

DRAFT GUIDANCE ON DESIGNATING

TRIBAL BENEFICIAL USES





ACKNOWLEDGEMENTS

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EXECUTIVE SUMMARY

Purpose of This Guide

California Native American Tribes have stewarded California's waters since time immemorial. Tribal Beneficial Uses (TBUs) ensure these cultural, traditional, spiritual, and subsistence relationships with water are formally recognized and protected within state water quality planning and permitting. This guide explains what TBUs are, how designations work, and how Tribes can engage in the process.

What are Tribal Beneficial Uses

- **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."

Why Tribal Beneficial Uses Matter

TBU designations ensure Tribal cultural and subsistence uses are fully considered in Water Boards permitting, planning, and water quality decisions. They reduce the need for Tribes to repeatedly explain their uses, strengthen protections for current and future practices, and elevate Tribal knowledge in regulatory processes. Water Boards can still protect a TBU during a regulatory action even without a formal designation.

Starting the TBU Designation Process

Before submitting anything in writing, Tribes should first talk with Water Board staff about the information they plan to share. This ensures a shared understanding of what is needed for the basin plan amendment and what will enter the public record. A Tribal Beneficial Use can only be designated with the Tribe's consent and an official written request, which formally begins the process.

Information to Support a Designation

General information is sufficient for a designation, and Tribes do not need to share exact locations or sensitive cultural details. Helpful information includes:

- **Type of use (CUL and/or T-SUB)**
- **Specific types of activities (CUL only)**
- **Where the activity occurs (general segment or waterbody, not exact locations)**
- **Exposure pathways (ingestion, immersion, plant handling, etc.)**
- **Frequency, duration, and seasonality**
- **Whether the use is current or planned for the future**
- **Summary-level data on consumption or cultural practices**

This information can be provided in a combination of formats, including but not limited to: written or verbal testimony, photos, stories, maps, art, video, survey results, or summary information.

How Designation Works: The 10-Step Process

1. A Tribe submits a written request identifying the Tribal Beneficial Use(s) and describing how the waterbody(s) is used.
2. The Water Board adds the TBU definitions to the basin plan.
3. The Water Board proposes waterbody designations in consultation with the Tribe.
4. The Water Board conducts CEQA review and AB 52 Tribal consultation.
5. The Water Board evaluates whether new or revised water quality objectives are needed.
6. If needed, the Water Board develops an implementation plan for the new objectives.
7. Staff prepare the basin plan amendment, staff report, and CEQA documentation.
8. The Water Board holds a public hearing and adopts the amendment.
9. The amendment is submitted for final approval to the State Water Board, Office of Administrative Law, and U.S. Environmental Protection Agency (if required).
10. After approvals, the Water Board implements the amendment and continues coordination with the Tribe.

The remainder of this guide provides more detail on each step of the designation process, resources available, and options for collaboration. This guide is intended to support Tribes in pursuing a TBU designation and to ensure Tribal lifeways and knowledge are meaningfully reflected in California's water quality planning.

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OVERVIEW AND PURPOSE OF THIS GUIDE

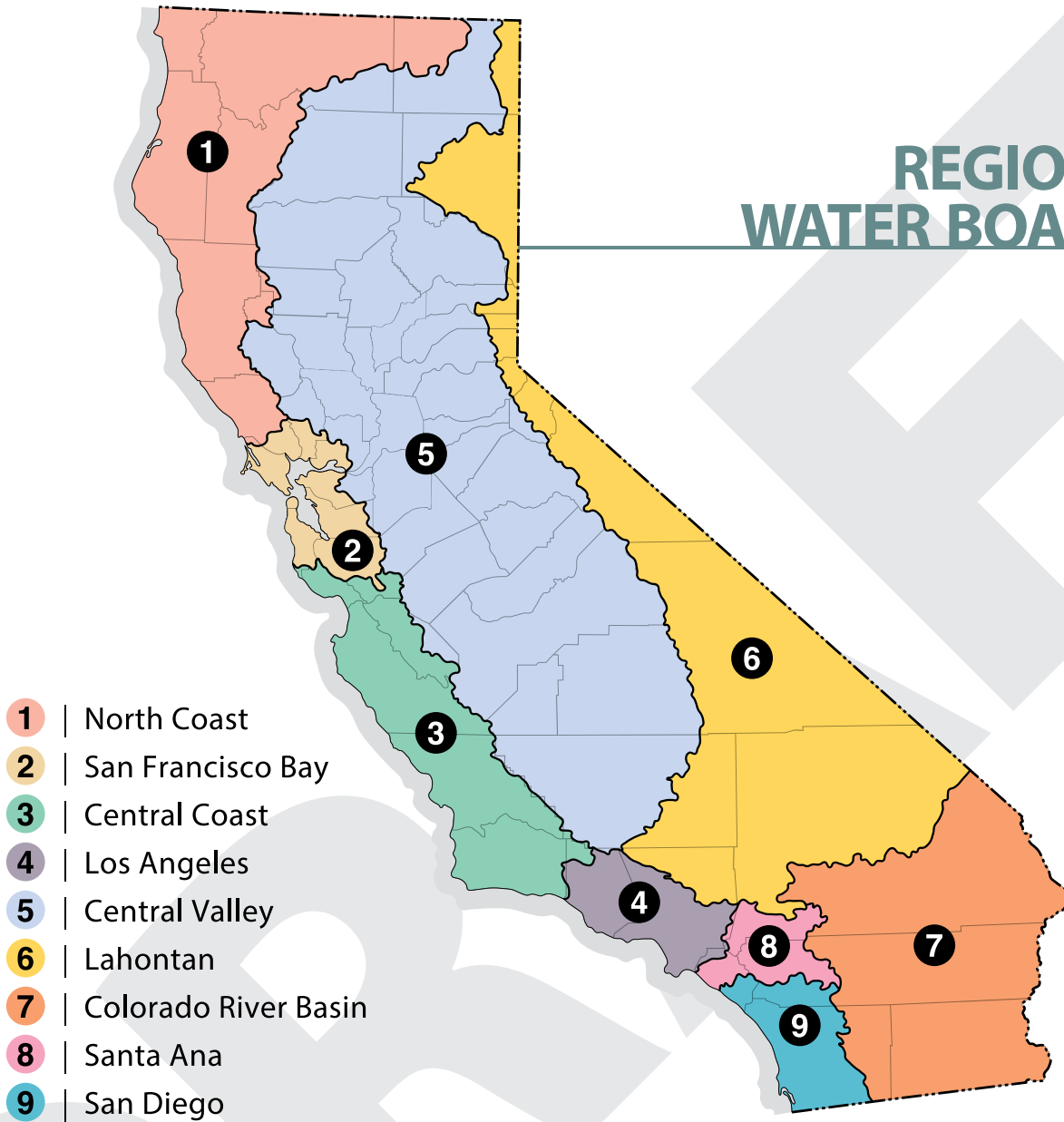
Water is life. Since time immemorial, California Native American Tribes¹ have used California's waterbodies to support cultural, spiritual, ceremonial, and/or traditional practices, lifeways and rights.

These unique practices, lifeways, and rights to water have not always been protected through state and federal water quality statutes, and, in some cases, were not fully accounted for when those statutes were enacted. The establishment of the Tribal Beneficial Uses (TBUs) are an important step in California's efforts to recognize and protect beneficial uses of water that support Tribal practices, lifeways traditional rights along with other beneficial uses of waters that are protected under state and federal statutes. Tribal Beneficial Uses recognize and honor Tribal Nations' unique and ongoing relationships with water and ensure that these uses are considered and safeguarded in water quality policies, planning, and permitting regulatory processes.

This document explains what the Tribal Beneficial Uses² are, how they are incorporated into water quality control plans established by the State Water Resources Control Board (State Water Board) and the nine Regional Water Quality Control Boards (Regional Water Boards), how the water quality protections are implemented into permits and other Water Board actions, and describes the overall water quality control planning process for Tribal Beneficial Uses. The water quality control planning efforts described in this document are carried out by the State Water Board and the Regional Water Boards, which together are known as the California Water Boards. California's nine Regional Water Boards are responsible for protecting surface water and groundwater quality in each of their distinct geographic regions of the state. The nine regions are: the North Coast, San Francisco Bay, Central Coast, Los Angeles, Central Valley, Lahontan, Colorado River Basin, Santa Ana, and San Diego. This document describes the roles of the California Water Boards and focuses primarily on how Tribal Beneficial Uses are designated (i.e., assigned) to specific waterbodies.

While the document describes opportunities for Native American Tribes to engage in the planning process to designate Tribal Beneficial Uses and support the protection and restoration of Tribal Beneficial Use of water for present and future generations, the document does not go into detail on all of the ways water is protected, including the many ways Tribes are actively protecting and restoring waters.

REGIONAL WATER BOARDS



- 1 | North Coast
- 2 | San Francisco Bay
- 3 | Central Coast
- 4 | Los Angeles
- 5 | Central Valley
- 6 | Lahontan
- 7 | Colorado River Basin
- 8 | Santa Ana
- 9 | San Diego

1 This document uses the terms "Native American Tribe" and "Tribe" to refer to any Tribe that is encompassed within the definition of a "California Native American Tribe," which is defined by Part 2 of the ISWEBE 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." (Part 2, ISWEBE, p. A-17.) This is also the same definition of "California Native American Tribe" as in Public Resources Code section 21073.

2 See [Part 2](#) of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California.

TRIBAL USES OF WATER SINCE TIME IMMEMORIAL

California is home to 109 federally recognized Tribes and approximately 60 non-federally recognized Tribes. California is also home to many Native Americans from Tribes whose ancestral homelands are located outside of California, making it the state with the highest Native American population in the United States. Native American Tribes have relied on many of California’s waterbodies for cultural, spiritual, ceremonial, healing, and/or traditional practices, lifeways, and rights since time immemorial.

The photos below illustrate some of the many ways water is central to Tribal cultural, spiritual, ceremonial, and/or traditional practices, lifeways and rights. From tule boats to water ceremonies, these uses demonstrate the deep, place-based knowledge and longstanding relationships with and stewardship of California’s waters by Tribal communities.

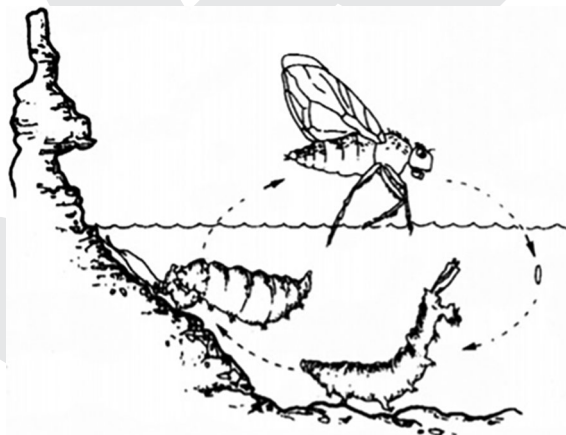


Image of a tule boat replica at California Native American Day.

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Karuk basketweaver, Dixie Rogers, demonstrating basketweaving techniques at California Native America Day.



Jessie Durant, Kootzaduka'a Tribe, harvesting kootzabe (alkali fly pupa) from the waters of Kootzabbaa (Mono Lake).
Courtesy of the Kootzaduka'a Tribe of California and Nevada.

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Tubatulabal Tribe's Spring Ceremonial Basket.



Traditional salmon bake.

THE WATER BOARDS' ROLE IN PROTECTING WATER QUALITY

The California Water Boards share the mission to preserve, enhance, and restore California's water resources and drinking water for the benefit of the environment, public health, and all beneficial uses and to ensure proper water resource allocation and efficient use, for the benefit of present and future generations. The Water Boards have authority under the federal Clean Water Act and California's Porter-Cologne Water Quality Control Act (Porter-Cologne Act) to regulate water quality for both surface and groundwater.

What Guides the Work: Basin Plans/Water Quality Control Plans

The Water Boards implement their authority through state and regional water quality control plans, also known as basin plans at the Regional Water Board level.³

State water quality control plans and Regional Water Board basin plans include the following:

- **General information** about water quality control planning, the environmental setting for the region or basin, and other introductory topics
- **Water quality standards**—as described below
- **Descriptions and definitions of the beneficial uses** identified in the plan
- **Designations of beneficial uses** of specified waterbodies or waterbody segments
- **Water quality objectives**, which are limits or levels of water quality constituents or characteristics, to reasonably protect the beneficial uses
- **Implementation programs** with actions to meet and maintain water quality objectives
 - Discharge prohibitions: Restrictions on harmful releases of pollution
 - Total maximum daily loads (TMDL): Maximum pollutant levels for impaired waters
- **Monitoring activities** to assess compliance with water quality objectives

Water Quality Standards

To protect waterbodies, the Water Boards establish water quality standards⁴ that ensure each waterbody is safe for its intended uses. These standards are established in state water quality control plans and Regional Water Board basin plans.

Water quality standards include:

- **Beneficial use designations**, which describe what the water is used for
- **Water quality objectives**, which are limits on pollutants or conditions to reasonably protect those uses
- **Antidegradation requirements**, which specify conditions under which water quality can be lowered

Water quality objectives are used to reasonably safeguard beneficial uses of water. Together, these standards provide the legal foundation for regulating pollution and issuing permits (also known as “waste discharge requirements”). They help the Water Boards determine when discharges into a waterbody are acceptable and when and how they must be restricted. Water quality objectives can be expressed as either numerical criteria or narrative descriptions.

The State Water Board and each of the Regional Water Boards conduct regular public hearings to assess applicable water quality standards and prioritize the development and adoption of revised or new water quality standards as amendments to the water quality control plans.

How Permits Use Water Quality Standards

Once a waterbody has designated beneficial uses and water quality objectives to protect those uses, the Water Boards apply those protections through regulatory tools like permits for discharges of waste that may affect the waterbody. Permits may include:

- **Effluent limitations**, which are provisions that specify the maximum amount, or concentration of, pollutants that can be released into waterbodies
- **Receiving water limitations**, which are conditions that must be achieved in the waterbodies
- **Management practices**, which are actions that the discharger must take to prevent or minimize discharges
- **Other provisions**, like seasonal or other operational restrictions
- **Monitoring and reporting requirements**, which provide feedback to determine whether the discharge is in compliance with the permit requirements

These permit conditions are designed to ensure that no discharge of waste causes water quality to drop below the level needed to protect the designated beneficial uses.

The designation of beneficial uses and adoption of water quality objectives are important steps in providing efficient and systematic protection for a waterbody’s beneficial uses. However, the Water Boards are also required to protect beneficial uses that are actually occurring in the waterbody, even if those uses have not been formally designated yet, or if a water quality objective hasn’t been adopted yet. When adopting permits for discharges of waste to the waterbody, the Water Boards have to look at the designated beneficial uses as well as any undesignated beneficial uses that are taking place in the vicinity of the discharge and anywhere that the discharge may affect a beneficial use (typically downstream of the discharge, but potentially upstream of the discharge in the case of fish that swim upstream before being caught for consumption), and make sure they are protected on a case-by-case basis. If a beneficial use that could be affected by a proposed discharge of waste is occurring but has not yet been designated, sufficient information needs to be provided to the Water Board during the waste discharge requirements adoption proceeding. These approaches are discussed in Step 3 (“Designate Beneficial Uses”) and Step 5 (“Evaluate Water Quality Objectives”) below.

Differences Between Regional Water Board and State Water Board Plans

While both the State and Regional Water Boards work together to manage water quality, they have different responsibilities:

- **Regional Water Boards** create and update water quality control plans (often referred to as basin plans) for their specific regions. These plans identify beneficial uses, set water quality objectives, and guide regulatory actions. Changes to basin plans require public input and approval from the State Water Board, the Office of Administrative Law, and the U.S. Environmental Protection Agency.
- The **State Water Board** adopts statewide water quality control plans, which may apply broadly across all regions. These plans typically do not include specific beneficial use designations for individual waterbodies. Additionally, statewide water quality control plans may consider requirements for instream flows to protect beneficial uses.

If a Regional Water Board basin plan and a statewide plan conflict, the statewide plan takes precedence.

Regional Water Board Basin Plans

Basin plans serve various purposes, including guiding each Regional Water Board's regulatory actions, informing the public about regional water quality goals and requirements, and forming the foundation for collaborative watershed management.

Regional Water Board basin plans are reviewed regularly through a formal public review process that takes place approximately every three years (commonly referred to as the Triennial Review Process). This includes a public hearing to gather input and identify priorities, such as:

- Designating new beneficial uses (including Tribal Beneficial Uses)
- Revising water quality objectives
- Addressing new pollution concerns or other pollution control requirements.
- Establishing a priority list for future basin plan amendments.

The process of revising a basin plan is called a basin plan amendment. Changes in federal or state law, or in local environmental conditions, may also create the need for basin plan amendments.

State Water Board Water Quality Control Plans and Policies

The State Water Board has developed and adopted several statewide water quality control plans, including:

- **Bay-Delta Plan: Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary**
- **California Ocean Plan**
- **California Thermal Plan: Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays and Estuaries of California**

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- **Enclosed Bays and Estuaries Plan: Water Quality Control Plan for Enclosed Bays and Estuaries: Part 1 Sediment Quality Objectives**
- **Inland Surface Waters, Enclosed Bays, and Estuaries Plan (ISWEBE)** [Note that the State Water Board has adopted several stand-alone components of the ISWEBE Plan that are currently in effect (including Part 2, which includes the Tribal Beneficial Uses), but has not yet adopted a final comprehensive ISWEBE Plan.]

The State Water Board has also developed and adopted several statewide water quality control policies, including:

- **Antidegradation Policy**
- **Low-Threat Underground Storage Tank Case Closure Policy**
- **Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304 Policy (also known as, 92-49)**
- **Sources of Drinking Water Policy**

Statewide water quality control policies often provide broader guidelines and principles for managing water quality statewide. Policies tend to provide a more overarching framework than Plans, but can also include water quality objectives and other elements that are typically adopted in water quality control plans.

3 This document does not address water quality standards established by federally recognized Tribes for waters on Tribal lands, as authorized by the U.S. Environmental Protection Agency.

4 "Water quality standards" is a term that is used in the federal Clean Water Act. The remainder of the terms used in this section are similar to federal terms, but come from the state's Porter-Cologne Act.

DEVELOPMENT OF THE TRIBAL BENEFICIAL USES DEFINITIONS

California's waterbodies are essential to life in California. Waterbodies support many uses, from recreation and drinking water to agriculture and fish and other aquatic wildlife habitat, and much more. These beneficial uses are protected by water quality regulations, including the California Porter-Cologne Act.

For many years, Native American Tribes advocated to the Water Boards that the existing beneficial use categories (e.g., recreational uses and recreational and commercial fishing) do not adequately reflect how Tribes use water. Several Tribes in the North Coast and fourteen in the Central Valley requested Tribal Beneficial Uses be adopted to designate waters so Tribal uses could be transparently evaluated alongside the other beneficial uses when setting water quality objectives. Tribal representatives have also explained that some traditional practices may put Tribal members at greater risk of exposure to toxins, and that those uses may not be protected by existing beneficial uses. For example, a traditional basket weaver who softens wetland reeds by placing them in their mouth may be exposed to contaminants that the plant absorbed from the water. Another example is that Tribes may consume fish, shellfish or other aquatic species according to their traditions, lifeways, or ceremonies. This consumption of aquatic species may occur at higher rates and using different consumption methods than the general population. The existing water quality objectives established for the general population's fish consumption beneficial use may not provide enough protection for this kind of toxin exposure.

In response to this concern, Native American Tribes initiated a collaboration with the State Water Board and together created definitions for two new beneficial use categories, known as Tribal Beneficial Uses. From 2014 to 2017, the State Water Board engaged with Tribes through government-to-government consultations as well as through a Tribal Beneficial Uses Ad Hoc Group to develop definitions for beneficial uses to reflect Tribal culture, tradition, and subsistence. Eight Tribes submitted resolutions in the spring of 2015 proposing specific language for two beneficial uses related to Tribal traditional and cultural use and Tribal subsistence fishing.

On February 16, 2016, the State Water Board adopted [Resolution No. 2016-0011](#), acknowledging the importance of identifying and describing beneficial uses unique to Native American Tribes. The Resolution directed staff to develop proposed beneficial use categories and definitions for Tribal traditional and cultural uses and subsistence fishing to be used by the State Water Board and the nine Regional Water Boards. In 2017, the State Water Board adopted [Resolution 2017-0027](#) which adopted [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. This Plan (often referred to as the ISWEBE Plan) established and defined the Tribal Beneficial Uses as follows:

- The **Tribal Tradition and Culture (CUL)** beneficial use is defined as: "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."

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- The **Tribal Subsistence Fishing (T-SUB)**⁵ beneficial use is defined as: “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.”

Part 2 of the ISWEBE also includes a definition for a third beneficial use, Subsistence Fishing (SUB), to support subsistence fishing by individuals, households, or communities who are not covered under the T-SUB beneficial use for Tribes (i.e., “individuals, households or communities of California Native American Tribes”). As a result, the SUB beneficial use applies to the general population, which includes everyone who is not a member of California Native American Tribe, such as Indigenous peoples from California who are not a member of Native American Tribe and individuals who are members of Tribes outside of California.

- **The Subsistence Fishing (SUB) beneficial use is defined as:** “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.”

While the State Water Board established the Tribal Beneficial Use definitions, the Regional Water Boards are responsible for adding the definitions into their respective basin plans and working with Tribes to designate waters within their regions with the Tribal Beneficial Uses.

⁵ The ISWEBE states that Tribal Subsistence Fishing (T-SUB) normally refers to consumption rates of fish or other aquatic resources that are higher than the general population’s consumption rates, but it also recognizes that there may be circumstances where a site-specific study supports using the CUL beneficial use to protect a higher rate of consumption. (See Part 2, ISWEBE, pages A-3, and A-4, fn. 4.)

HIGHLIGHT:

HISTORY OF PROTECTING TRIBAL BENEFICIAL USES IN THE NORTH COAST

In the early 2000s, several Tribes in the north coast region worked with the North Coast Regional Water Board to define Tribal Beneficial Uses. The following Tribes played a significant role in defining Tribal Beneficial Uses in the North Coast: Karuk Tribe, Yurok Tribe, Hoopa Valley Tribe, Tolowa Dee-ni' Nation, and Wiyot Tribe. Through this partnership, the North Coast Regional Water Board adopted the following Tribal Beneficial Use and subsistence fishing definitions:

Native American Culture (CUL): Uses of water that support the cultural and/or traditional rights of Indigenous people such as subsistence fishing and shellfish gathering, basket weaving and jewelry material collection, navigation to traditional ceremonial locations, and ceremonial uses.

Subsistence Fishing (FISH): Uses of water that support subsistence fishing.

In 2003, the State Water Board approved the North Coast Regional Water Board's definitions that protect Native American culture and subsistence fishing. These definitions predate the establishment of the Tribal Beneficial Uses and their corresponding definitions adopted by the State Water Board in 2017. This means that the State Water Board's Tribal Beneficial Uses established in Part 2 of the ISWEBE (Tribal Tradition and Culture (CUL) and Tribal Subsistence Fishing (T-SUB) would not apply to the waterbodies in the north coast region unless the North Coast Regional Water Board adds the State Water Board definitions into its basin plan.

Since 2003, the North Coast Regional Water Board has successfully designated the Native American Culture beneficial use to 28 waterbodies within its region. The North Coast Regional Water Board has successfully applied the Native American Culture beneficial use definition and designations for water quality protection in the north coast region. In 2010, the *Action Plan for the Klamath River Total Maximum Daily Loads Addressing Temperature, Dissolved Oxygen, Nutrient and Microcystin Impairments in the Klamath River in California* cited the impaired Native American Culture beneficial use as the basis upon which to establish water quality targets necessary to protect and support sacred tribal ceremonies, tribal dependence upon Klamath fisheries, aquatic plants used for basket weaving, and other cultural practices.

While the Native American Culture beneficial use was developed and adopted in 2003, the definition differs from the Tribal Beneficial Use definitions the State Water Board adopted in 2017. The 2023 North Coast Triennial Review included a project to collaborate with Tribes to provide input and guidance on whether the existing North Coast Regional Water Board beneficial use definitions or the Tribal Beneficial Use definitions established by the State Water Board would better serve the needs of Tribes.

The legacy of the success of the Native American Culture and Subsistence Fishing beneficial use designations by the North Coast Regional Water Board continues to guide the important work of engaging with Native American Tribes on these issues.

UNDERSTANDING CUL AND T-SUB

Like all other types of beneficial uses, the Tribal Beneficial Uses can be classified as either existing uses or probable future uses (Wat. Code, § 13241). Some water quality plans may also use the term potential uses to describe probable future uses (for example, [the Water Quality Control Plan for the Lahontan Region](#), p. 2-1.). The classification of Tribal Beneficial Uses as existing or probable future uses is in alignment with the Porter-Cologne Act framework for water quality planning and protection. The classification of the uses is not intended to determine the value of Tribal practices.

- An **existing Tribal Beneficial Use** means that a specific cultural or subsistence use is currently happening in a waterbody, or that it has happened there at any time since 1968, consistent with the State Water Board's Resolution No. 68-16. [Note that this definition of an "existing use" is not the same as U.S. EPA's meaning of the same term in 40 C.F.R. section 131.3(e).] This approach aligns with the federal Clean Water Act, which protects uses that have occurred since 1975. California's Water Boards go further by protecting uses that have occurred any time since 1968.
- A **probable future Tribal Beneficial Use** means that a specific CUL or T-SUB use is not currently happening in the waterbody, and hasn't occurred there since 1968, but is expected to take place in the future—such as through cultural revitalization efforts or planned restoration.

The Water Boards generally do not designate purely past (i.e., discontinued) beneficial uses. Within the framework of the Porter-Cologne Act, "past beneficial uses" are those that have not happened since 1968 and are not reasonably expected to happen again based on currently available information. Within this regulatory context, they fall outside the Water Board's authority, which is to implement water quality protections for existing and probable future uses. Evidence of purely historical activities or other uses can play an important role in the basin planning process. Information about a historical use could be used to identify a past Tribal use as a probable future Tribal Beneficial Use where restoration efforts or goals are demonstrated. That historical information may also help to inform the details of the probable future use, including location, duration, and frequency. Additionally, beneficial uses that are not currently expected to happen in the future can still be considered for inclusion in a future basin planning action.

Tribal Tradition and Culture (CUL)

The Tribal Tradition and Culture (CUL) beneficial use was developed to recognize and support the protection of many different Tribal activities and other Tribal uses of a waterbody that are rooted in a Tribe's cultural, spiritual, ceremonial, or traditional rights or lifeways.

Examples of CUL-related uses may involve (but are not limited to):

- Long-standing spiritual relationship with an aquatic species
- Practices that involve contact with or ingestion of water (e.g., ceremonies, navigation, plant preparation, swimming)
- Gathering of natural aquatic resources, which includes both animal and plant species and other aquatic materials

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- Consumption of fish, shellfish, and natural aquatic resources tied to a Tribe's ceremonial or traditional practices
- Uses that involve seasonal or event-based exposure pathways (e.g., water ceremonies and rituals, boat dances, first salmon ceremonies)

These examples of CUL uses illustrate the uniquely wide breadth of the different activities and other uses of water that can be protected under the CUL beneficial use, as compared to the other beneficial uses designated in the water quality control plans. The other beneficial uses focus on more specific activities and other uses of water, such as recreational activities involving water contact where ingestion of water is reasonably possible, like swimming and whitewater kayaking (REC-1), navigational uses of water by vessels (NAV), recreational and commercial collection of fish and other aquatic species for human consumption (COMM), and cold freshwater aquatic habitat for vegetation, fish and other wildlife (COLD).

Each of these beneficial uses are designed around a narrow set of closely related activities or other uses that are tied to common water quality constituents or characteristics. As a result, water quality protections that are applicable to the entire beneficial use can be developed by addressing the exposure pathways and other water quality issues that are necessary to protect the most sensitive activities or other uses included within that beneficial use. By contrast, the CUL beneficial use has many different components and was intentionally designed to be both inclusive and open ended. The CUL beneficial use encompasses a wide range of Tribal cultural activities, lifeways, and spiritual practices that may reflect many distinct activities and uses of water that are not necessarily tied to common water quality constituents or characteristics. The CUL beneficial use may also address other water quality issues that are similar to those addressed under REC-1, NAV, and COMM, as examples.

Since there are many different water quality constituents or characteristics associated with protecting the various CUL activities and other uses, it is important for the Tribe to identify the specific activities or other CUL uses of water when requesting a CUL designation. This allows the Water Boards to analyze how to protect those specific activities or other uses. It also lets the Water Boards clearly identify which specific activities or other uses need to be protected when the CUL use is designated for a waterbody or waterbody segment in a water quality control plan. A Water Board may designate multiple CUL components at the same time for one or more waterbodies or waterbody segments, and may also designate additional CUL components for the same waterbodies or waterbody segments in a subsequent water quality control plan amendment if requested by the Tribe.

Note that the CUL use includes a component related to consumption of fish, shellfish, and natural aquatic resources, as does the T-SUB beneficial use discussed in the next section. An in-depth discussion of a Tribe's consumption of aquatic species under the CUL beneficial use is located under the section titled "Distinguishing Consumption under CUL and T-SUB: Degree of Human Health Risk." That section also examines how to determine whether consumption practices under CUL or T-SUB are the appropriate designation—by evaluating the degree of human health risk associated with the consumption practice under evaluation.

Tribal Subsistence Fishing (T-SUB)

The Tribal Subsistence Fishing (T-SUB) beneficial use was developed to apply to waterbodies where Tribal members catch or gather and consume fish, shellfish, or other natural aquatic resources to meet needs for sustenance. The level of consumption under T-SUB is expected to have higher health risks than what is protected under the COMM beneficial use (commercial and recreational fishing for human consumption). Consumption under T-SUB could also include different rates and/or methods of consumption than what occurs under the COMM beneficial use if those methods result in increased exposure to toxins. Additionally, the consumption rate under T-SUB typically would be higher than the rate of consumption connected to a Tribe’s ceremonial practices under the CUL beneficial use due to the frequency and duration of the exposure. As a result, consumption under the T-SUB beneficial use can result in statistically significantly higher levels of toxin exposure than under the consumption rates and exposure pathways protected by the COMM and CUL beneficial uses. This is because T-SUB indicates that Tribal communities regularly rely on aquatic species as a primary food source. The establishment of T-SUB as its own beneficial use category, allows the Water Boards to apply stronger water quality protections for situations where Tribal communities are exposed to higher levels of human health risk due to their consumption of aquatic resources.

T-SUB uses may involve:

- **Frequent or high-volume or differing frequency and timing of consumption of fish, shellfish, vegetation, or other natural aquatic species or resources**
- **The consumption of fish, shellfish, or other natural aquatic species or resources and may include using preparation or cooking methods that differ from consumption under the COMM use (e.g. consuming more parts of a fish than a skin-off filet (e.g. skin, fat, organs, cooking juices), not cooking the meat, smoking, utilizing the fatty area between the skin and the fillet, etc.)**
- **A wider variety of species than those covered under existing designations for commercial or recreational fishing beneficial uses, including the consumption of species that are generally not consumed under the COMM use.**
- **Consumption of multiple aquatic species from the same waterbody**
- **Year-round or seasonal subsistence practices**
- **Higher cumulative exposure to contaminants externally through contact or internally through ingestion, or both**
- **Greater health risks for all consumers and especially sensitive populations such as people who are pregnant, breastfeeding, or might become pregnant (generally individuals 18–49 years) and children (1–17 years)**
- **A need for stronger water quality protections to safeguard human health**

T-SUB was developed to apply to waterbodies where Tribal members consume fish or other aquatic species at rates that are substantially higher than consumption by the general population protected under the COMM use. This would include a rate of consumption of the same aquatic species from all sources from recreational or commercial consumption (including other waterbodies, markets, restaurants, etc.). This could mean more meals per week, eating a greater variety of species, or higher consumption over time. For comparison, the

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Water Boards typically use a baseline of one fish meal per week, based on state and federal studies, to represent the average consumption under the COMM use.

For a T-SUB designation, there is no single threshold for what qualifies as a “higher rate” of consumption. If the Tribe’s actual consumption rate and exposure pathways (i.e. through different preparation and consumption methods) can be estimated, that data will help determine the level of protection needed. Each Tribe has different customs, traditions, and food consumption patterns. To designate T-SUB at a waterbody as an “existing” use, Tribes would need to provide information showing that their consumption practices since 1968 are likely to result in a statistically significantly higher human health risk than what is already protected for the general population under the COMM beneficial use.

A Water Board might consider any combination of the following examples, or others, to determine a higher human health risk of exposure:

- **A survey (or summary derived from a survey) of Tribal members’ fish consumption rates showing a significantly higher rate of consumption,**
- **Seasonally high levels of consumption,**
- **Consumption of natural aquatic resources whose consumption is not already protected under other beneficial uses, such as consumption of frogs, reptiles, mollusks, insects, larvae, pupae, tule and cattail roots, taboose, and more,**
- **Cumulative consumption of multiple plant or animal species from the same waterbody,**
- **Confirmation that the rate of four to five meals per week is appropriate for the Tribe, consistent with Dr. Fraser Shilling’s study of fish consumption among some California Tribal communities,**
- **A rate of consumption that is at least 50 percent higher than the rate of consumption under the COMM or CUL use (such as three meals every two weeks, averaged over the year), or**
- **Higher exposure risks due to traditional harvesting and cooking methods, or other tribal consumption patterns or practices, as identified by Tribes.**

A waterbody may also be designated for a probable future T-SUB use if a Water Board, state agency, or Tribe has developed plans, or is taking steps, to restore or increase subsistence fishing in the future. This probable future use T-SUB designation would occur if it is likely that the human health risk will be statistically significantly higher than that protected under the COMM or CUL use. If the future consumption rate can be reasonably estimated, that estimate will guide the level of protection. If no reliable estimate is available, the Water Board may use existing research such as Dr. Shilling’s study on [California Tribes Fish-Use](#) (2014) showing four to five meals of caught fish per week as a starting point. If there is no existing research that adequately describes the Tribe’s expected consumption patterns, the Water Board can designate the use and wait to develop water quality objectives until the Tribe’s plans to restore or increase subsistence fishing are underway and future consumption levels can be measured.

Note: In some cases, a waterbody may not be able to support the current consumption practices for a T-SUB designation. This can happen when the contamination is so severe that it cannot be feasibly cleaned up in the foreseeable future to make fish or other natural aquatic species safe for the subsistence level of consumption. This is particularly the case in waterbodies with very high levels of mercury. In these situations, even with

stronger protections, the health risks from eating fish may remain too high. The Water Boards consider these limitations when evaluating whether a T-SUB designation is appropriate for a particular waterbody. In these circumstances, the Water Boards will work to ensure fish consumption advisories are posted to provide appropriate warnings.

Distinguishing Consumption under CUL and T-SUB: Degree of Human Health Risk

Both the Tribal Tradition and Culture (CUL) use and Tribal Subsistence Fishing (T-SUB) use involve Tribal consumption of natural aquatic resources. As stated in Part 2 of the ISWEBE, the consumption components of the CUL use and the T-SUB use are designed to “relate to the risks to human health from the consumption of noncommercial fish or shellfish,” but the T-SUB use is designed to “normally involve[s] higher rates of consumption ... than those protected under the [general population’s] Commercial and Sport Fishing [COMM] and the Tribal and Tradition and Culture beneficial uses.” (Part 2, ISWEBE, chpt. II, p. A-3.) Consumption under COMM is generally one fish, filet only, per week. The ISWEBE assumes that the Tribal consumption practices under CUL are similar to the general population’s consumption practices under COMM, unless a site-specific study concludes otherwise (see Part 2, ISWEBE, chpt. III, fn., 4.). The main difference between the CUL consumption and T-SUB uses is the difference in how much is eaten, and how those species are consumed. The differences in these consumption practices can potentially result in differing levels of human health risk. CUL is the appropriate beneficial use when the Tribal consumption practice is similar to that of the general population. T-SUB is the appropriate beneficial use when the Tribal consumption practices are higher or include other consumption practices that could create a statistically significantly higher health risk for Tribal members.

The key difference is that T-SUB reflects situations where a Tribe may face potentially higher human health risks from eating aquatic species than what is protected under CUL and COMM. This higher risk comes from differences in consumption practices. Higher human health risk associated with consumption practices can be the result of many things. For example, a Tribe may have frequent and consistent (year round or seasonal) or high-volume consumption of aquatic species or resources; consumption of aquatic species different from those that are covered under the COMM beneficial use; consumption of species using preparation or cooking methods that differ from consumption under the COMM use; consumption of multiple aquatic species from the same waterbody; or higher cumulative exposure to contaminants from the same water body.

Under CUL, the Tribal consumption practices, including the rate, frequency, portion of species, and type of species consumed, are assumed to be similar to the general population’s consumption practices for the purposes of protection goals. As a result, the Tribal consumption practices under CUL are protected at human health risk levels similar to the general population’s consumption under COMM. Therefore, the existing water quality objectives established to protect the general population under the COMM beneficial use are expected to protect Tribal consumption practices under the CUL beneficial use. That means that, in most cases, new water quality objectives to protect consumption under CUL would not need to be developed to protect the CUL-designated water body. However, if a site-specific study shows that consumption is higher than the general population, such as by eating one fish per week most of the year and eating substantially more during ceremonies, the ISWEBE gives the option of designating either T-SUB or CUL. In this situation, the Tribe would need to confirm that designating CUL instead of T-SUB is appropriate. It would generally be recommended that T-SUB be used in this circumstance, to highlight the need to evaluate whether there is a

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higher risk to human health. If a waterbody is already designated with the COMM beneficial use and has water quality objectives that would also protect the CUL use, the Water Boards should still designate the waterbody with the CUL use to accurately reflect the Tribal consumption practices.

In contrast, Tribal consumption of aquatic life under T-SUB beneficial use are assumed to involve Tribal consumption practices that are different from those of the general population, including higher consumption rates and greater reliance on caught fish. As a result, the consumption practices under the T-SUB beneficial use generally are expected to result in statistically significantly higher potential human health risks than the consumption practices addressed under CUL and COMM, and therefore warrant special consideration. Where Tribal consumption practices are determined to involve a statistically significantly higher risk to human health, the Water Boards would be required to develop more protective water quality objectives than the water quality objectives established to protect consumption by a Tribe under the CUL beneficial use and consumption by the general population under COMM. As a result, a T-SUB designation would typically signal the need for the Water Boards to determine whether it is necessary to establish more protective water quality objectives. For these reasons, a T-SUB designation is appropriate to recognize a Tribe's consumption practices that may involve a statistically significantly higher risk to human health than the human health risks under CUL and COMM.

Lastly, it is worth noting that the harvesting activities that support a Tribal consumption practice under either CUL or T-SUB do not have to be attainable every year (or applicable season) for the beneficial use to be designated. For example, if a Tribe's fishing depends on a strong salmon run and a low run causes limits or cancellations of the harvesting, the original CUL or T-SUB designation remains appropriate.

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Distinguishing Consumption Practices under the CUL and T-SUB Beneficial Uses

This table includes hypothetical examples of potential consumption practices for illustrative purposes only. The examples are not intended to reflect any actual consumption practices.

| Consumption Rate and Frequency | Species and Form | Degree of Human Health Risk* | Designation | Are Water Quality Objectives Needed? |
|--|---|---|-------------|---|
| Consumption of approximately one fish per week on average, year round | Salmon filet | The Tribe's consumption practices and human health risk is similar to the general population's | CUL | Existing water quality objectives for COMM are expected to be protective |
| Consumption of three fish every two weeks (or more) on average, year round | Salmon filet | The Tribe's consumption is significantly higher than the general population's consumption, so the human health risk may be statistically significantly higher than the general population's | T-SUB | More protective water quality objective(s) may need to be developed, depending on health risk |
| Consumption of approximately one fish per week on average, year round, harvested from a large-scale harvest of fish during a seasonal ceremony and stored for year-round consumption | Any fish species that is commonly consumed by the general population; filet only | The Tribe's consumption and human health risk is similar to the general population's | CUL | Existing water quality objectives for COMM are expected to be protective |
| Consumption of approximately one serving per week on average, year round | Alkali fly pupae | The Tribe's consumption is significantly higher than the general population's consumption, so the human health risk may be statistically significantly higher than the general population's | T-SUB | More protective water quality objectives may need to be developed, depending on health risk |
| Consumption of approximately one fish per week on average | Salmon or other fish species, portions other than the filet that tend to have higher levels of harmful substances (e.g., skin, fat, head, organs) | The Tribe's consumption practices are significantly different than the general population's consumption practices, so the human health risk may be statistically significantly higher than the general population's | T-SUB | More protective water quality objectives may need to be developed |
| Ceremonial or other seasonal consumption of approximately five fish per week on average during the season | Any fish species, portions other than the filet that tend to have higher levels of harmful substances (e.g., skin, fat, head, organs) | The Tribe's consumption practices are significantly different than the general population's consumption practices, so the human health risk may be statistically significantly higher than the general population's | T-SUB | More protective water quality objectives may need to be developed |

*Similar to General Population or Potentially a Statistically Significantly Higher Risk

Relationship to Fish and Ecosystem Protections

T-SUB and the consumption-related activities within the CUL use relate to the potential human health risks Tribal members may face when consuming or harvesting natural aquatic resources. Neither T-SUB nor consumption-related activities under CUL are intended to directly protect fish populations or aquatic habitats. Instead, the T-SUB and CUL uses focus on protecting the health of Tribal members who consume fish, shellfish, or other aquatic species and resources.

Fish populations and aquatic habitats are protected and enhanced by other beneficial uses that are designed to support fish, wildlife, or aquatic habitats for the reproduction or development of fish. The following beneficial uses are intended to protect fish and ecosystems: Cold Freshwater Habitat (COLD), Warm Freshwater Habitat (WARM), Fish Spawning (SPWN), Aquatic Habitat (AQUA or HAB), Estuarine Habitat (EST), Rare, Threatened or Endangered Species (RARE), Preservation of Biological Habitats of Special Significance (BIOL), and Shellfish Harvesting (SHELL).

Although these ecosystem-based beneficial uses serve a different purpose, healthy habitats and clean water are essential for supporting cultural practices and subsistence fishing. As a result, water quality protections established for other beneficial uses that enhance aquatic habitats and fish populations may also indirectly support Tribal Beneficial Uses. Similarly, Tribal Beneficial Uses may indirectly support aquatic habitat beneficial uses by emphasizing the value of the fisheries to Tribes. Having a designated Tribal Beneficial Use may help determine what level of protection of a fishery beneficial use is reasonable. The designation of the Tribal Beneficial Uses reinforces the importance of aquatic life beneficial uses on the same water body in supporting the unique cultural and traditional needs of Tribes; the designation of the Tribal Beneficial Uses and aquatic life beneficial uses recognizes their interconnectedness.

Water Rights and Instream Flows

To better understand the Tribal Beneficial Uses, it's important to clarify that the term "beneficial use" is central to both the water rights framework under the California Water Code and the water quality framework under the Porter-Cologne Act. The term "beneficial use" carries distinct legal and policy implications in each context.

- **A water right is legal permission to use a reasonable amount of water for a beneficial purpose. Within the water rights framework the term "beneficial uses" is about who gets to use water, how much they can use, and for what purpose. It is part of the requirements to ensure water is used for a recognized, productive purpose (e.g., irrigation, municipal, domestic supply, industrial, or environmental or recreational needs) that is reasonable and not wasted. (Wat. Code, § 100.)**
- **Within the water quality framework, "beneficial uses" are to preserve and protect the water quality conditions of the waterbody needed to support the use, rather than to guarantee any person or entity a specific quantity of water for their legal use. (Wat. Code, §13050, subds. (f) (beneficial uses), (g) (quality of the water).)**

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The Porter-Cologne Act aims to ensure the *quality* of all the waters of the state are protected for use by the people of the state. (Wat. Code, § 13000.) The Tribal Beneficial Uses are established under the Porter-Cologne Act, which means they are intended to protect water quality of the waterbodies necessary for the cultural, spiritual, and traditional practices of Native American Tribes in and on those waterbodies. Tribal Beneficial Uses are not water rights, and do not provide legal permission to use an amount of water. But Tribal Beneficial Uses can *influence* water rights actions. This means that when the State Water Board reviews water right applications, transfer petitions, or change petitions, or applies the public trust or reasonableness doctrines, it must consider applicable beneficial uses established under the Porter-Cologne Act, including the Tribal Beneficial Uses alongside other water needs.

The State Water Board's water rights actions follow specific laws, including the public interest doctrine, the reasonableness doctrine, and the public trust doctrine. Most Tribal Beneficial Uses are instream uses, meaning they do not require water to be diverted or stored, but instead depend on clean, flowing water remaining in rivers, lakes, or streams and supporting related ecosystems. The need for such water to support a Tribal Beneficial Use will be considered in the State Water Board's water right decisions that could affect the availability of clean, flowing water or access to key locations.

For example:

- **When reviewing a new water right application, the State Water Board must consider how much water should remain in the river or stream to protect beneficial uses (including Tribal Beneficial Uses), if doing so is in the public interest. (Water Code, § 1243.5; see also §§ 1257, 1258.)**
- **When reviewing a petition for a long-term water transfer, the State Water Board must ensure the change will not result in substantial injury to any other legal use of the water or unreasonably affect fish, wildlife, or other instream beneficial uses. (Water Code, § 1736.). A long-term water transfer is a change in the point of diversion, place of use, or purpose of use for more than one year. "Instream uses" means uses of a waterbody that depend on water staying in the river, stream, or lake, rather than being taken out. These instream uses include public trust resources and other beneficial uses, including Tribal Beneficial Uses.**

Even if a Tribal Beneficial Use has not yet been formally designated in a water quality control plan, the State Water Board may still consider it in a water rights proceeding. To do so, there must be enough information in the record to show that the Tribal Beneficial Use is either an existing or a probable future use. Water right decisions generally have notice and comment periods where this information can be submitted.

In cases where the State Water Board has already committed, through a rulemaking, to using its water rights authority to protect a beneficial use or water quality objective, it must uphold that commitment. It cannot change the protections or water quality objectives without going through the proper public process (see *State Water Resources Control Board Cases* (2006) 136 Cal.App.4th 674, 733–734). The State Water Board must also avoid harming senior Tribal water rights, including federal reserved rights, which often protect instream uses.

Some activities under the Tribal Tradition and Culture (CUL) beneficial use, such as ceremonies, navigation, or immersion practices, may be supported by instream flow or bypass requirements that are also intended to protect aquatic life or recreation. The Tribal Subsistence Fishing (T-SUB) beneficial use may also benefit from instream flow protections.

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The CUL and T-SUB beneficial uses were not established to protect fish and wildlife; the goal is to protect human health from eating contaminated fish, shellfish, or natural aquatic resources and, for the T-SUB beneficial use specifically, at higher-than-average rates. While T-SUB is not focused on fish population protection itself, subsistence fishing depends on healthy fish populations. As a result, flow requirements that support fish and aquatic life indirectly support the CUL and T-SUB uses, as long as the fish and other aquatic species are safe to eat. Measures taken to protect fish and wildlife beneficial uses can help ensure that Tribal consumption under CUL and T-SUB remains possible for Tribal communities.

STEPS TO DESIGNATE TRIBAL BENEFICIAL USES

The creation of the Tribal Beneficial Use definitions within the water quality framework was an important milestone. Now, Native American Tribes and the California Water Boards are working together to take the next step: adding these definitions into water quality control plans and officially designating specific waterbodies with Tribal Beneficial Uses.

This section outlines the major components of the designation process. Each Water Board may approach these steps differently. Some may choose to define and designate Tribal Beneficial Uses and adopt water quality objectives and (if needed) implementation plans all at once, and some Regional Water Boards may choose to do one or more of these steps at a time. The approach will depend on input from Tribes, staff capacity and priorities, and available resources. In some cases, the steps may occur in a different order depending on the needs of the region and participating Tribes.

Note: if a Regional Water Board fails to act on a request to designate the Tribal Beneficial Uses or adopt associated water quality objectives, a Tribe may ask the State Water Board to review the inaction under Water Code section 13248. If appropriate, the State Water Board may direct the Regional Water Board to prioritize the water quality standards work requested by the Tribe or may take action itself.

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| Step 1 | Tribe Submits a Designation Request | A Tribe submits a written request identifying Tribal Beneficial Uses for one or more specific waterbodies or waterbody segments. This begins the Tribal consultation process with the Tribe who submitted the request. |
| Step 2 | Add the Tribal Beneficial Use Definitions to the Plan | The Water Board must include the definitions for Tribal Tradition and Culture (CUL) and Tribal Subsistence Fishing (T-SUB) in their water quality control plan. If they are not already included, the Water Board will propose adding them. The basin planning action may include the designation of the Tribal Beneficial Uses and inclusion of the definitions at the same time, or the designations may occur after the definitions have been added to the basin plan. |
| Step 3 | Propose Waterbody Designations | Staff develop proposed draft regulatory language (basin plan amendment) that designates the specific waterbodies or segments for Tribal Beneficial Uses, based on sufficient information provided by the Tribe. |
| Step 4 | Initiate CEQA Process, including Tribal Consultation | The Water Board's basin planning actions must comply with the California Environmental Quality Act (CEQA). This includes notifying Tribes and offering consultation under AB 52. |

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|---------|---|--|
| Step 5 | Evaluate Water Quality Objectives | The Water Board will review existing water quality objectives for the designated waterbody. If current objectives are not sufficient to protect the Tribal Beneficial Use, the Water Board may propose new or updated objectives. Alternatively, the Water Board may defer proposing new or updated objectives to a subsequent water quality control plan amendment, in which case the Water Board would still need to determine whether new or updated objectives will be needed and project what those objectives might eventually be at the time that it designates the beneficial use. |
| Step 6 | Develop Implementation Plan (if needed) | If new objectives are proposed, an implementation plan is developed to describe how they will be achieved. This includes timelines, monitoring, and regulatory actions. |
| Step 7 | Prepare Staff Report, including CEQA Analysis | Once Water Board staff have concluded their initial evaluations, they will draft and circulate to the public a staff report and CEQA analysis to support the proposed water quality control plan amendment. This includes: <ul style="list-style-type: none"> Releasing a draft staff report and CEQA document referred to as a “substitute environmental document” under the Water Boards’ regulations. This substitute environmental document identifies how people or organizations that discharge waste could reasonably comply with new requirements to protect water quality. The document also describes any possible negative environmental impacts from those actions, and it identifies other alternatives to reduce or mitigate those impacts, if any. Holding a public comment period and responding to feedback |
| Step 8 | Adopt the Water Quality Control Plan Amendment | After completing CEQA and other rulemaking requirements, the Water Board conducts a public meeting to formally adopt the amendment to the water quality control plan. This meeting may be combined with the public hearing in Step 4. The amendment includes the designation, any new objectives, and the implementation plan (if applicable). |
| Step 9 | Obtain Final Approvals | The adopted amendment is submitted for: <ul style="list-style-type: none"> State Water Board approval (if proposed by a Regional Water Board) Office of Administrative Law (OAL) approval U.S. Environmental Protection Agency (US EPA) approval (if it includes water quality standards requiring approval under the federal Clean Water Act) |
| Step 10 | Implement Tribal Beneficial Use Designations and Objectives, and Continuous Assessment and Engagement | Once approved, the Water Board uses the updated plan to: <ul style="list-style-type: none"> Guide permitting decisions Set discharge limits Evaluate pollution control needs Monitor compliance <p>The Water Boards continually monitor and assess water quality data to determine if the objectives are being attained so that beneficial uses are reasonably protected.</p> <p>Tribes are encouraged to stay engaged to help shape future protections, including by collaborating on monitoring data exchange and assessments.</p> |

STEP 1: TRIBE SUBMITS A DESIGNATION REQUEST

Meaningful engagement with Native American Tribes is fundamental to carrying out the California Water Board's mission. The California Water Boards recognize and appreciate Native American Tribes' knowledge and experience managing water resources since time immemorial. **Out of respect for Tribal sovereignty, the Water Boards cannot designate Tribal Beneficial Uses without the consent and support of a Tribe.**

The concept and need to develop beneficial uses specific to Tribes came from direct feedback from Native American Tribes and the official definitions were developed in partnership with Native American Tribes and representatives. The process to designate waterbodies with Tribal Beneficial Uses will also rely on the leadership and direction from Native American Tribes.

The Water Boards recognize that all water in California is important. The Tribal Beneficial Use designation process is not meant to determine whether water has value to Native American Tribes. Instead, designation of Tribal Beneficial Uses helps answer these questions:

- *Is the water safe for Tribal members to continue cultural, ceremonial, traditional, spiritual, or subsistence practices without putting their health at risk?*
- *Are the conditions of the waterbody adequate to maintain continued use for cultural, traditional, spiritual, or subsistence practices?*

To answer these questions and provide the right level of water quality protection, collaboration and information-sharing between Tribes and the Water Boards is essential. To begin the Tribal Beneficial Use designation process and determine how best to protect the use, the Water Boards respectfully request the following information from Tribes for Tribal Beneficial Uses that have a specific activity and the waterbody or waterbody segment in which the activity occurs:

- **What type of activity is taking place?**

Is the activity related to cultural, spiritual, traditional, or ceremonial practices (CUL)? Or does the activity involve regular consumption of fish, shellfish, or other aquatic species for subsistence (T-SUB)?

Native American Tribes can submit requests to have specific waterbodies designated with either or both the CUL beneficial use or the T-SUB beneficial use.

- **What are the exposure pathways? What is the timing, frequency, and duration of the activity?**

How often does the activity happen, how long does it last, and are there other ways Tribal members may come into contact with water or aquatic resources? What other factors should be considered, for example are multiple activities happening at the same time? This helps determine the level of potential exposure to toxins or other information needed to protect the use.

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- **Where is the activity happening?**

Which waterbodies are involved? General areas, such as stretches (or segments) of a river or portions of a lake, are enough. Precise locations are not required, because the Water Boards typically designate beneficial uses based on the waterbodies and waterbody segments that are already identified in the beneficial uses chapter of the water quality control plans. (See, e.g., the [Water Quality Control Plan for the Sacramento River Basin and the San Joaquin River Basin](#), pp. 2-6 through 2-15.) If the activity is occurring in multiple waterbodies or waterbody segments, they may be designated at the same time.

Note that a CUL designation associated with spiritual connections to certain aquatic species may be appropriate for an entire watershed, rather than for specific waterbodies or waterbody segments, as discussed below under “Watershed-Wide Designations for Spiritual Connections to Aquatic Species.”

- **If the activity has not occurred since 1968, is it likely to occur in the future?**

For future uses, what cultural revitalization efforts are underway? What actions are being taken now to encourage or support that activity to take place in the future?

- **Can future exposure be reasonably estimated?**

If the use is not currently happening, what is an estimate of how often and in what ways Tribal members are likely to interact with the waterbody in the future?

Additional information to support a designation may include any combination of the following:

- A map, illustration, or table showing general descriptions of where and when Tribal members use the waterbody and how it is used with a description. Identification of specific locations is not required. Identification of the general vicinity (e.g., waterbody or waterbody segment) is sufficient.
- Stories and histories passed down orally, explaining how the Tribe(s) have used the water resources and the waterbody.
- Explanations about how Tribal traditions are being renewed.
- Aggregate reports following any surveys about Tribal fish, shellfish, or aquatic resource consumption rates and methods to demonstrate higher consumption rates than the general public and help determine potential health risks from contaminated waterbodies.
- Written records or ethnogeography of traditional ecological knowledge of the area and the waterbody.
- Additional supporting data that would be useful in some cases:
 - Ecological and water quality data
 - Fisheries surveys
 - Fish tissue sampling data
 - Toxicology data related to exposure to harmful substances and impacts to human health through cultural, traditional, and subsistence use activities

This information can be submitted in a signed letter from an authorized Tribal representative along with any additional supporting documentation.

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Additional details can also be shared through Tribal members' written statements in comment letters, public comments, oral testimony at hearings, Tribal surveys, or gathered through Water Board research and historical materials. A list of guiding questions is included in the Appendix of this booklet to help support the preparation of designation requests.

Identifying Exposure Pathways

The way(s) in which we interact with water can affect the types and severity of human health risks and impacts individuals may experience. To understand and calculate these potential health risks, information on the different ways individuals may be exposed to harmful substances, including pollutants, contaminants, or other hazards that can be detrimental to human health, known as exposure pathways or exposure routes, is required.

Exposure pathways describe the different ways that harmful substances may enter the body and can include:

- **Inhalation:** Breathing in of harmful substances, which are then absorbed into the bloodstream through the lungs. Harmful substances may be in the form of gasses, vapors, aerosols, particulates, dust, or fumes.
- **Ingestion:** Swallowing of harmful substances, which are then absorbed into the bloodstream through digestion. Ingestion can occur intentionally (e.g., consuming food or water that contain harmful substances or unintentionally (e.g., touching a surface that may be contaminated and then touching your mouth).
- **Absorption:** Penetration of harmful substances into the human body through skin or eye contact.
- **Injection:** Direct insertion of harmful substances into the bloodstream through punctures, cuts, or abrasions to the skin. Injections usually occur when handling contaminated items such as broken glass, plastic, blades, or other items capable of breaking the skin.

To get a complete understanding of and to be able to calculate the risks of certain activities to human health, the following information is needed:

- **Who is being exposed to harmful substances?**
Are some activities associated with certain individuals and not others? This can help determine who may be more susceptible to negative human health impacts of exposure to harmful substances.
- **What are the exposure pathways?**
Pathways are the different ways activities may expose participants to harmful substances.
- **When do activities take place?**
Do the activities take place regularly, frequently or seasonally. This can help determine how often someone may be exposed to harmful substances or toxins and help evaluate how water quality may change across seasons.
- **Where do the activities take place?**
In which environments or waterbodies do the activities take place?

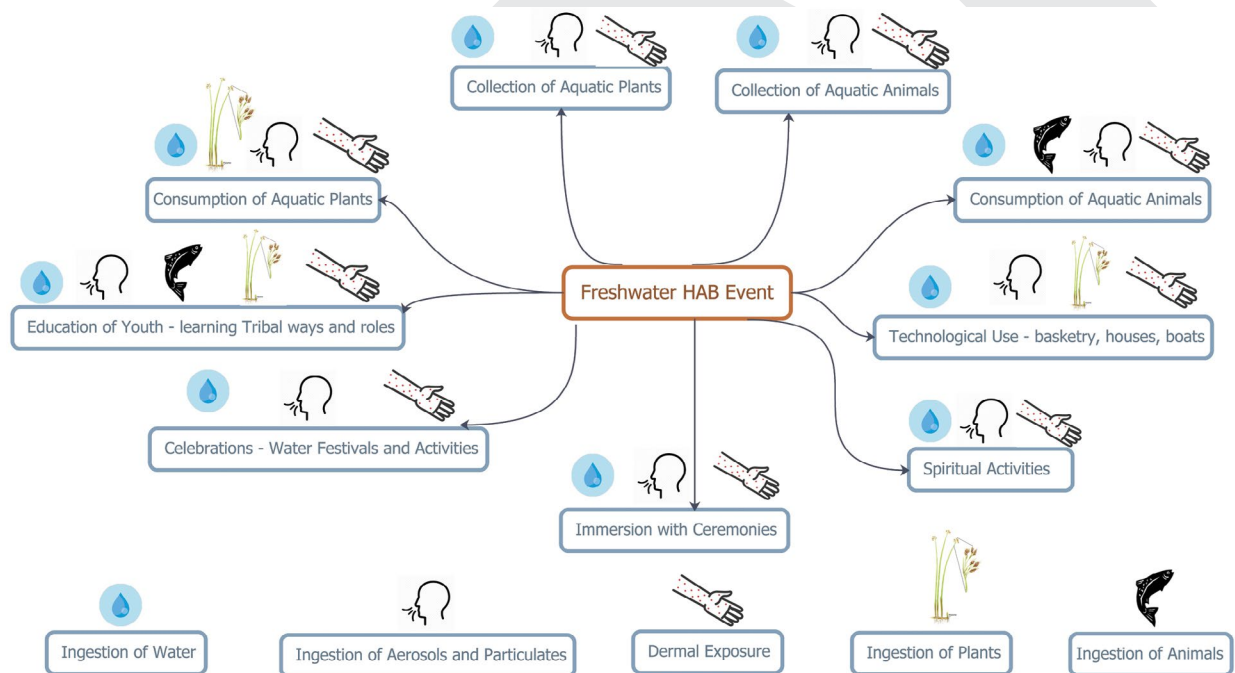
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- **How long do activities last?**

This focuses on the frequency or duration of an activity—this can help determine the duration of potential exposure and therefore the severity of health impacts. The different exposure pathways and related information described above associated with activities can significantly impact the types and severity of health effects one might experience. For example, some substances may not have any impacts on human health when exposed to skin but can be toxic when ingested. Some substances may not have significant impacts to human health when exposure does not happen often, but those same substances may have severe impacts when exposure occurs frequently. Other substances may have significant health impacts even if exposure is limited and/or infrequent.

Knowing the exposure pathways associated with different activities not only helps inform how risks to human health are calculated but can also inform the development of water quality objectives associated with Tribal Beneficial Uses and the actions the Water Boards can take to help protect Tribal communities from water-related exposures.

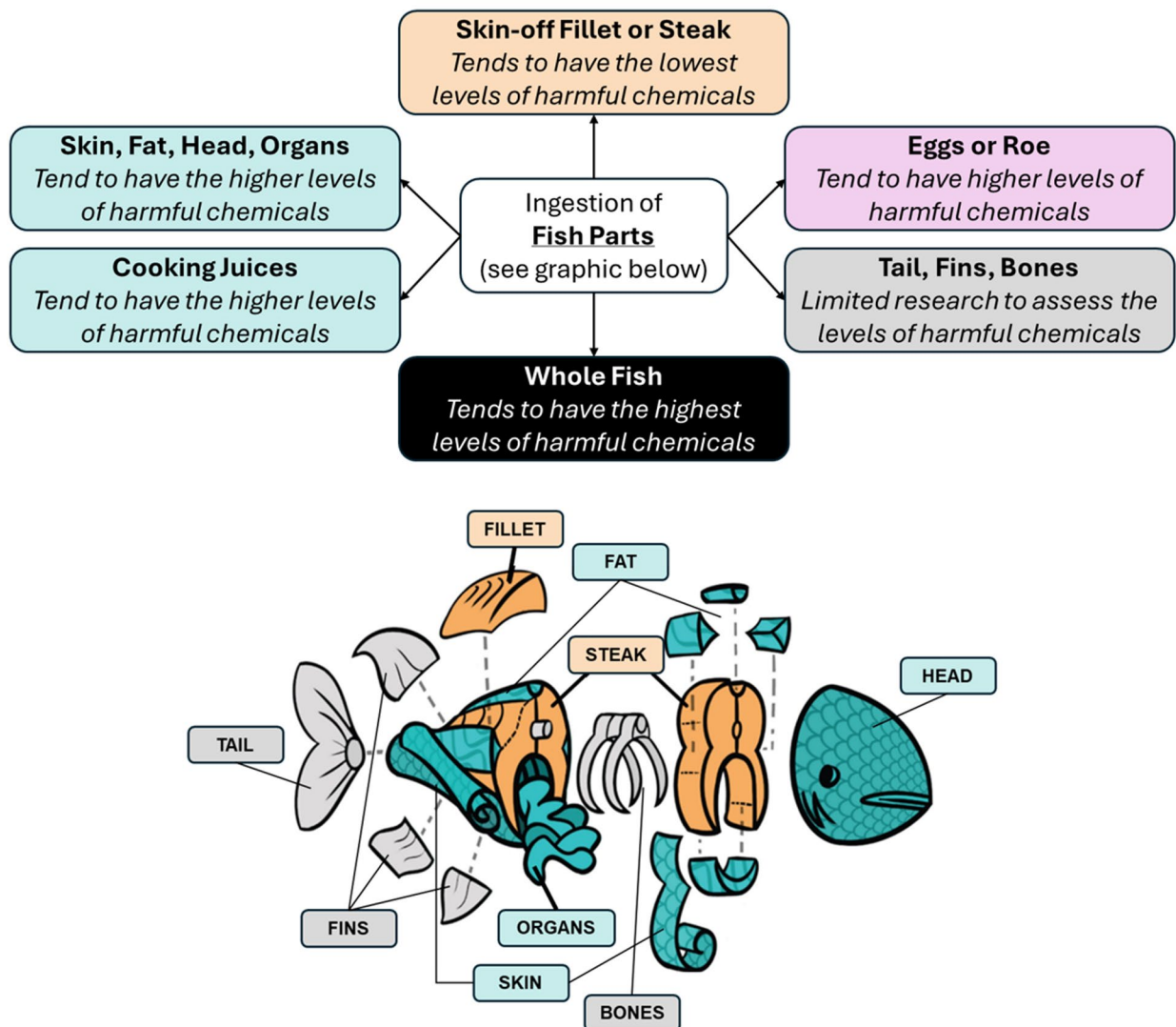
The figure below illustrates the many potential exposure pathways associated with harmful algal blooms and related to Tribal traditions and activities, like the collection of aquatic plants and animals, consumption of aquatic plants and animals, educational methods, celebrations, ceremony, or spiritual activities.



Tribal Cultural Use Conceptual FHAB Impact Pathway: Native peoples were given their land by Creator and honor Creator and their Ancestors by maintaining traditions and cultural landscapes. This is the connection between the land and the people. Uses can be repetitive, gender assigned and long term. Exposures can occur second hand through the use and trade of plants and animals that have been in contact with freshwater harmful algal blooms (FHABs). Figure and caption developed by Big Valley Band of Pomo Indians and Karuk Tribe, with assistance from Meyo Marrufo & Dr. Jeanine Pfeiffer, 2019

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Traditional consumption and use of traditional foods typically involve do not wasting any portion of the food source or materials. Traditional cooking methods may increase the nutrition consumed and may also potentially increase the concentration of toxins. It is up to each individual or family to make decisions on how to prepare, store and consume aquatic food and resources. Designating waters with Tribal Beneficial Uses aims to support Tribal families to be able to continue subsistence and cultural practices. The figure below illustrates the many potential exposure pathways associated with the different parts of a fish one might consume as part of Tribal Tradition and Cultural activities (CUL) or Tribal Subsistence (T-SUB).



Exposure Pathways Associated with Different Fish Parts.

Graphic was adapted from US EPA [Recommended Fish Images to Use with Fish Advisories](#) and California's Office of Environmental Health Hazard Assessment (OEHA) [Guidance on Eating Fish Safely](#).

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The methods used to prepare, cook, and/or consume fish are also part of an individual's exposure pathway and can influence their exposure to harmful substances and corresponding human health impacts. Example preparation, cooking, and consumption methods and their relationship to exposure to harmful substances can include:

- **Trimming the fat, removing the skin, and filleting the fish before cooking can reduce exposure to harmful substances. Many harmful substances tend to build up in the skin, fat, internal organs (or guts), and head of the fish. By not consuming these parts of the fish (i.e. only consuming the fish steak or fillet), exposure to harmful substances and overall health risk can be reduced. Some toxins, like mercury, cannot be removed from the fillet or steak if present.**
- **Limiting how often reproductive parts (eggs or roe) of fish are eaten can help reduce exposure to some harmful substances.**
- **Grilling, broiling, or baking fish so the juices drain away can reduce the amount of some substances in the fish, thus reducing exposure to harmful substances and overall health risk.**
- **Cooking fish thoroughly before eating helps destroy harmful parasites (worms), viruses, or bacteria found in fish that can make people sick.**
- **Traditional cooking methods, like draining the fat away, may help reduce risks to toxin exposure.**
- **Following serving size and frequency recommendations described in [OEHHA Fish Advisories](#) is recommended since they balance the benefits and risks of consuming fish as part of a healthy, well-balanced diet.**

Why This Information Matters

The California Water Boards use the information provided by a Tribe to answer the question: "Is the water safe and adequate for this Tribal Beneficial Use?" The answer helps determine what actions may be needed to support, maintain, or improve water quality.

Once a Tribal Beneficial Use is formally designated for a waterbody, it becomes part of the Water Boards' regulatory framework and must be considered in permitting, enforcement, and water quality planning. Designation ensures that Tribal Beneficial Uses are considered in regulatory decisions, such as permit approvals, pollutant limits, and monitoring programs.

This information helps the Water Boards:

- **Evaluate the level of protection needed**
- **Adjust the timing or terms of permits to prevent harm**
- **Identify where more data or monitoring is needed**
- **Decide whether new water quality objectives are necessary**
- **Determine if designation is feasible, based on current or anticipated water quality**

How Information Submitted Can Be Used to Protect Tribal Health

The beneficial use exists and is already adequately protected.

If the existing water quality objectives of that waterbody already protect the Tribal use, no new water quality objectives may be needed. Some beneficial uses that may have water quality objectives that could provide protection for TBUs include recreational use and consumption of fish by the general population (i.e., REC-1, REC-2, COMM). Even if a Water Board's water quality control plan/basin plan already designates beneficial uses that have water quality objectives that could also provide protection for a Tribal Tradition and Culture beneficial use, it is still important to formally designate the CUL beneficial use. Formally designating the CUL beneficial use is necessary to make those Tribal activities and uses visible and to ensure they are considered in decision-making now and into the future.

The Water Boards need to know generally where and when the activity happens, so that when a permit is reviewed, considerations of how that permit could potentially impact the Tribal Beneficial Use can be considered. Knowing the general location and timing of the Tribal Beneficial Use helps determine whether the timing or location of the permit or action needs to be modified. For example, if an application for an aquatic pesticide permit is being reviewed, and it is determined that the use of the pesticide would conflict with the general location and timing of a Tribal ceremony, that permit could be modified to ensure pesticides are used at a time that does not conflict with the Tribal ceremony.

The beneficial use exists, but it is unclear if it is currently protected.

In this case, the Tribe and the Water Board may need to work together to gather more information. This could include data on exposure risks, water quality, and how often and how long the activity occurs. The goal is to better understand whether current protections are enough or if new protections are needed. For example, current water quality standards may be protective enough for immersion ceremonies and practices, but it may be unclear if it is safe for basket weavers to ingest water pollutants absorbed by the plants when using their mouth to bend wetlands plants. The lack of information does not preclude the Water Board from designating the beneficial use, which may help to prioritize efforts to gather the data and other information that will assist in the future development of water quality objectives to protect the beneficial use.

The beneficial use exists, and we know it is not adequately protected.

If the water quality does not support the beneficial use, further data collection may be needed to understand pollutant levels and health risks. The Water Board may need to develop new water quality objectives or total maximum daily loads and modify permits accordingly. In some cases, if the waterbody is too contaminated and cannot feasibly be restored to safe levels for a beneficial use, designation of that use may not be appropriate. This situation is discussed below in Step 5 ("Evaluate Water Quality Objectives").

Watershed-Wide Designations for Spiritual Connections to Aquatic Species

Many Tribal representatives have emphasized that many cultural, subsistence, traditional and ceremonial practices are inherently watershed-wide. Many Tribal representatives have highlighted that focusing designations on individual stream segments fails to honor the holistic relationship between Tribal Beneficial Uses and the waters that sustain them. The Water Boards recognize and respect these relationships. The Water Boards are directed by the structure of the Clean Water Act and the Porter-Cologne Water Quality Control Act to protect beneficial uses in the locations where they occur. Like most beneficial uses, many Tribal Beneficial Uses involve activities that occur in general locations within a watershed. When that is the case, the Water Boards identify both the specific activity(ies) and the general location(s) to make sure the water quality in that area is protective of the specific activity(ies). When issuing permits for discharges of waste, the Water Boards are obligated to protect the beneficial uses of the water in the vicinity of the discharge, as well as any downstream beneficial uses. This is true for all beneficial uses, not just Tribal Beneficial Uses.

However, a watershed-wide designation may be appropriate for CUL-related spiritual connections and similar uses that are not tied to a particular location. For example, a holistic spiritual connection to the full lifecycle of salmon or other natural aquatic resources may involve the entire watershed, not just one location. The rationale that would support a watershed-wide spiritual connection designation under CUL is that (1) the fish migrate, or the plants exist, throughout the entire watershed and (2) unlike all of the other lifeways or traditions under CUL, a spiritual connection to those species is not location based; the spiritual connection to the species exists regardless of the location of the Tribal member.

To designate an entire watershed, a Tribe would affirm that the spiritual connection to the species is continuous and occurs throughout the watershed, establishing the nexus needed for a comprehensive designation. For this type of designation, the species would be protected primarily by water quality objectives established to protect aquatic life beneficial uses, but the CUL designation would help to reinforce the value of those aquatic life uses to Tribes.

Note that other CUL activities that do occur in particular locations within that watershed would continue to be designated for specific waterbodies or waterbody segments, as discussed above in “Understanding CUL and T-SUB.”

Tribal Data Sovereignty and Limits on Confidentiality

The Water Boards recognize and respect the importance of protecting the confidentiality of Tribal cultural resources, sacred sites, objects, and features of cultural value to a Tribe. The Water Boards also honor the government-to-government relationship with Native American Tribes. Currently, there are no laws that offer confidentiality protections for all types of Tribal information submitted to the Water Boards. For this reason, Tribes and the Water Boards should first discuss what information is needed for a designation and whether it can be protected before sharing it.

The water quality control plan/basin planning process is subject to the Administrative Procedures Act, which requires the Water Boards to base their decisions on a transparent record that is available for review by the public. In most cases, generalized information about Tribal cultural or traditional practices is enough to support a Tribal Beneficial Use designation. For example, exact locations of practices are not required; instead, general stretches of rivers, lakes, or streams can be used. Exact dates are also not needed for ceremonies and other short-term activities. Instead, general seasonal timing (such as spring or fall) is sufficient.

Information about “Tribal cultural resources” shared during formal Assembly Bill 52 Tribal consultation under the California Environmental Quality Act (CEQA) process is intended to remain confidential and protected from public disclosure. “Tribal cultural resources” are defined by the Public Resources Code as “sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American Tribe that are either included or determined to be eligible for inclusion in the California Register of Historical Resources or included in a local register of historical resources” or resources determined by a lead agency to be culturally significant. (Public Res. Code, § 21074(a)(1)-(2)).

Outside of Tribal cultural resources protected within the CEQA A.B. 52 context, once information is shared with the Water Boards, it may become subject to public records act requests under California Public Records Act (Govt. Code, § 7920.000 *et seq.*). Although the California Public Records Act contains protections against disclosure of specified categories of sensitive information, it likely does not protect all forms of sensitive Tribal information. The Public Records Act does not require disclosure of records related to archeological sites, including the records obtained through a consultation process between a California Native American Tribe and a state or local agency (Gov. Code, § 6254.10.). Records of Native American graves, cemeteries, religious and cultural sites, and culturally significant places, features, or objects are exempt from disclosure (*Id.*, § 6254, subd. (r); see also Pub. Resources Code, §§ 5097.9, 5097.993.).

Additionally, data and information about uses related to the human health of identifiable individuals are protected under Health Insurance Portability and Accountability Act (HIPAA) laws and Protected Health Information (PHI) standards. For this reason, surveys completed gathering individual-level fish consumption or cultural use information can be shared at the discretion of the submitting Tribe in aggregate or in summary reports. Further, the names of individual Tribal members who engage in a Tribal Beneficial Use can be kept confidential if desired.

The Water Boards are committed to honoring Tribal sovereignty and will strive to uphold FAIR (findable, accessible, interoperable, reusable) and CARE (collective benefit, authority to control, responsibility, and ethics) principles for Indigenous data governance. The Water Boards will aim to receive only the minimum necessary information to support the Tribal Beneficial Use designation or establishment of corresponding water quality objectives. The Water Boards will aim to work closely with Tribes to make sure that only information the Tribe agrees to share is included in the public record. Alternative approaches, such as verbal communication, Tribal-hosted data-sharing rooms, or on-site meetings, can be used to share preliminary information without creating written records that could be subject to public records requests. Early Tribal consultations will be critical for building a shared understanding of data and information sharing approaches.

STEP 2: ADD THE TRIBAL BENEFICIAL USE DEFINITIONS TO THE WATER QUALITY CONTROL PLANS/BASIN PLANS

Tribal Beneficial Use definitions can be included in both statewide water quality control plans and Regional Water Board basin plans. Although the State Water Board developed definitions for Tribal Beneficial Uses, these definitions are not automatically incorporated into statewide or regional plans. Each Water Board must update its plans with the Tribal Beneficial Use definitions. To assign a beneficial use to a waterbody, the definition of that specific use must be part of the list of beneficial uses outlined in the plan. To incorporate Tribal Beneficial Use definitions, each Water Board must formally adopt them through a plan amendment, either before or at the same time as proposed beneficial use designations and implementation plans.

STEP 3: PROPOSE WATERBODY DESIGNATIONS

Designation involves assigning beneficial uses of water to a waterbody through the adoption of a basin plan or water quality control plan amendment. A proposed Tribal Beneficial Uses designation means the Water Board is recommending that one or more waterbodies be formally recognized in the water quality control plan as being used, or likely to be used in the future, for Tribal Tradition and Culture (CUL) and/or Tribal Subsistence Fishing (T-SUB) purposes.

Once a Tribe submits an official designation request, the Water Board can begin prioritizing the Tribal Beneficial Use designation project. The Water Board reviews information provided by the Tribe(s) about the type of use, when and where it occurs, and whether it is an existing or probable future use. This step involves consulting with the Tribe(s) to identify which waterbodies should be recognized for Tribal Tradition and Culture (CUL) and/or Tribal Subsistence Fishing (T-SUB).

Developing the project may involve engagement with a Tribal working group, focused Tribal-specific workshops, or through one-on-one Tribal engagement and consultation. Developing a project to designate waterbody(ies) with Tribal Beneficial Uses may take time as early discussions with the Tribe(s) and information gathering are necessary.

Tribal Beneficial Uses Must be Protected Regardless of Designation Status

Even if a Tribal Beneficial Use hasn't been formally designated, the Water Boards can still consider and protect it on a case-by-case basis. If a water quality control plan/basin plan does not currently have Tribal Beneficial Use waterbody designations, it does not necessarily mean that Tribal Beneficial Uses do not exist within that waterbody, it may just mean that they have not yet been designated. The Water Boards can still protect Tribal Beneficial Uses through regulatory actions like permitting, waste discharge requirements, and other orders. In order to take regulatory action to protect an undesignated beneficial use, there needs to be sufficient information shared during the Water Board action to demonstrate that a use that has occurred since 1968 may be adversely affected. If there's enough information presented to a Water Board during a water quality permitting process to affirm that a Tribal Beneficial Use could be negatively affected by a proposed discharge of waste, the Water Boards must protect that Tribal Beneficial Use even if it is not officially designated in the water quality control plan yet.

The Water Boards do not have to wait for waterbody designations in water quality control plans to be completed before taking action to protect Tribal Beneficial Uses. However, without formal Tribal Beneficial Use designations, this approach places a greater burden on Tribes who would need to participate in each Water Board proceeding and provide information about the beneficial use and the necessary protections every time a decision could potentially affect their use of the water. Formal designation of Tribal Beneficial Uses helps reduce that burden by making it so that permits consider the Tribal Beneficial Use and the information provided by the Tribe(s) every time a permit or other regulatory action is considered. This makes protections more consistent and lasting.

STEP 4: CONDUCT CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) ANALYSIS AND TRIBAL CONSULTATION

After initiating the project to propose a waterbody designation and beginning Tribal consultation, the next step is to start the environmental review process required under the California Environmental Quality Act (CEQA), which includes continued Tribal consultation and initiating public participation. Before a Water Board can adopt a Tribal Beneficial Use designation through an amendment to a water quality control plan, it must complete the formal environmental review process under CEQA.

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CEQA is a state law that requires state and local government agencies to assess and disclose the potential environmental impacts of proposed projects before they are approved. CEQA helps identify and reduce potential environmental impacts of a project and ensures that decisions are made transparently, with input from Tribes and the public. The Water Boards address CEQA during the development of plan amendments. The documents prepared will include the necessary evaluation of potential environmental impacts by the Tribal Beneficial Use designations.

Key Components in the CEQA Process:

- **Determine CEQA Requirements:** The Water Board determines whether CEQA applies and evaluates whether the Tribal Beneficial Use designation project may adversely affect the environment. A CUL Tribal Beneficial Use designation may qualify as exempt from CEQA if there are other beneficial uses that are already designated for the same waterbody segments or waterbodies, and their water quality objectives protect the CUL activities. Virtually all water quality control plan amendments to designate beneficial uses and adopt water quality objectives to protect those beneficial uses are designed to improve the environment, and the same is true for Tribal Beneficial Uses.

As a result, the CEQA analysis is focused on indirect or incidental adverse environmental effects that may result from the reasonably foreseeable methods for compliance that waste dischargers and others must do to protect the beneficial uses. Examples of methods of compliance could include (1) expanding a wastewater treatment plant into adjacent wetlands to install new nitrogen reduction facilities to prevent harmful algal blooms, and (2) increasing flooding and the spread of invasive vegetation by installing riparian fencing to exclude livestock from streams to reduce pathogens and sedimentation. Where such environmental effects are reasonably foreseeable, the CEQA document must discuss alternatives and feasible mitigation measures that would reduce the effects. Even if there are no such alternatives or mitigation measures, the Water Board may move forward with the beneficial use designation. Note that it is not necessary for the Water Boards to engage in speculation about potential effects.

- **Notify Tribes and Offer Assembly Bill 52 Consultation:** In 2014, Assembly Bill 52 introduced an important legal provision for the CEQA process. A project that could potentially result in a significant adverse change to a Tribal cultural resource is considered a project that may have a substantial impact on the environment.

Under A.B. 52, the Water Board notifies Native American Tribes who are traditionally and culturally affiliated with the area. Tribes that request consultation are invited to participate early in the process to help identify and protect Tribal cultural resources. The Water Boards contacts Tribes who have requested to be added to the Water Boards Assembly Bill 52 notification list as well as Tribes who are listed by the Native American Heritage Commission as being potentially traditionally and culturally affiliated to the project area.

- **Prepare Environmental Review Documents:** Depending on the potential impacts, the Water Board prepares one of the following:
 - a. Substitute Environmental Documentation, including Environmental Checklist
 - b. Explanation that the project is exempt from CEQA

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- **Hold a Public Review and Comment Period:** The public, including Tribes, has the opportunity to review the draft environmental document and provide comments.
- **Respond to Comments:** The Water Board considers all comments received and may revise the environmental document or mitigation measures in response. A final version is posted publicly.
- **Board Decision and Certification:** The Water Board considers the final environmental document, including the results of Tribal consultation and public feedback, before voting to approve the water quality control plan amendment/basin plan. If a Supplemental Environmental Document has been prepared, the Water Board must also approve the Supplemental Environmental Document.
- **Appeals and Legal Challenges (if applicable):** There may be a period for appeals or legal challenges, and Tribal considerations may continue to be part of any dispute resolution process.

During the CEQA public process, the information necessary to support a Tribal Beneficial Use designation becomes part of the public administrative record. The length of the CEQA process, including Tribal consultation, depends on the complexity of the project and the potential for environmental or cultural impacts. In most cases, the process takes several years, and can take even longer if legal challenges arise.

Although mandatory Tribal consultation is triggered under A.B. 52 within the context of CEQA, meaningful Tribal engagement should begin upon a Tribe submitting an official request for designation to a Water Board, even without a legal requirement. Early consultation helps ensure the process is collaborative, culturally respectful, and led by Tribal perspectives from the outset.

California Environmental Quality Act (CEQA) Environmental Checklist

The California Environmental Quality Act (CEQA) environmental checklist, also referred to as the initial study checklist, is a standard list of questions used to evaluate potential environmental impacts of a project. Some environmental factors evaluated include topics such as: aesthetics, greenhouse gas emissions, land use, cultural resources, hazards and hazardous materials, water quality, air quality, etc.

The environmental checklist is used to show whether a more comprehensive environmental analysis is required. The Water Board will need to complete the CEQA environmental checklist as part of any amendment to a water quality control plan/basin plan that could have a significant effect on the environment. To complete the environmental checklist, the Water Board will need enough information about how the waterbody is being used or is likely to be used in the future. This also includes any reasonably foreseeable environmental impacts resulting from the water quality control plan/basin plan amendment, and appropriate project alternatives and feasible mitigation measures for those impacts, if any.

STEP 5: EVALUATE WATER QUALITY OBJECTIVES

As part of the Water Boards' CEQA process to designate Tribal Beneficial Uses, the Water Board will conduct a high-level assessment of the existing water quality objectives that correspond beneficial uses already designated to the same waterbody or waterbodies. This assessment will be used to determine if the existing water quality objectives are adequate enough to protect the new Tribal Beneficial Use designations. Water quality objectives describe the levels of pollutants or conditions (such as temperature or pH) that are allowed in the water while still reasonably protecting the designated beneficial uses.

Water quality objectives may be:

- **Numerical, with specific limits for a pollutant**
- **Narrative, using descriptive language to explain what conditions are acceptable**

Examples of water quality objectives could include:

- **Boron Water Quality Objective:** Boron levels in inland surface waters shall not be greater than 0.75 mg/L. (numerical example)
- **Floating Material Water Quality Objective:** Water should not have floating materials like solids, liquids, foams, or scum in amounts that cause problems or harm beneficial uses. (narrative example)
- **Tribal Subsistence Fishing Water Quality Objective⁶:** The average methyl mercury levels in fish tissue within a year should not exceed 0.04 mg/kg in skinless fillets, considering a mix of 70 percent trophic level 3 fish and 30 percent trophic level 4 fish. (numerical example)

One of the primary differences between numeric and narrative water quality objectives are that numeric water quality objectives are much more efficient and straightforward to implement as effluent limitations in subsequent permits, because they contain specific, measurable numeric limits. In contrast, narrative water quality objectives, which describe desired conditions of a water body (e.g., "waters shall be free from toxic substances"), must go through an additional process for each permit to be translated into a numeric value to implement as effluent limitations. Without that additional process, the lack of measurable limits in narrative water quality objectives presents significant challenges to regulate and, as a result, may provide less protection to beneficial uses.

If a waterbody already has water quality objectives in place to support uses similar to activities under the CUL beneficial use (such as recreation or fishing for human consumption), the Water Board may determine that no new objectives are needed to protect the CUL designation. However, if the existing protections do not go far enough, the Water Board should likely develop new objectives specifically to protect the Tribal Beneficial Use. Almost certainly, one or more protective water quality objectives would need to be developed to protect a T-SUB designation, because consumption under T-SUB necessarily involves higher health risks than those protected under the COMM beneficial use.

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To decide whether new objectives are needed, the Water Boards consider factors such as:

- How the waterbody has been used historically, today, and potential future use
- How people interact with the water (i.e., exposure routes to humans) (e.g., ingestion, swimming, eating fish, contact with plants)
- What are the exposure routes of potential contaminants (dermal, ingestion, etc)
- How often (i.e., frequency) and how long (i.e., duration) people are exposed to the water
- What time of year these activities happen (i.e., water body condition)

A Water Board may decide to incorporate the Tribal Beneficial Use definition, designate waterbodies, and adopt new water quality objectives through one single water quality control plan/basin plan amendment. A Water Board may instead decide to complete those steps through two or three separate water quality control plan/basin plan amendments.

To formally adopt a new water quality objective for a waterbody, the Water Boards must adopt a water quality control plan/basin plan amendment. In some cases, before the water quality control plan/basin plan amendment is completed, the Water Boards may apply water quality objectives through a single discharge regulatory action (e.g., a permit) on a case-by-case basis. This means they can include protective limits and requirements in individual permits to make sure the Tribal Beneficial Use is not harmed while the formal process to develop water quality objectives is still underway. Tribes are encouraged to participate in Water Boards public meetings where development of permits, total maximum daily loads, and other regulatory standards are being set, to advocate for the protection of Tribal Beneficial Uses.

When Water Quality Conditions Do Not Support a Beneficial Use and Designation May Not Be Warranted

Beneficial use designation is the formal mechanism the Water Boards take to recognize a use of a waterbody as a formally protected beneficial use that must be protected under the Porter-Cologne Act and the Clean Water Act as a component of a water quality standard and create enforceable regulatory protections for it. Once designated, the Water Boards are required ensure the beneficial use is protected, by establishing water quality objectives and taking actions, if necessary.

If pollutants in a waterbody exceed water quality objectives for the waterbody's designated beneficial uses, the waterbody's beneficial use and pollutant combination is placed on California's Clean Water Act's 303(d) list of impaired waters, as required by the federal Clean Water Act. A waterbody's inclusion on the 303(d) list as impaired by a pollutant does not prevent the Water Boards from designating a new Tribal Beneficial Use, even if the use is affected by the listed impairment. That is because the impairment is ultimately intended to be addressed by a water quality improvement plan, such as a total maximum daily load (TMDL), and implementation requirements. Tribes are strongly encouraged to participate in the development of such implementation requirements, and remain engaged with the Water Boards' efforts to eliminate the impairment. If a Tribe believes that such efforts are not effective, it may raise its concerns with the Water Board at a public meeting or through consultation.

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However, if the water quality is so degraded and cannot be improved to a level that supports the Tribal Beneficial Use or other conditions in the waterbody preclude the Tribal Beneficial Use after consulting with the Tribe, the Water Boards may determine that designation of the beneficial use is not feasible until the water quality or other waterbody conditions change or technologies are developed that allow the Tribal Beneficial Use to safely occur (see 40 C.F.R. § 131.10(g)(1)-(6) (providing factors that affect the feasibility of attaining of a use)). This may occur in waterbodies where, for example:

- **Dams, diversions, or other types of hydrologic modifications prevent the attainment of the use.**
- **Human caused contaminants, such as methyl mercury, are present at such high levels that prevents attainment of the use (e.g., the higher rates of fish consumption associated with the Tribal Subsistence Fishing (T-SUB) beneficial use).**
- **The beneficial use is otherwise an “existing” use (either currently occurring, or has occurred at any time since 1968), but the water quality has not been adequate to support the beneficial use since 1968 and is not likely to support the beneficial use in the future even with the imposition of discharge requirements or other improvements to water quality.**

In these cases, beneficial use designations would not be warranted because the Water Board’s obligation is to ensure that designations of beneficial uses are not only symbolic but also lead to realistic protections or restoration necessary to support the uses. If the water quality is improved to support the Tribal Beneficial Use in the future, the use could be designated at that time. Additionally, the Water Boards could also include language in the water quality control plan/basin plan that documents the Tribe’s desire to designate CUL or T-SUB in the waterbody in circumstances where the use is currently unattainable. Such language would not be regulatory but would memorialize Tribal priorities that could help focus efforts on improving the water quality—and not allowing the water quality to continue to degrade in the meantime—so that the designation would be considered in a future Water Board water quality control plan/basin plan amendment if the water quality conditions improve enough to support the use. This type of acknowledgement in a water quality control plan/basin plan can also be used when a Tribal use happened only in the past and is no longer happening today or expected to occur in the future. Including these historical Tribal Beneficial Uses as part of a general historical narrative helps document and explain the history of the waterbodies in the region.

⁶ See [Part 2](#) of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California.

STEP 6: DEVELOP IMPLEMENTATION PLAN (IF NEEDED)

Water quality control plans/basin plans are required to have a program of implementation to attain water quality objectives. If the Water Board adopts a new water quality objective to protect a Tribal Beneficial Use, it may also be required to develop an implementation plan as part of the plan amendment. This is the case unless existing implementation provisions in the water quality control plan/basin plan and the Porter-Cologne Water Quality Control Act (e.g., issuing or revising waste discharge requirements that protect the Tribal Beneficial Use) are adequate to protect the new water quality objective.

An implementation plan may include information about the actions that must be taken, when they must be done, and how progress will be monitored to ensure the associated water quality objectives are met. Implementation plans are used for waterbodies under the Water Boards' jurisdiction. To carry out implementation plans, the Water Boards use tools such as permits, orders, and other regulatory actions that apply to people or facilities discharging waste into water.

Permits

Any activity that could impact surface water, groundwater, or coastal water may require a permit from the State or Regional Water Board. Permits are a key way the Water Boards apply water quality objectives. Specific types of permits include waste discharge requirements, waivers of waste discharge requirements, and Clean Water Act section 401 water quality certifications. They often include:

- **Limits on pollutants**
- **Monitoring and reporting requirements**
- **Other restrictions or conditions that protect Tribal Beneficial Uses**

If needed, the Water Boards may issue new permits or revise existing ones to ensure Tribal Beneficial Uses are protected, although the Water Boards' ability to reissue or revise water quality certifications may be limited. This authority to revisit permits includes considering whether an activity could affect a Tribal Beneficial Use, even if the waterbody has not yet been formally designated. Tribes can raise concerns during the permit process to help the Water Board understand potential impacts on cultural or subsistence practices.

Enforcement

The Water Boards ensure responsible parties investigate, clean up, and abate discharges to achieve the water quality conditions of the waterbody before it was affected by the activities of the specific responsible party, or if that is not feasible, then the best reasonable water quality that protects beneficial uses. If permit requirements are violated, the Water Boards may take enforcement actions, encourage voluntary actions, and coordinate with other agencies to protect water quality for Tribal Beneficial Uses. These can include:

- **Cleanup and abatement orders**
- **Cease and desist orders**

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- Time schedule orders
- Fines or penalties
- Supplemental Environmental Projects (SEPs) that offset harm
- Referrals to a district attorney or attorney general

In addition to enforcement actions by the Water Boards, Native American Tribes and other federal or state agencies can take action to help enforce the laws and requirements to help protect water quality. Complaints about permit violations, pollution, illegal diversions, or other activities impacting fisheries or habitats, can be submitted using the [CalEPA Environmental Complaint System](#).

STEP 7: PREPARE STAFF REPORT, INCLUDING CEQA ANALYSIS

Once the Water Board has concluded its initial evaluations, the Water Board will draft and circulate to the public a staff report and CEQA analysis to support the proposed water quality control plan/basin plan amendment. This includes preparing and releasing a draft staff report and CEQA document referred to as a “substitute environmental document” under the Water Boards’ regulations. The substitute environmental document identifies the reasonably foreseeable means of compliance by waste dischargers to protect the beneficial use and comply with the water quality objective, if any. It also identifies any resulting adverse environmental effects and identifies alternatives and feasible mitigation measures to reduce those effects. After the staff report has been distributed to the public, the Water Board will provide a public comment period and respond to the comments.

STEP 8: ADOPTION OF THE WATER QUALITY CONTROL PLAN/BASIN PLAN AMENDMENT

Once the Water Board has completed the development of a draft water quality control plan/basin plan amendment and accompanying CEQA analysis, a draft will be released for public review and comment. Following release of these documents, the Water Board will hold one or more public meetings to hear comments and to decide whether to adopt the plan amendment. This plan amendment may include Tribal Beneficial Use definitions, waterbody designations, and any new water quality objectives or implementation measures.

Tribes, Tribal members, and all members of the public are encouraged to provide written comments and also to attend the board meeting and provide verbal testimonies. Consultation between Tribes and the Water Boards can also continue to occur as the Water Board prepares to decide whether to adopt the plan amendment.

STEP 9: OBTAIN FINAL APPROVALS

After the plan amendment is adopted by the State or Regional Water Board, it must go through several approvals before it becomes enforceable. These approval processes include public steps to obtain Tribal and public input and may also consider potential impacts on statewide consistency.

- The State Water Board must approve plan amendments adopted by Regional Water Boards
- The Office of Administrative Law must confirm the plan amendment followed the correct legal procedures
- The U.S. Environmental Protection Agency must approve any water quality standards that fall under federal Clean Water Act requirements, although U.S. Environmental Protection Agency approval is not necessary for the standards to be enforceable under state law.

STEP 10: IMPLEMENT DESIGNATIONS AND OBJECTIVES AND CONTINUOUS ASSESSMENT AND ENGAGEMENT

Once all approvals are in place, the Water Board begins applying the new Tribal Beneficial Use designations and objectives through their regulatory authorities. This includes:

- Updating permits to reflect the new Tribal Beneficial Use designations
- Requiring pollution controls to meet any new water quality standards
- Monitoring compliance
- Collaborating with Tribes to make sure the protections are effective
- Launching additional efforts, such as cleanup plans, if needed

Protecting Tribal Beneficial Uses is an ongoing responsibility. After designations and water quality objectives are in place, the Water Boards continue to evaluate whether the protections are working as intended. This includes:

- Monitoring and assessing if water quality objectives are being met
- Using the Triennial Review process to assess if the water quality standards are appropriate and/or if new standards are needed
- Staying in communication with Tribes about new concerns, uses, or data

Tribes are encouraged to stay engaged in water quality control planning efforts to help shape future protections and ensure their uses of water remain visible and protected.

HOW TRIBES CAN GET INVOLVED

Below are some ways that Native American Tribes can begin, or continue, engaging in this process:

- **Engage with Water Boards:** Each Water Board is at a different stage in incorporating Tribal Beneficial Uses into water quality control plans/basin plans. Some have established Tribal working groups, others may be soliciting consultation requests, others may be coordinating Tribal summits. Visit the webpages linked at the end of this document to learn about current engagement opportunities, read background information, and review examples and resources. Tribal environmental staff are always encouraged to meet with Water Boards' Tribal Coordinators and other staff to learn about efforts taking place and to partner on this process.
- **Discuss Tribal Beneficial Uses with your Tribal community.** Tribal environmental staff and Tribal Historic/Heritage Preservation Officers can work alongside community members to gather information in ways that honor cultural protocols and Tribal knowledge systems. Tribal staff can then work with their Tribal council for the official designation letter. Creating awareness within the community about the Tribal Beneficial Use process supports shared understanding and strengthens coordination. It is especially important to engage with Tribal cultural practitioners and Elders early on. Their lived experience, cultural knowledge, and teachings provide essential guidance on how waterbodies support community wellbeing, cultural practices, traditions, and how those waters should be protected for future generations.
- **Tribal members can support and share testimonies.** Tribal cultural practitioners, Elders, and Tribal members can work with their Tribal staff and leadership to support Tribal Beneficial Use development. Tribal members can provide documentation and testimony at public meetings and can work with their Tribe to include their testimonies in the formal designation request letter submitted by their Tribal leadership.
- **Participate in Tribal working groups, Tribal summits and workshops.** Engaging in inter-tribal working groups, Tribal summits and workshops are helpful ways to engage in the Tribal Beneficial Use designation process. These platforms provide an avenue for collaboration, knowledge sharing and consensus building.
- **Submit an official letter of support to the State Water Board or Regional Water Board.** Letters of support can urge the Water Boards to prioritize working on Tribal Beneficial Uses project; to incorporate Tribal Beneficial Use definitions into water quality control plans/basin plans; or to support designation of specific waterbodies.
- **Submit an official letter with a request to designate specific waterbodies.** Documentation for designation requests can include any combination of a collection of written narratives describing traditional ecological knowledge; testimonials; summaries with the aggregate results from cultural or fish consumption surveys; photos; or other relevant information about how, when, where, and by whom is the water being used. Prior to submitting the official designation request, Tribes are strongly encouraged to meet with Water Boards staff to discuss what level of detail is needed in the designation request and to discuss what information would be added to the public record.

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- **Request government-to-government consultation.** The Water Boards welcome consultations with Tribal leadership at any stage in the process, even before the consultation window for A.B. 52 commences.
- **Provide oral or written comments during public proceedings.** The Water Boards follow a government-to-government approach when engaging with Tribes. Public processes, like board meetings on water quality control plan/basin plan amendments, provide Tribes with a platform to communicate directly with all board members simultaneously. Public proceedings are also an opportunity for the public to learn about the importance of Tribal Beneficial Uses. Tribes have the option to coordinate directly with the Water Boards to organize panel presentations that are distinct from the regular public comment process during these meetings.
- **Engage in the development of Total Maximum Daily Loads.** Total maximum daily loads (TMDLs) are action plans to restore impaired waterbodies by defining how much of a pollutant a waterbody can tolerate and still attain water quality objectives. Tribal participation is a vital part of the TMDL process. Each TMDL has its own engagement process, which can include attending meetings, submitting written comments on draft reports, and reviewing posted items on the Regional Water Board website. Sometimes, the Regional Water Boards will seek assistance with tasks, such as data gathering, data analysis, or public education efforts.
- **Submit violation complaints.** Complaints for permit violations, water rights or water quality complaints, can be completed through the California Environmental Protection Agency Complaints System: calepa.my.salesforce-sites.com/complaints/Complaint
- **Apply for funding to engage.** The California Environmental Protection Agency's Environmental Justice Action Grants have historically offered funding to support Tribal engagement in the development of Tribal Beneficial Uses. This includes funding to pay for Tribal staff time; development, collection, and distribution of cultural surveys and consumption surveys; hiring toxicologists, attorneys, or other specialists; and outreach and engagement. This grant program is offered when there is available funding. For more information, visit: calepa.ca.gov/ejactiongrants

HOW SUPPORTERS CAN GET INVOLVED:

While designation requests should come directly from a California Native American Tribal government, there are several opportunities for everyone to engage in this process. Tribal organizations, advocacy organizations, nonprofits, and the public can engage through the following ways:

- **Learn about current opportunities to engage.** Visit the webpages linked in this document and sign up to receive notifications about this process.
- **Submit letters of support to the State Water Board or Regional Water Board.** Letters of support can urge the State Water Board and Regional Water Boards to prioritize working on Tribal Beneficial Uses projects; to incorporate Tribal Beneficial Use definitions into the water quality control plan/basin plan; or to support a Tribe's request for designation of specific waterbodies. Letters of support can also help prioritize the Tribal Beneficial Use project during Triennial Reviews.
- **Participate and provide public comments in public workshops and board proceedings.** In addition to holding workshops only for Tribal representatives, some Regional Water Boards may hold workshops open to representatives from Tribal organizations, nonprofits, and members of the public. Other opportunities to provide comments include the California Environmental Quality Act public hearing and State Water Board and Regional Water Board meetings on plan amendments.
- **Submit violation complaints.** Complaints for permit violations, water rights or water quality complaints, can be completed through the California Environmental Protection Agency Complaints System: calepa.my.salesforce-sites.com/complaints/Complaint

ADDITIONAL RESOURCES

State Water Board Website:

waterboards.ca.gov

Tribal Affairs:

waterboards.ca.gov/Tribal_affairs

Tribal Beneficial Uses:

waterboards.ca.gov/Tribal_affairs/beneficial_uses.html

Plans and Policies:

waterboards.ca.gov/plans_policies

Regional Water Board Tribal Coordinators Contacts:

waterboards.ca.gov/tribal_affairs/tribal_contacts.html

State Water Board Tribal Liaison:

Tribal-Liaison@waterboards.ca.gov
(916) 341-5501

CalEPA Environmental Complaint System

bit.ly/calepa-complaint

APPENDIX: GUIDING QUESTIONS FOR PREPARING DESIGNATION REQUEST LETTERS

The following questions are intended to guide Tribal communities as they discuss, reflect on, and begin gathering information for a Tribal Beneficial Use designation request. Tribes do not need to answer every question, nor are these questions meant to function as a questionnaire that must be completed and submitted. Instead, these questions are prompts designed to foster conversation among Tribal members, help identify relevant cultural practices and exposure pathways, and support the development of narratives or documentation that Tribes may choose to include in a designation request.

Responses may be shared in written, photographic, audio, or video form. Before submitting any information in writing, Tribes are strongly encouraged to meet with Water Boards staff to discuss what details will be shared publicly and ensure comfort with what will enter the public record.

Tribal Tradition and Culture (CUL)

- What are the cultural, spiritual, ceremonial, or traditional rights or practices that you or your Tribal community practice that involve waterbodies?
- Are there any traditions or practices that were previously practiced that are no longer practiced today?
- What is the name of the waterbody or waterbodies where those traditions or cultural practices take place? Historically, were there other waterbodies where these traditions or cultural practices were implemented?
- Approximately when are these traditions practiced? Is there a specific season where this practice takes place? Is this a practice(s) that takes place year-round? How frequently? What is the approximate duration of the practice(s)-- for example does it last two hours, two days, two weeks, etc.?
- Who is participating in this practice? Are children, pregnant people, or Elders involved? Is it a large group practice or a practice involving a smaller group of people?
- What are the exposure pathways for the activity? How much exposure to the water is required when implementing this practice(s)? Are people submerged in water for long periods of time, are people swimming in the water, consuming vegetation, or ingesting water, or are there other ways people are exposed to water through this practice(s)?
- How has the waterbody where this practice(s) takes place changed over the course of time? Do Elders recount differences in the water quality of the waterbody? Has the landscape, ecosystem, or the types of plants and animals around the water changed? Are there new ways that the water is now being used?

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- How have changes to the water affected the Tribal traditions or cultural practices? Have practices been modified? Have new practices been introduced? Have some practices stopped altogether?
- For practices that do not occur now but are likely to occur in the future, are there any steps that the Tribal community or others are taking to restore the practices?

Tribal Subsistence Fishing (T-SUB)

- Where do you or your community fish, collect, or harvest regularly? Are you typically collecting fish, shellfish, or aquatic resources from marine, freshwater, or estuary habitats?
- What species are being collected?
- What are your methods of fishing, collection, or harvesting?
- When fishing, collecting, or harvesting, how long are you exposed to the water?
- How frequently do you fish, collect, or harvest fish, shellfish, or aquatic resources? Has the frequency of fishing, collection, or harvesting changed over time? Do your fishing, collection, or harvesting practices change with the time of year or season?
- How many fish, shellfish, or aquatic resources are you consuming per day, week, or month? Has the amount you consume changed over time?
- What kind of fish, shellfish, or aquatic resources are you consuming?
- What part(s) of the fish, shellfish, or aquatic resources are consumed?
- How are you preparing or cooking the fish, shellfish, or aquatic resources before consuming them?
- How much of the total amount of fish consumed comes from the same waterbody?
- Who is consuming the seafood? Is it people who are pregnant, breastfeeding, or might become pregnant (generally individuals 18–49 years) and children (1–17 years)?
- Does your Tribe or Tribal community have future plans that involve consumption of fish, shellfish, or aquatic resources from specific waterbodies? If so, what consumption rates and methods are planned?

DISCLAIMER

This Guide is intended to provide generalized information about the processes of the Water Boards, including the process to designate Tribal Beneficial Uses. It is intended only to describe existing requirements and practices; it does not implement any legal requirements or make them more specific. It does not create any enforceable rights, obligations, or legal standards, and its contents are not binding on the Water Boards or any person. This Guide does not apply to any other governmental agencies or external entities.

This Guide may be updated from time to time. Nothing in this Guide shall be interpreted to prevent the Water Boards or CalEPA from taking timely action to fulfill legal obligations to protect public health, ensure accessibility, or safeguard the environment.

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Page 33: Tribal Cultural Use Conceptual FHAB Impact Pathway Graphic by Big Valley Band of Pomo Indians and Karuk Tribe.

Page 34: Exposure Pathways Associated with Different Fish Parts by US EPA.