

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – OFFICE OF PUBLIC PARTICIPATION
FEBRUARY 16, 2016**

ITEM 7

SUBJECT

CONSIDERATION OF PROPOSED RESOLUTION DIRECTING STAFF TO DEVELOP BENEFICIAL USES PERTAINING TO TRIBAL TRADITIONAL AND CULTURAL, TRIBAL SUBSISTENCE FISHING, AND SUBSISTENCE FISHING

DISCUSSION

The State Water Board and Regional Water Boards (collectively, Water Boards) carry out their water quality protection authority through, among other actions, the adoption of water quality control plans established pursuant to the Porter- Cologne Act. Through these plans, the Water Boards establish water quality standards, which are comprised of beneficial uses, the designation of specific waters with beneficial uses, water quality objectives to protect those uses, and an antidegradation policy. Beneficial uses are the cornerstone of water quality protection.

In 1972, the State Water Board established a uniform list of beneficial uses, including descriptions, for the Regional Water Boards to subsequently designate waters within their respective regions where the use is occurring. The State Water Board updated that list in 1996. The State Water Board's updated list of beneficial uses does not contain an explicit beneficial use for tribal traditional, cultural, or subsistence fishing. In addition to the beneficial uses identified on the statewide list, the Regional Water Boards develop additional beneficial uses to be applied to waters within their respective region.

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.

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.

POLICY ISSUE

Should the State Water Board adopt a resolution directing staff to develop beneficial use definitions pertaining to tribal traditional and cultural, tribal subsistence fishing, and subsistence fishing as part of a statewide water quality control planning process?

FISCAL IMPACT

State Water Board and Regional Water Board staff work associated with or resulting from this action will be addressed with existing and future budgeted resources.

REGIONAL BOARD IMPACT

Yes, State Water Board approval of the proposed Resolution may impact the Regional Water Boards. Should these beneficial use definitions be developed and adopted into a statewide plan, Regional Water Boards would need to consider whether the beneficial uses are applicable to specific waters within their respective region would, and if so, amend their water quality control plans (basin plans) as applicable.

STAFF RECOMMENDATION

Staff recommend the State Water Board adopt the proposed resolution.

State Water Board action on this item will assist the Water Boards in reaching Goals 5, and 6 of the Strategic Plan Update: 2008-2012. In particular, approval of this item will assist in fulfilling Goal 5 which is to improve accountability and transparency by ensuring the Water Boards goals are clear and accessible; and Goal 6 which is to enhance consistency across the Water Boards to ensure the Water Boards' processes are effective, efficient, and predictable and to promote the fair application of laws and procedures.

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2016-

DIRECTING STAFF TO DEVELOP BENEFICIAL USES PERTAINING TO TRIBAL TRADITIONAL AND CULTURAL, TRIBAL SUBSISTENCE FISHING, AND SUBSISTENCE FISHING

WHEREAS:

1. The State Water Resources Control Board (State Water Board) and the nine Regional Water Quality Control Boards (Regional Water Boards) administer the Porter-Cologne Water Quality Control Act (Water Code, Div. 7, § 13000 et seq.) (Porter-Cologne Act) to achieve an effective water quality control program for the state.
2. The Porter-Cologne Act declares that “the people of the state have a primary interest in the conservation, control, and utilization of the water resources of the state, and that the quality of all the waters of the state shall be protected for the use and enjoyment by the people of the state.” (Wat. Code, § 13000.)
3. The State Water Board and Regional Water Boards (collectively, Water Boards) carry out their water quality protection authority through, among other actions, the adoption of water quality control plans. Through these plans, the Water Boards establish water quality standards, which are comprised of beneficial uses, the designation of specific waters with beneficial uses, water quality objectives to protect those uses, and an antidegradation policy.
4. 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 includes, 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.” (Wat. Code, § 13050, subd. (f).)
5. The Water Boards may not establish a beneficial use category or definition until after a hearing is provided subsequent to providing adequate notice. (See Wat. Code, §§ 13244 (hearing and notice requirements), 13050, subd. (j) (defining “water quality control plan” as consisting of the establishment of beneficial uses).)
6. Even when a beneficial use category or definition is established, specific waters are not designated with that beneficial use unless a water quality standards action occurs to make the designation, which is typically done through the adoption of a water quality control plan (basin plan) amendment. Generally, the Regional Water Boards designate specific waterbodies within their respective region where the use applies. A Regional Water Board’s waterbody-designation would occur through its basin planning process in accordance with Water Code sections 13244 (hearing and notice requirements) and 13245 (approval by the State Water Board).

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7. In 1973, the State Water Board provided a uniform list of beneficial uses, including descriptions, to the Regional Water Boards to use to subsequently designate waters within their respective regions where the use is occurring. The State Water Board updated that list in 1996. The State Water Board's updated list of beneficial uses does not contain an explicit beneficial use for tribal traditional, cultural, or subsistence fishing. In addition to the beneficial uses identified on the statewide list, the Regional Water Boards develop additional beneficial uses to be applied to waters within their respective region.
8. 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.
9. 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.
10. By letter dated October 1, 2013, Felicia Marcus, Chair of the State Water Board, wrote to a Tribal Ad Hoc Beneficial Use Group, which was comprised of twelve tribes or organizations, to acknowledge the importance of identifying tribal and cultural uses of water and request input regarding appropriate language for creating tribal and cultural beneficial uses. Chair Marcus also indicated that the first step toward the development of a beneficial use could be a proposed resolution by the State Water Board to direct staff to formally initiate the development of a beneficial use or uses. Felicia Marcus' letter and other documents related to tribal interests can be found [here](#).
11. In 2014 and 2015, State Water Board staff engaged with members of the Tribal Ad Hoc Beneficial Use Group and additional representatives of tribal interests, to receive their input concerning matters uniquely within their knowledge, tradition, and practices. During Spring 2015, eight tribes submitted resolutions to the State Water Board which propose specific language for two beneficial uses pertaining to tribal traditional and cultural use and tribal subsistence fishing. Their recommendation is set forth in Attachment A, item 1.
12. In 2014 and 2015, State Water Board Staff also received input from environmental justice representatives concerning the need for a beneficial use category for subsistence fishing by other cultures or individuals associated with their respective cultural customs, economic circumstances, or both. Their recommendation is set forth in Attachment A, item 2.
13. State Water Board staff is currently developing an amendment to the statewide Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries which includes numerous mercury water quality objectives pertaining to the consumption of fish, including tribal subsistence (Mercury Amendment). Staff's goal is to bring the Mercury Amendment to the State Water Board for consideration no later than April 2017.
14. On January 15, 2016, the State Water Board provided 30 days notice of this draft resolution by email notification to subscribers of the board's lyrics list for the following categories: board meetings, board workshops, tribal matters, regulations-general, fresh water plans and policies, and the California Ocean Plan.

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THEREFORE BE IT RESOLVED THAT:

The State Water Board

1. Directs 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.
2. Directs State Water Board staff to consider the beneficial uses presented in Attachment A when developing the aforementioned beneficial use categories.
3. Directs State Water Board staff to utilize the applicable public participation process when developing the beneficial use categories and seek input from representatives of tribes, environmental justice organizations, the regulated community, and all other interested entities and individuals.
4. Will consider adopting the beneficial use categories and definitions proposed by staff as part of the Mercury Amendment to the statewide Water Quality Control Plan for Inland Surface Waters, Enclosed Bays and Estuaries, no later than April 2017, to create a consistent set of beneficial uses to be used by the Water Boards.
5. Affirms that specific waters are not designated with beneficial uses unless the State Water Board or a Regional Water Board does so through the process applicable to amending a statewide plan or basin plan, respectively.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on February 16, 2016.

Jeanine Townsend
Clerk to the Board

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ATTACHMENT A TO STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2016-

1. As referenced in recital 11 in the accompanying resolution, tribes and tribal representatives propose the following beneficial uses:

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.

2. As referenced in recital 12 in the accompanying resolution, environmental justice representatives propose the following beneficial use:

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.