

# Draft

## STAFF REPORT FOR PROPOSED AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE LAHONTAN REGION

### Adding Definitions for Three New Beneficial Uses- Tribal Tradition and Culture (CUL), Tribal Subsistence Fishing (T-SUB), and Subsistence Fishing (SUB)

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## Summary

This report describes an important step in recognizing and protecting cultural practices, traditional uses of waters, and subsistence fishing by California Native American Tribes, and subsistence fishing by other communities and individuals. With the adoption of Resolution 2017-0027, the State Water Resources Control Board (State Water Board) established three new beneficial use definitions for use by the State Water Board and Regional Water Quality Control Boards (Regional Water Boards) in their Water Quality Control Plans. The three new beneficial uses are Tribal Tradition and Culture (CUL), Tribal Subsistence Fishing (T-SUB), and Subsistence Fishing (SUB). CUL reflects uses of water that support the cultural, spiritual, and traditional ways of living by California Native American Tribes. The T-SUB and SUB uses are in recognition of populations that are likely to consume more fish than the average recreational angler in California, thus at a higher human health risk from bioaccumulative contaminants in fish tissue such as mercury. Resolution R6T-2018-0050, adopted by the Lahontan Water Board on November 15, 2018, identified adding CUL, T-SUB, and SUB to its Water Quality Control Plan (Basin Plan) as a Basin Planning priority, as well as engaging with Tribes to identify waters that support Tribal beneficial uses. The proposed action of adding the CUL, T-SUB, and SUB beneficial use definitions as an amendment to the Basin Plan is a non-regulatory change, is not a “project” for purposes of the California Environmental Quality Act (CEQA), and is therefore exempt from CEQA provisions. The proposed Basin Plan amendment was made available to the public for review for a 45-day period from July 31, 2020 to September 16, 2020.

## Introduction

Statewide Water Quality Control Plans and Regional Water Quality Control Plans (Basin Plans) provide the foundation for all the State Water Resources Control Board (State Board) and Regional Water Quality Control Board (Regional Water Board) regulatory actions. Water Quality Control Plans identify beneficial uses of surface and ground waters, water quality objectives to protect those uses, implementation actions to achieve objectives, and a monitoring program to assess the Plans’ effectiveness. They contain enforceable water quality standards designed to ensure beneficial uses of California’s waters are protected. State and federal laws require periodic review of Water Quality Control Plans. Because federal law requires a review every three years, it is also referred to as the “triennial review.” Water Quality Control Plans can be updated by amendments as needed. California’s Secretary for Natural Resources has certified the Water Quality Control (Basin)/208 Planning Program of the State Water Board and the Regional Water Boards as being exempt from the preparation of a separate environmental impact report, negative declaration, or initial study under the California Environmental Quality Act.. (Pub. Resources Code, § 21080.5; Cal. Code Regs., tit. 14, § 15251(g)). A Basin Plan amendment does not become effective until approved by the

State Water Board and the Office of Administrative Law. The United States Environmental Protection Agency must also review and approve amendments that add or modify water quality standards for waters of the United States.

The State Water Board adopted Resolution 2017-0027, which approved "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" on May 2, 2017. With the adoption of Resolution 2017-0027, the State Water Board established three new beneficial use definitions for use by the State and Regional Water Boards in designating Tribal Tradition and Culture (CUL), Tribal Subsistence Fishing (T-SUB), and Subsistence Fishing (SUB) beneficial uses to inland surface waters, enclosed bays, or estuaries in the State. CUL reflects uses of water that support the cultural, spiritual, and traditional ways of living by California Native American Tribes (defined as a federally-recognized California tribal government listed on the most recent notice of the Federal Register or a non-federally recognized California tribal government on the California Tribal Consultation List maintained by the California Native American Heritage Commission.) The T-SUB and SUB uses are in recognition of populations that are likely to consume more fish than the average recreational angler in California. For the State Water Board or the Regional Water Boards to designate the CUL or T-SUB beneficial uses in a Water Quality Control Plan for a particular waterbody segment and time(s) of year, the designation must be confirmed as appropriate by a California Native American Tribe. No confirmation is required to designate the SUB beneficial use in a Water Quality Control Plan.

The T-SUB and SUB beneficial uses, and the consumption of fish and shellfish component of the CUL beneficial use, relate to the risks to human health from the consumption of non-commercial fish or shellfish. They are intended to protect Tribal cultural practices and traditional uses of waters by California Native American Tribes, subsistence fishing by California Native American Tribes, and subsistence fishing by other communities and individuals. Because these groups are likely to consume more fish than the average recreational angler in California, bioaccumulative contaminants such as mercury are of concern. The two beneficial uses for subsistence fishing normally involve higher rates of consumption of fish or shellfish than those protected under the Commercial and Sport Fishing (COMM) and the CUL beneficial uses. The functions of the CUL, T-SUB, and SUB beneficial uses are not to protect or enhance fish populations or aquatic habitats. Fish populations and aquatic habitats are protected and enhanced by other beneficial uses including, but not limited to, Fish Spawning (SPWN), Migration of Aquatic Organisms (MIGR), Aquaculture (AQUA), Warm Freshwater Habitat (WARM), and Cold Freshwater Habitat (COLD).

Resolution 2017-0027 stipulates that the Regional Water Boards shall use the three new beneficial uses and abbreviations (CUL, T-SUB, SUB) to the extent such activities are defined in a Water Quality Control Plan after June 28, 2017. It does not require the Regional Water Boards to designate specific waters within their regions with the CUL, T-SUB, or SUB beneficial uses nor does it set forth a prioritization schedule for such designations to occur. It states that the Regional Water Boards generally consider prioritizing the designation of beneficial uses during their triennial review processes.

## Statement of Necessity for the Basin Plan Amendment

In November 2018, the Lahontan Regional Water Board adopted its Triennial Review that lists Basin Plan priorities for the next three years (Resolution R6T- 2018-0050). Priority 8 in the Resolution was to add CUL, T-SUB, SUB to the Basin Plan, and to engage with Tribes to identify waters that support Tribal beneficial uses. During the Triennial Review process, support for adding Tribal Beneficial Uses to the Lahontan Basin Plan was received from Mono Lake and Owens Valley Tribes and tribal organizations: Bishop Paiute Tribe, Owens Valley Indian Water Commission, Mono Lake Kutzadika Tribe, Lone Pine Paiute-Shoshone Reservation, and Big Pine Paiute Tribe of the Owens Valley. No comment letters in opposition were received. A year later, in November 2019, the Cedarville Rancheria in Cedarville, California expressed interest in designating the T-SUB beneficial use for two water bodies.

This amendment proposes to incorporate the definitions for the three new beneficial uses of CUL, T-SUB, and SUB into the Lahontan Basin Plan. This is a first step toward completing a Triennial Review priority to protect Tribal cultural practices and traditional uses of waters by California Native American Tribes, subsistence fishing by California Native American Tribes, and subsistence fishing by other communities and individuals. The proposed amendment will add only the definitions for the three new beneficial uses from "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" into the Lahontan Basin Plan. Designations of the new beneficial uses to specific waterbodies, where those uses are existing or attainable, will be considered under a future, separate Basin Plan amendment process. Input from California Native American Tribes and the subsistence fishing communities will be a vital part of the beneficial use designation process.

## Proposed Amendment

Chapter 2 of the Lahontan Basin Plan defines and designates the beneficial uses for all surface and ground waters in the Lahontan Region. The proposed amendment will add definitions and related text to Chapter 2 of the Lahontan Basin Plan for three new beneficial uses as defined in "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". The entire proposed amendment is shown in Appendix A, with the definitions for the three new beneficial uses also included below:

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.

LIFEWAYS: Any customs, practices, or art of a CALIFORNIA NATIVE AMERICAN TRIBE.

CALIFORNIA NATIVE AMERICAN TRIBE(S): A federally recognized California tribal government listed on the most recent notice of the Federal Register or a non-federally recognized California tribal government on the California Tribal Consultation List maintained by the California Native American Heritage Commission.

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.
3. 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.

### [Compliance with California Environmental Quality Act \(CEQA\)](#)

The proposed amendment is a non-regulatory change to the Basin Plan and 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).).

### [Public Participation](#)

The proposed Basin Plan amendment was made available to the public for review on July 31, 2020. The Notice included information about how to review the proposed amendment and staff report, and about how to participate in the process. Information about how to subscribe to the related Basin Plan email subscription service or listserve

was also included in the Notice. Interested persons had an opportunity to submit written comments during a 30-day comment period which extended from July 31, 2020 through August 31, 2020. Responses to these comments are provided as a separate document to the Lahontan Regional Board.

## Conclusion

Adoption of the proposed Basin Plan amendment to add CUL, T-SUB, and SUB definitions to Chapter 2 of the Lahontan Basin Plan is consistent with the Lahontan Water Board's 2018 Triennial Review Priority Project 8 and the State Water Board's "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". It is an important step in recognizing and protecting Tribal cultural practices and traditional uses of waters by California Native American Tribes, subsistence fishing by California Native American Tribes, and subsistence fishing by other communities and individuals.

## Appendix A – Proposed Amendment to the Lahontan Basin Plan