

## CALIFORNIA WATER BOARDS BASIN PLANS AND TRIBAL BENEFICIAL USES INFORMATION

### Summary

On May 2, 2017, the State Water Resources Control 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" (ISWEBE Plan). Resolution 2017-0027 provides a consistent regulatory approach throughout the state by setting mercury limits to protect the beneficial uses associated with the consumption of fish by both people and wildlife. Additionally, the State Water Board established two new beneficial use definitions for use by the State and Regional Water Boards in designating Tribal Tradition and Culture (CUL) and Tribal Subsistence Fishing (T-SUB) beneficial uses to inland surface waters, enclosed bays, and estuaries in the state.

The new Tribal Beneficial Uses help protect activities specific to Native American Culture and their historic uses of California's waters, including practices not covered by existing beneficial uses. The Tribal Tradition and Culture, and Tribal Subsistence Fishing beneficial use definitions are provided below:

**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.

**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.

### The Purpose of Tribal Beneficial Uses

In some cases, current discharge requirements may not adequately protect Tribal Beneficial Uses. Examples of this issue include ensuring the application of aquatic herbicides at the appropriate time so that they do not interfere with cultural practices, and reducing bioaccumulative pollutants to levels that are protective of a high rate of fish consumption.

### Regional Water Quality Control Boards and Basin Plans

To meet requirements of Section 303(c)(1) of the Federal Clean Water Act and Section 13240 of the Water Code, the Regional Water Quality Control Boards (Regional Water Boards) review their Basin Plans every three years; this process is known as the Triennial Review. Basin Plans are the foundation of the Regional Water Boards water quality regulatory programs. The Basin Plans contain:

- Designated beneficial uses for both surface and ground water bodies in the Basin(s)
- Water quality objectives to protect those beneficial uses
- Implementation plans that describe the actions necessary to achieve water quality objectives
- Descriptions of the surveillance and monitoring activities needed to determine regulatory compliance and assess the health of the Basin(s) water resources

After tribal and public input is received, the Regional Water Board develops and adopts a resolution that establishes a priority list of potential issues that may result in basin plan amendments. The priority list is used to direct basin planning efforts over the next three years. Implementation of the work plan depends upon the Regional Water Board's program priorities, resources, and other mandates and commitments.

Crucial to successful implementation of the actions is adequate support of the Regional Water Board's Basin Plan activities. Please see the Regional Water Boards information below on their current Basin Planning process in relation to Tribal Beneficial Uses.

### Board Actions for Tribal Beneficial Uses

There are at least two actions a Regional Water Board could take:

1. Add one or more of the beneficial uses definitions; and/or
2. Add one or more of the use definitions and designate one or more water body with the use.

The Tribal Beneficial Uses definitions are not actually contained within the basin plans; they are in the ISWEBE Plan. A Regional Water Board can take an action to add these definitions via a basin plan update/amendment as was proposed in Item 6c at today's Board meeting.

The Regional Water Boards generally consider prioritizing designation of waters during their triennial review process. In addition, the Regional Water Boards could consider designation during another basin planning activity such as the development of a total maximum daily load. The need for a designation may be brought to the attention of a Regional Water Board with a request that a beneficial use be designated to a specific water body.

If the Regional Water Board declines to designate a water body, tribes or others may request the State Water Board to consider the designation. The Regional Water Boards may consider whether the beneficial use is existing or a probable future use to determine whether to designate.

### Confidentiality and Tribal Beneficial Uses

Stated as a guiding principles within the California Water Boards' Tribal Consultation Policy, the California Water Boards acknowledge, recognize, and respect the need and importance, and in some circumstances requirement (e.g., AB 52) for confidentiality

regarding places, recognize and respect the tribal cultural resources of California Native American Tribes regardless of where they are located.

In general, the Regional Water Boards do not designate specific locations but instead designate stretches of rivers or creeks or whole water bodies. There is no need to specify the exact location of the practice or activity. For traditional and cultural uses, information would need to be established about the practice to get an understanding of the risk involved and the nexus to water quality so the appropriate water body or water body segment may be designated. Such information would be public information and not confidential.

### **New Tribal Beneficial Uses Work Group**

The nine Regional Water Boards are in different stages of their basin planning processes. To maintain consistency across the Regional Water Boards, a Tribal Beneficial Use work group has been established. This work group aims to provide guidance and/or clarification to questions and/or concerns that may be occurring in multiple regions pertaining this matter. This work group was established August 2019 and plans to meet on a quarterly basis.