifeways” applicable to water bodies through the state in view with the definition to better anticipate the extent of CUL’s scope.</p>	<p>See response to Comment No. 0.1. This comment was not timely raised before the Lahontan Water Board nor was an explanation of why the commenter was unable to raise the specific comment provided.</p> <p><i>Part 2 of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California – Tribal and Subsistence Fishing Beneficial Uses (Provisions)</i> provides that the Regional Water Boards shall use the beneficial use definitions contained in the Provisions for CUL, T-SUB, and SUB, to the extent the Regional Water Boards describe such uses in a water quality control plan after the effective date of the Provisions. The Regional Board uses the definitions specified by the State Water Board.</p>

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		<p>Further, LADWP requests that the definitions for both tribal subsistence fishing (T- SUB) and subsistence fishing (SUB) beneficial uses be updated to include language that suggests the function of each beneficial use is not to protect or enhance fish populations or aquatic habitats, as stated in p. 3 of the Final Staff Report. LADWP believes that misapplication of these beneficial uses will be significantly reduced by including this language into each definition.</p>	
1.3	Los Angeles Department of Water and Power	<p>LADWP does not believe that the full spectrum of potential impacts to water bodies through the Lahontan Region due to the implementation of the three new beneficial uses has been properly discussed and explained by the Lahontan Regional Water Quality Control Board in their staff report. The addition of the three new beneficial use definitions may involve the development and implementation of new water quality objectives for waterbodies throughout the region, which may ultimately affect the operation of water systems in the Lahontan Region. By not presenting this potential impact in the staff report, the Regional Board is lacking transparency with the public, which ultimately limits the extent of stakeholder comments submitted. LADWP suggests the Regional Board edit the Staff Report to include this potential impact and fully disclose all other potential impacts from the development and implementation of the three new beneficial</p>	<p>See response to Comment No. 0.1. This comment was not timely raised before the Lahontan Water Board nor was an explanation of why the commenter was unable to raise the specific comment provided.</p> <p>The amendment does not constitute an activity which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. (Pub. Res. Code, § 21065.) The proposed amendment is not a “project” for purposes of CEQA, is not subject to CEQA, and therefore, is not subject to the Water Board’s certified regulatory programs regulations implementing CEQA. (Cal. Code Regs., tit. 23, 3720 (b), (c)(2).)3720 (b).).</p> <p>The proposed action inserts existing State Water Board definitions into the Lahontan Basin Plan. Actions to designate beneficial uses to waterbodies will contain a more thorough and specific analysis of the potential impacts associated with the proposed designation, subject to CEQA. The Lahontan Water Board’s</p>

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		uses. Further, the Regional Board should reopen the comment period to, at a minimum, another 45 days after this revision prior to adoption of the three new beneficial use definitions.	adoption process already included a 45-day public written comment period on the staff report and an opportunity for oral comment. LADWP did not submit comments. The Lahontan Water Board is not required to reopen its written comment period prior to State Board's action on this amendment.
1.4	Los Angeles Department of Water and Power	LADWP believes that the Regional Board should include stakeholders in their quarterly Tribal Beneficial Uses Working Group meetings and receive stakeholder input throughout the process of adopting these beneficial use definitions or, at a minimum, have separate meetings with Stakeholders to help facilitate the adoption of the proposed tribal beneficial use definitions. Further, because the Regional Board intends to assign (designate) these new beneficial uses to waters bodies in the region under a future, separate Basin Plan amendment process with input from California Native American Tribes and the subsistence fishing communities, LADWP suggests that the Regional Board also include stakeholders throughout this process. An effective way of doing so is to schedule Stakeholder Working Group meetings on a quarterly basis to ensure that stakeholder feedback is received and utilized for the implementation of the new beneficial uses.	See response to Comment No. 0.1. The first portion of this comment was not timely raised before the Lahontan Water Board nor was an explanation of why the commenter was unable to raise the specific comment provided. The Lahontan Water Board's basin plan amendment included a 45-day public comment period on the staff report and an opportunity for oral comment. Designation of beneficial uses is not part of the Lahontan Water Board Basin Plan amendment under review. The comment on stakeholder meetings during a future designation process is noted. The State Water Board agrees that it will be important to involve stakeholders in the process of designating the beneficial uses.
2.1	California Indian Environmental Alliance	This letter is on behalf of the California Indian Environmental Alliance in order to provide our support for the Board to approve the resolution to amend the Lahontan Region's Water Quality Control Plan to include the three new beneficial	Thank you for your support.

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		<p>uses: “tribal subsistence fishing,” and “tribal tradition and culture,” and “subsistence fishing” (R6T-2020-0057). We urge the Board to approve the resolution at its May 18th hearing.</p> <p>We wish to thank the State Water Resources Control Board for your leadership on May 2, 2017, in the adoption of Resolution 2017-0027, which established the three new Tribal Beneficial Uses under Part 2 of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California— Tribal and Subsistence Fishing Beneficial Uses and Mercury Provisions (Resolution No. 2017-0002). This resolution before you allows the Lahontan Region to advance your good work by adopting these new Beneficial Uses.</p>	
2.2	California Indian Environmental Alliance	<p>According the staff of the Central Valley [sic] Regional Board this is the first step towards subsequently designating water bodies for these uses. While we would prefer that these take place in tandem and not with one task occurring before the other, we are encouraged that the Central Valley [sic] Water Quality Control Board is moving ahead with the adoption of the new definitions and we do ask that you approve the establishment of these uses in the Lahontan Region.</p>	<p>The State Board is considering approval of an amendment to the Lahontan Regional Water Quality Control Board’s Water Quality Control Plan. The Lahontan Water Quality Control Board is one of nine regional water quality control boards and the Lahontan Region is not a subset of the Central Valley Region. Approval of this amendment does not affect the plans, or pace, of basin planning actions for the Central Valley Water Quality Control Board.</p>
2.3	California Indian Environmental Alliance	<p>We also further recommend that the State Water Board encourage all Regional Water Quality Control Board’s including the Central Valley Board to accelerate the creation of regional and</p>	<p>Thank you for your support. The State Water Board values integrating tribal input to enhance the Water Boards’ activities, policies, and decision-making process.</p>

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	<p>interregional Tribal Advisory Committee(s) to support the work of the Regional Boards and the Tribal Coordinators. It is our understanding that the Regional Tribal Coordinators in some regions, including the Central Valley are waiting to engage Tribes officially after AB52 and CEQA is enacted. This we feel will not only delay designation, but also will also have an unintended result in creating an unnecessary flawed process.</p> <p>Tribes were instrumental, and in fact lead the process to develop the CUL and T-SUB definitions. A core group of Tribes and Tribal organizations including CIEA worked closely to first develop these definitions holding multiple meetings with Tribes throughout the state. This Tribe to Tribe coordination began even before Water Board Staff began meeting with Tribes to refine the definitions and to assist us in understanding the regional designation process. Together Tribes and State Board staff discussed many times what the path towards adoption and designation could look like per the rules that govern the state and regional agencies.</p> <p>For the last year and a half we have been told by regional Boards that they do not have clear direction on how to do move these definitions forward in their regions and how these will integrate into other regional regulatory programs. They have spent the last year talking internally and not including Tribes in these conversations. We assert that by not engaging a Tribal Advisory</p>	<p>Collaboration and input help the Water Boards craft decisions and policies that better protect California's water quality, resources, and systems.</p>
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		Committee as the first step the Regional Boards have inadvertently delayed the process and by waiting until AB52 is activated Regional Boards are now missing the opportunity to utilize Tribal support staff that have been waiting to engage.	
2.4	California Indian Environmental Alliance	Additionally, Tribal territories overlap multiple Water Board Regions and Tribes would like to assist in the creation of the workplans so that this work can proceed in a coordinated way. Much like the Regional and State agencies Tribes have a number of steps to take internally to prepare for designation and would like to be engaged in planning early so that each can coordinate between regions, align timelines and understand what information should be gathered in order to provide information needed for submissions. For this reason, in addition to asking for your support in approving this amendment that the State Board recommend that Tribal Coordinator more fully include regional and interregional Tribes in their planning processes and engage a Tribal Advisory Committee soon.	The California Water Boards are committed to improving our communications and working relationships with California Native American Tribes. In June 2019 the California Water Boards finalized our Tribal Consultation Policy, where we reaffirm that collaboration and input from all California Native American tribes helps the Water Boards craft decisions and policies that better protect California's water quality, resources, and systems.
3.1	Clean Water Action	I am pleased to write on behalf of Clean Water Action and our members throughout California in strong support of the resolution to amend the Lahontan Region's Water Quality Control Plan by adding subsistence fishing, tribal subsistence fishing, and tribal tradition and culture as beneficial uses (R6T-2020-0057). We urge the Board to approve the resolution at its May 18 th hearing.	Thank you for your support.

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3.2	Clean Water Action	<p>Clean Water Action is proud to have worked alongside tribal representatives for over a decade to establish definitions for these three beneficial uses, which were adopted by the Board under Part 2 of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California—Tribal and Subsistence Fishing Beneficial Uses and Mercury Provisions (Resolution No. 2017-0002).</p> <p>Our reasons were simple. As we worked on various pollution cleanup efforts, we realized that establishing goals to protect sports fishers or recreational uses of waters were not adequate to protect the communities of color and low income communities that bear the biggest exposure burden to mercury, PCBS, pesticides, and other contaminants in the state’s impaired waters. These highly impacted communities include those eating particularly high levels of contaminated fish out of economic need or cultural tradition, as well as tribal members being exposed through traditional activities. It remains an environmental injustice that people on the lower end of the economic scale or those whose cultures predate our modern, diverse society, should bear the brunt of pollution.</p> <p>We understand that approving R6T-2020-0057 is just a first step in the process of designating “the new beneficial uses to specific waterbodies, where those uses are existing or attainable” and that further Basin Plan Amendments will be</p>	Thank you for your support.
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		<p>required. But it is an important step in protecting our most vulnerable Californians. We are pleased to see that the resolution recognizes the need to include impacted communities themselves, including tribal members and non-tribal subsistence fishers, in that designation process, and encourage the Board to ensure that this happens.</p>	
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