

Final Staff Memo

PROPOSED AMENDMENT TO THE WATER QUALITY CONTROL PLAN –
LOS ANGELES REGION TO ADD THREE NEW BENEFICIAL USE
DEFINITIONS - TRIBAL TRADITION AND CULTURE (CUL), TRIBAL
SUBSISTENCE FISHING (T-SUB), AND SUBSISTENCE FISHING (SUB)

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION
March 2022**

I. EXECUTIVE SUMMARY

This amendment proposes to add the definitions of three new beneficial uses to the Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura Counties (Basin Plan): Tribal Tradition and Culture (CUL), Tribal Subsistence Fishing (T-SUB), and Subsistence Fishing (SUB). The State Water Resources Control Board (State Water Board) established those three beneficial uses in Resolution No. 2017-0027 “Part 2 of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California (ISWEBE Plan)—Tribal and Subsistence Fishing Beneficial Uses and Mercury Provisions” for use by the State Water Board and regional boards in their Basin Plans. The CUL use 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 recognize use of some surface waters by populations that are likely to consume more fish than the average recreational angler in California.

This proposed amendment is consistent with Resolution No. 2020-004, “2020-2022 Triennial Review Selection of Basin Planning Projects” of the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board). In the 2020-2022 Triennial Review, the Los Angeles Water Board identified adding tribal beneficial uses to its Basin Plan as a priority project, as well as initiating a focused effort to work with the region’s Native American tribes on the inclusion of tribal beneficial uses definitions in the Basin Plan, and the eventual designation of waterbodies for these uses, as appropriate. The proposed amendment also advances the Los Angeles Water Board’s commitment to making racial equity and environmental justice central to our work as we are implementing our mission by recognizing the important beneficial uses of waters of the state by California Native American Tribes (State Water Board Resolution No. 2021-0050). Part of the Water Boards’ commitment in this regard is to recognize the important uses of water resources by California Native American Tribes for food sources and cultural, spiritual, and traditional ways of living and to improve communication, working relationships, and co-management practices with California Native American Tribes.

The proposed action of adding the CUL, T-SUB, and SUB beneficial use definitions as a Basin Plan amendment is not a “project” for purposes of the California Environmental Quality Act (CEQA) and is therefore exempt from CEQA provisions.

II. INTRODUCTION

Beneficial uses form the cornerstone of water quality protection under the Basin Plan, along with the water quality objectives to protect those uses once they are designated. The beneficial uses, water quality objectives, and antidegradation requirements form enforceable water quality standards that are mandated for all waterbodies within the state under the California Water Code in order to ensure protection of beneficial uses in California’s waters. The federal Clean Water Act also mandates water quality standards for all surface waters, including wetlands.

In 2014 and 2015, the State Water Board received input from California Native American tribes and representatives of tribal interests regarding the frequent use of water unique to

tribal culture, tradition, ceremonies, and lifeways. During that time, the State Water Board also received input from environmental justice representatives concerning subsistence fishing by other individuals or cultures associated with their respective cultural customs or economic circumstances.

On February 16, 2016, the State Water Board adopted Resolution No. 2016-0011, which recognized the importance of identifying and describing beneficial uses unique to California Native American tribes, in addition to subsistence fishing by other cultures or individuals and directed State Water Board staff to develop proposed beneficial use definitions pertaining to tribal traditional and cultural use, tribal subsistence fishing use, and subsistence fishing use by other cultures or individuals. The resolution also provided that the proposed beneficial use definitions should be combined with the proposal to establish statewide mercury water quality objectives.

Prior to the adoption of Resolution No. 2016-0011, only the North Coast Regional Water Quality Control Board's water quality control plan identified a beneficial use pertaining to the cultural and traditional rights of indigenous people and a subsistence fishing beneficial use. On May 2, 2017, the State Water Board adopted Resolution No. 2017-0027, entitled "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. 2017-0027 contains three new beneficial use definitions for use by the State Water Board and regional boards in designating Tribal Tradition and Culture (CUL), Tribal Subsistence Fishing (T-SUB), and Subsistence Fishing (SUB) beneficial uses of inland surface waters, enclosed bays, or estuaries in the State. The CUL beneficial use 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 beneficial uses recognize uses of some surface waters by populations that are likely to consume more fish than the average recreational angler in California; the latter is protected under the Commercial and Sport Fishing (COMM) and Water Contact Recreation (REC-1) beneficial uses.

III. PURPOSE OF THE BASIN PLAN AMENDMENT

This amendment proposes to add the definitions of three new beneficial uses (CUL, T-SUB, and SUB) to the Basin Plan. State Water Board Resolution No. 2017-0027 states that the regional boards shall use the three new beneficial uses and abbreviations (CUL, T-SUB, SUB) to the extent such activities are defined in a Basin Plan after June 28, 2017.

The establishment of a beneficial use definition in the Basin Plan does not also operate to designate any waterbodies with the use. The Los Angeles Water Board will designate specific waterbodies where the use applies through a separate basin planning process in accordance with Water Code sections 13240 (periodic review and revision of Basin Plan), 13244 (hearing and notice requirements) and 13245 (approval by the State Water Board).

The State Water Board staff report titled, “The Final Staff Report, including the Substitute Environmental Documentation, for 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” (April 21, 2017), is a detailed technical and environmental document that analyzes and describes the necessity and scope of the CUL, T-SUB, and SUB, beneficial uses.

Incorporating Tribal Beneficial Use definitions is also an important step toward addressing the Los Angeles Water Board’s 2020-2022 Triennial Review’s proposed project (Resolution No. 2020-004) that identified the need 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. In its 2020-2022 Triennial Review, the Los Angeles Water Board listed the incorporation of Tribal and Subsistence Beneficial Use Definitions into the Basin Plan as a priority project to be considered. During the Triennial Review process, the Gabrieleño Band of Mission Indians-Kizh Nation, Heal the Bay, and United States Environmental Protection Agency (U.S. EPA) Region IX expressed support for adding tribal beneficial uses to the Basin Plan. No comment letters in opposition were received.

As part of this Basin Plan amendment project, an introductory meeting of the Los Angeles Water Board and the tribes in the region was conducted on March 26, 2021. The meeting was attended by three tribes: the Gabrieleño Band of Mission Indians-Kizh Nation, the Ventureño Band of Chumash Indians, and the San Fernando Band of Mission Indians. The meeting was followed by a public workshop on September 23, 2021, to notify stakeholders about the nature and scope of the Tribal Beneficial Use project. Forty-three stakeholders registered and attended the workshop; participants represented different tribes (e.g., Barbareño, Ventureño Band of Mission Indians, Big Pine Paiute Tribe of the Owens Valley), regulatory agencies (e.g., State Water Board, U.S. EPA, Department of Water Resources), municipalities (e.g., Los Angeles County Department of Public Works, Los Angeles County Sanitation Districts, City of Santa Clarita, City of San Diego, County of Ventura), non-governmental or non-profit organizations (e.g., Heal the Bay, California Indian Legal Services, Sacred Places Institute for Indigenous Peoples), private companies (e.g., the Boeing Company, Larry Walker Associates, Essex Marina City Club, Tomaras and Ogas, LLP) and associations (e.g., Los Angeles Irrigated Lands Group).

This proposed amendment is the first phase of the Tribal Beneficial Use project and entails adding 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" to the Basin Plan. The proposed amendment does not establish any designations of the new three beneficial uses for any particular waterbody. A separate Basin Plan amendment process to designate the CUL, T-SUB and SUB beneficial uses for specific waterbodies where those uses are existing or attainable will be undertaken as the second project phase in the future. For the Los Angeles Water Board to designate the CUL or T-SUB beneficial uses in the Basin Plan for a particular waterbody segment and time(s) of year, a California Native American Tribe must confirm whether the designation is appropriate (as required by Part 2 of the ISWEBE Plan—Tribal and Subsistence Fishing

Beneficial Uses and Mercury Provisions). Input from California Native American Tribes and other stakeholders will be a vital part of the upcoming designation process.

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, Migration of Aquatic Organisms, Aquaculture, Warm Freshwater Habitat, and Cold Freshwater Habitat, that are designed to support aquatic habitats for the reproduction or development of fish.

The ISWEBE Plan, Chapter III.D.2, establishes water quality objectives for mercury for the reasonable protection of people and wildlife that consume fish; these mercury objectives apply to all the inland surface waters, enclosed bays and estuaries of the State that have the applicable beneficial uses. The water quality objectives that protect people who consume fish apply to waters with the COMM, CUL, T-SUB, and SUB beneficial uses as well as any other waters where fish consumption is an existing use but COMM is not designated. In the future, when waterbody designations for CUL, T-SUB, and SUB are made, the designations may expand the number of waterbodies to which the mercury objectives are applicable.

IV. PROPOSED AMENDMENT

Chapter 2 of the Los Angeles Basin Plan defines and designates the beneficial uses for all surface and ground waters in the Los Angeles Region. The proposed amendment will add the following three new beneficial use definitions to Chapter 2 of the Basin Plan for the Los Angeles Region as defined in the ISWEBE Plan:

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.

Here, lifeways is defined as: Any customs, practices, or art of a California Native American Tribe

Here, California Native American Tribe(s) is 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.

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.

V. COMPLIANCE WITH CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The proposed 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 Boards’ certified regulatory programs regulations implementing CEQA (Cal. Code Regs., tit. 23, 3720 (b), (c)(2).)3720 (b).).

VI. REFERENCES

California Regional Water Quality Control Board – Los Angeles Region. 2020. 2020-2022 Triennial Review Selection of Basin Planning Projects.

State Water Resources Control Board. 2017. 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.

State Water Resources Control Board. 2017. Final Staff Report, Including Substitute Environmental Documentation for 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. May 2, 2017.