ELEVEN AUTONOMOUS BANDS

TO:  Betty Yee, Senior Water Resource Control Engineer  
CA Regional Water Quality Control Board – Central Valley  
11020 Sun Center Drive, #200  
Rancho Cordova, CA 95670-6114  
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DATE: October 11, 2017

Dear Ms. Yee,

Attached please find the Pit River Tribe’s comments to the 2018 Joint Triennial Review of the Water Quality Control Plans for the Sacramento River and San Joaquin River Basins and the Tulare Lake. Thank you for the opportunity to provide these comments.

Sincerely,

[Signature]
Honorable Chairman, Mickey Gemmill

Date: 10/12/17
Issue Statement

The Pit River Tribe has historically utilized waters within our traditional territory for cultural and subsistence fishing purposes. The Tribe has record of utilizing waters for traditional cultural and ceremonial purposes for since time immemorial.

Currently regional requests are being made for basin planning changes. The Tribe maintains historic and current scientific research information regarding culturally significant aquatic life.

The Tribe has concerns about proposed changes to the current COLD- Freshwater Habitat designation for the Pit River. We believe the COLD- Freshwater Habitat designation is appropriate. The Tribe formally requests participation and engagement in basin planning investigations undertaken by the CVRWQCB.

Priority of Issue High Priority

Pit River Tribe Recommendations

- We recommend the CVRWQCB make it a high priority to designate “Tribal Cultural and Tradition (CUL), and Tribal Subsistence Fishing (T-SUB) beneficial uses for the entire Pit River Watershed and its tributaries.
- We recommend the CVRWQCB designate Commercial and Sportsfishing (COMM) beneficial uses for the entire Pit River Watershed and its tributaries.
- The Tribe formally requests participation and engagement in basin planning investigations undertaken by the CVRWQCB.
• We further request that the CVRWQCB work directly with the Tribe, to review historical information and engage in coordinated planning on any scientific quantitative and qualitative data collected for the Pit River and its tributaries.

• We request CVRWQCB engage in basin wide studies and regional program development for the protection of the cultural beneficial uses (identified below); to develop water quality criteria for the protection of beneficial uses that are culturally important to the Tribe.

1) **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, or fishing, gathering, or consumption of natural aquatic resources, including fish, shellfish, vegetation, and materials.

2) **Tribal Subsistence Fishing (T-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 of California Native American Tribes to meet needs for sustenance.

**Statement of Reasoning for the addition of Tribal Beneficial Uses**

In California, Porter Cologne requires consideration of several factors, including: past, present, and probable future beneficial uses of water, environmental characteristics of the hydrographic unit at issue, and water quality conditions that could reasonably be achieved (Wat. Code § 13241, subds. (a)- (d).) In the Sacramento River, San Joaquin River and Tulare Lake Basins Tribal Cultural and Subsistence Fishing beneficial uses predate the United States Government, the State of California, the Clean Water Act and the Porter-Cologne Water Quality Control Act.

On June 28, 2017 the State Water Resources Control Board adopted Resolution 2017-0027 which included two new Tribal beneficial uses in the provisions to protect 1) California Tribes’ cultural, spiritual, ceremonial uses of water; and 2) non-commercial fishing by Tribal communities to meet sustenance needs. This adopted Resolution, was then certified by the California Office of Administrative Law on June 28, 2017 (OAL Matter 2017-0515-03) and submitted to US EPA on the same date. The approved standards took place immediately and are now available for use by any Regional Water Quality Control Board in the state of California at the request of California Tribes currently or historically within the waters under consideration. As included in the announcement document of the 2018 Joint Triennial Review, dated June 20, 2017, the CVRWQCB included that the “State Water Board may develop plans and policies which, when adopted supersede and regional water quality control plans for the same waters to the extent of conflicts (Wat. Code, §13170).” The following are two Tribal beneficial uses as approved by the SWRCB and the US EPA that we recommend be included in the update to the upcoming Sacramento River Basin Plan Amendment:

1) **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, or fishing, gathering, or consumption of natural aquatic resources, including fish, shellfish, vegetation, and materials.

2) **Tribal Subsistence Fishing (T-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 of California Native American Tribes to meet needs for sustenance.

Some of the information provided during SWRCB meetings and hearing in February, May and June of 2017 included testimonies by Tribes that show the differences between COMM, REC1, CUL and T-SUB.
California Tribes provided testimony to explain that there is a clear difference in Tribal Uses and that Tribes therefore need the designations of CUL and T-SUB in order for Tribal human exposure while engaging in past, current and future beneficial use activities. Specifically, Tribes noted the difference of exposure related to Native American place based culture, such as timing and location of activities wherein Tribal uses cannot be moved to another location and/or where it is inappropriate to adjust the timing of activities.

To exemplify the difference between human exposure to toxins due to exposure during Commercial and Sports Fishing (COMM) and Tribal Subsistence Fishing (T-SUB) fish consumption activities Tribal members and our colleagues pointed out that a person who eats fish occasionally as a result of sport fishing or from commercial fish sources will also consume fish from other sources thus limiting exposure to toxins found in a specific location, verses Tribal members who will eat large quantities of fish from a specific location during ceremonies or during a week for sustenance as a source of subsistence.

To exemplify exposure to toxins while practicing Swimming and Wadable (REC1) versus Traditional or Cultural Activities (CUL) there are cultural activities that Tribal members engage in that result in more concentrated, prolonged and/or repeated exposure to water, aquatic plants and animals in the Sacramento River Basin. Some of these activities and considerations include ceremonial uses, increased vulnerability due to age, preparatory activities, gaining access to sites, ingesting aquatic plants or minerals within or adjacent to waters.

**Strengthening of the T-SUB Water Quality Objectives**

The State Water Resource Control board approved staff recommendation that the statewide fish tissue target resulting in relative cleanup standards should be: 0.04 mg/kg in 70% trophic level 3 fish (TL3) and 30% trophic level 4 fish (TL4), 150-500 mm. This corresponds to a fish consumption rate of 142 grams per day or approximately 4.5 8 oz. meals per week and per Appendix H: Calculation of the Human Health Objectives. The text notes that this is “the same as the U.S. EPA nationally recommended subsistence rate.”

The SWRCB-UC Davis study recognized that the current consumption rates of 142 grams per day are repressed rates and that Tribal members have had to change their consumption patterns to temporarily respond to the shift in available species until the proper balance can be restored through improved water quality. Our concern is by setting a WQO using the contemporary repressed rate we are codifying the repressed rate and ignoring the heritage rate so that the water quality can’t recover beyond the current inhibited rate.

We do recognize that Porter-Cologne Water Quality Control Act (Wat. Code § 13000 et seq.) requires the establishment of a program of implementation to achieve water quality objectives. We therefore acknowledge that objectives related to a fish consumption rate of 175 grams per day may be a more realistic balanced consideration of all California’s beneficial use needs and would still us move us closer to protecting Tribal subsistence fishing in California. This would also be consistent with the fish consumption rate of 175 grams per day that was promulgated by U.S. EPA for Washington State (81 FR 85417, November 28, 2016) and in Oregon by the Oregon Department of Environmental Quality (175 5-6 0.04, 2011). It would simultaneously create consistency in WQOs for TL3 and TL4 anadromous fish that traverse rivers that span West Coast states bordering our shared Pacific Ocean and river systems.

We look forward to continued conversations and engagement with the CVRWQCB on water resources management planning through the Triennial Review process, in addition to implementation planning for the Mercury Program.