



**NCWA**  
Northern California Water Association



*To advance the economic, social and environmental sustainability of Northern California  
by enhancing and preserving the water rights, supplies and water quality.*

February 17, 2017

Ms. Felicia Marcus, Chair  
Members of the Board  
State Water Resources Control Board  
1001 I Street  
Sacramento, California 95814

**Re: Comment Letter – Beneficial Uses and Mercury Objectives**

Dear Chair Marcus and Members of the Board:

The Northern California Water Association (NCWA) submits these comments on the January 3, 2017 draft Staff Report for Part 2 of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries in California—Tribal and Subsistence Beneficial Uses and Mercury Provisions (Plan).

NCWA is working with many of our partners to advance the economic, social, and environmental sustainability of the Sacramento Valley by enhancing and preserving its water rights, water supplies and water quality for multiple beneficial uses, including supporting the rich mosaic of farmlands, cities and rural communities, refuges and managed wetlands, and the meandering rivers that provide habitats for fisheries and wildlife.

Our comments focus on Appendix A of that draft report, which contains the proposed provisions for Part 2 of the Plan. Specifically, we are requesting some edits to Part II of Appendix A, which describes the proposed new beneficial uses that would be added to the plan.

During the February 1 State Water Board staff workshop, staff discussed in detail the relationship between the proposed new beneficial uses in the Plan and potential instream flow requirements. Staff confirmed that the Tribal Tradition and Culture beneficial use is being developed to address navigation, ceremonies, and fishing, gathering and consumption of natural aquatic resources, including fish, and that the Tribal Subsistence and Subsistence Fishing beneficial uses are being developed to address concerns related to risks to human health from fish consumption. Staff confirmed that these latter beneficial uses are not being developed to protect or enhance fish populations or aquatic habitats, and that several existing Porter-Cologne beneficial uses, including WARM, COLD, AQUA, MIGR and SPWN, already are available and being used for these purposes. Because some interested parties had raised concerns about this issue, staff added clarifying language to the draft report.

While we appreciate that clarifying language has been added to the draft staff report, we are concerned that it may not be included in the text that is adopted for the actual amendments to Chapter II of the Plan. We therefore propose that the text regarding beneficial uses on pages A-3 to A-4 of Appendix A of the draft staff report be edited as shown in the enclosed document.

Our first proposed addition is to add the following paragraph to the text regarding beneficial uses:

The State Water Board may develop a flow objective if the flow objective is necessary for the reasonable protection of a beneficial use. However, it is not anticipated that flow objectives would be developed to support the activities contained in the Tribal Traditional & Cultural beneficial use definition.

This text already appears on page 108 of the January 3 draft staff report. We are requesting that it be added to the text of the plan that will be adopted by the State Water Board so that staff's confirmation of this point will be carried forward into the adopted plan.

Our other proposed additions are to add the following text at the end of each new beneficial-use definition:

but not including protection or enhancement of fish populations or aquatic habitats.

The proposed Plan text already states that “[t]he function of the Tribal Subsistence Fishing and Subsistence Fishing beneficial uses is not to protect or enhance fish populations or aquatic species.” Our proposed additions to the definitions of these two beneficial uses would confirm this point and would be included in the actual definitions that may be added to Basin Plans for specific basins in the future. Without these additions, cross references to the adopted Inland Surface Waters Plan would be necessary every time this issue comes up. Our proposed addition of this same text to the Tribal and Culture beneficial use is appropriate to clarify that purposes covered by this beneficial use do not include these two purposes, which, as discussed above, already are covered by several other beneficial uses.

Thank you for your consideration of these comments.

Sincerely yours,

A handwritten signature in black ink, appearing to read "David J. Guy".

David J. Guy  
President

Encl.

cc w/encl.: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

*[The entirety of the following text, except the italicized annotations, is proposed to be adopted as 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 (Part 2)<sup>11</sup>. Part 2 would constitute new regulatory language.]*

## II. BENEFICIAL USES

*[Proposed text to be added to Chapter II (Beneficial Uses) of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California (ISWEBE Plan).]*

A Regional Water Quality Control Board shall use the beneficial uses and abbreviations listed below, to the extent it defines such activities in a water quality control plan after [insert effective date of Part 2].

To designate the Tribal Tradition and Culture or Tribal Subsistence Fishing beneficial uses in a water quality control plan for a particular waterbody segment and time(s) of year, a CALIFORNIA NATIVE AMERICAN TRIBE must confirm the designation is appropriate. No confirmation is required to designate the Subsistence Fishing beneficial use in a water quality control plan.

The State Water Board may develop a flow objective if the flow objective is necessary for the reasonable protection of a beneficial use. However, it is not anticipated that flow objectives would be developed to support the activities contained in the Tribal Traditional & Cultural beneficial use definition.

The Tribal Subsistence Fishing and Subsistence Fishing beneficial uses relate to the risks to human health from the consumption of noncommercial fish or shellfish. The two subsistence fishing beneficial uses assume a higher rate of consumption of fish or shellfish than that protected under the Commercial and Sport Fishing and the Tribal Tradition and Culture beneficial uses. The function of the Tribal Subsistence Fishing and Subsistence Fishing beneficial uses is not to protect or enhance fish populations or aquatic habitats. Fish populations and aquatic habitats are protected and enhanced by other beneficial uses, including but not limited to, Aquaculture, Warm Freshwater Habitat, and Cold Freshwater Habitat, that are designed to support aquatic habitats for the reproduction or development of fish.

- 1) Tribal Tradition and Culture (CUL): Uses of water that support the cultural, spiritual, ceremonial, or traditional rights or LIFEWAYS of California Native American Tribes, including, but not limited to: navigation, ceremonies, or fishing, gathering, or consumption of natural aquatic resources, including fish, shellfish, vegetation, and materials, but not including protection or enhancement of fish populations or aquatic habitats.

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<sup>11</sup> The State Water Board intends to amend the Water Quality Control Plan for Enclosed Bays and Estuaries of California to create the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California Plan (ISWEBE Plan). The State Water Board intends that Part 2 will be incorporated into the ISWEBE Plan, upon the ISWEBE Plan's adoption.

- 2) Tribal Subsistence Fishing (T-SUB): Uses of water involving the non-commercial catching or gathering of natural aquatic resources, including fish and shellfish, for consumption by individuals, households, or communities of California Native American Tribes to meet minimal needs for sustenance, but not including protection or enhancement of fish populations or aquatic habitats.
  
- 3) Subsistence Fishing (SUB): Uses of water involving the non-commercial catching or gathering of natural aquatic resources, including fish and shellfish, for consumption by individuals, households, or communities, to meet minimal needs for sustenance, but not including protection or enhancement of fish populations or aquatic habitats.