

California
Water Boards
Protecting California's Water



Proposed Beneficial Uses Staff Workshop



State Water Resources Control Board
February 1st, 2017
Sacramento, CA

Purpose of Workshop

Identify potential instream flow or water supply implications that could be associated with the beneficial uses

Agenda

- Introduce Project and Schedule
- Brief Background
 - The proposed beneficial uses
 - Definition development is different than waterbody designation
- Purpose of today's staff workshop
 - **Discuss the relationship between the proposed beneficial uses and potential instream flow requirements**
- Answer questions

Introduction

“Draft 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”

- Three Beneficial Uses
- Five Mercury Fish Tissue Water Quality Objectives and Implementation

Project Schedule

The Proposed Tribal and Subsistence Fishing Beneficial Uses and Mercury Provisions

- Draft Language and Staff Report: Jan. 3, 2017
- Written comment period: Jan. 3 – Feb. 17, 2017
- Staff workshop: Jan. 9, 2017
- **Today's workshop**
- SWRCB hearing: Feb. 7, 2017
- SWRCB meeting to consider adoption: TBD [May 2017]

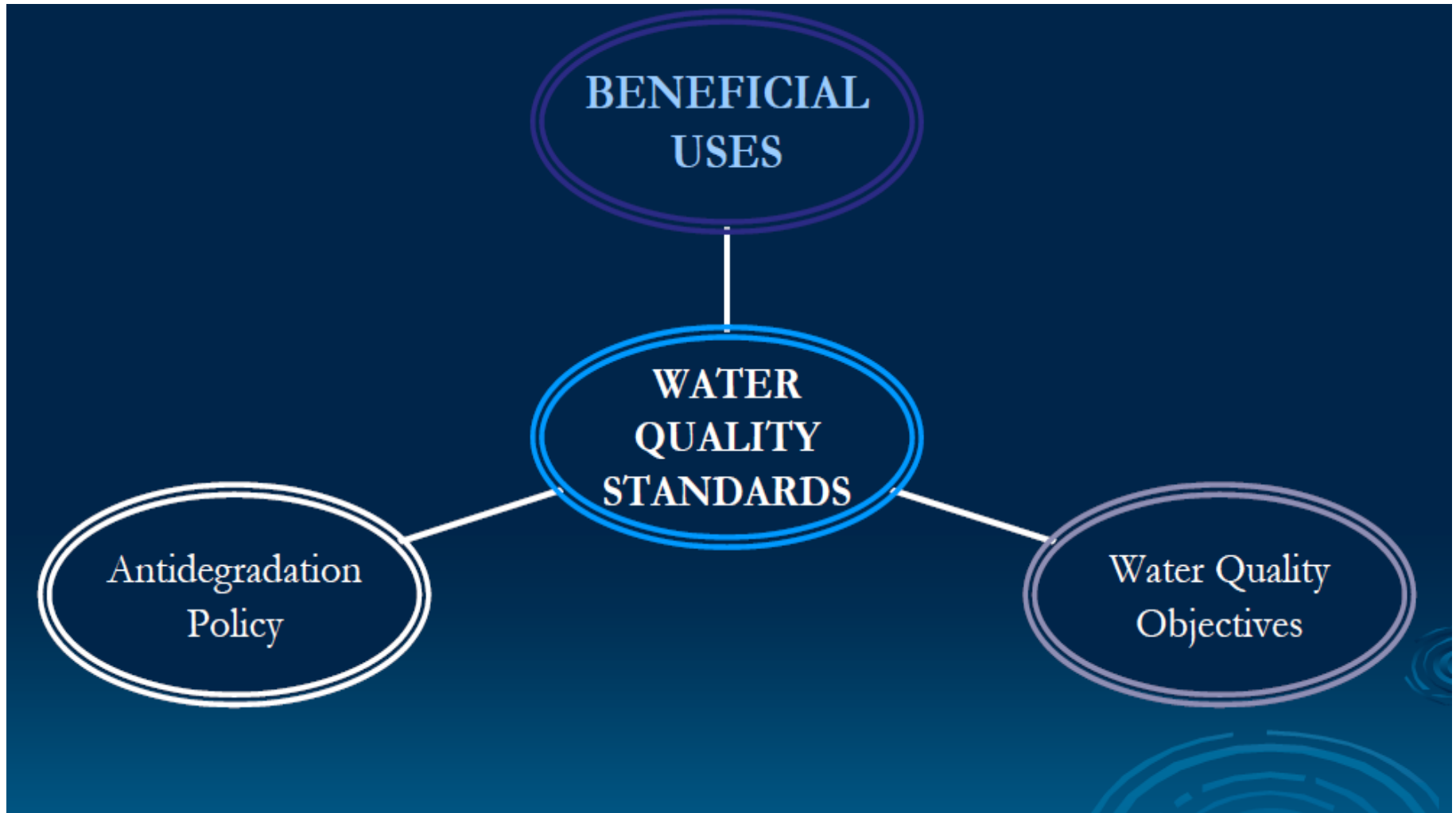
Background

- Of the nine Regional Water Boards, only the North Coast Regional Water Board's basin plan explicitly lists a beneficial use that pertains to the cultural and traditional rights of indigenous people (CUL)
 - Includes subsistence fishing
 - Also contains roughly 30 waterbody designations of that use
 - No flow objectives have been developed for the CUL use
 - Not anticipated to be developed for flow
- Resolution 2016-0011 – State Water Board directed staff to develop the definitions for the beneficial uses pertaining to tribal traditional and cultural, the tribal subsistence fishing, and the subsistence fishing
 - For State and Regional Board use

What Are Beneficial Uses?

- Beneficial uses are the cornerstone of water quality protection
- Reflect the goals for a water body
- Provide a framework for establishing water quality objectives to protect specific uses

What Are Beneficial Uses?



What Are Beneficial Uses?

Examples of existing Porter-Cologne Act beneficial uses:

- (AQUA) Aquaculture
- (COMM) Commercial and Sport Fishing
- (EST) Estuarine Habitat
- (FRSH) Freshwater Replenishment
- (GWR) Ground Water Recharge
- (IND) Industrial Service Supply
- (MIGR) Migration of Aquatic Organisms
- (MUN) Municipal & Domestic Supply
- (NAV) Navigation
- (REC-1) Water Contact Recreation
- (WARM) Warm Freshwater Habitat
- (WILD) Wildlife Habitat

What Are Beneficial Uses?

- The three beneficial uses being developed are for purposes of the Porter-Cologne Act and the Clean Water Act

Note: Beneficial uses under the Porter-Cologne Act are different from water rights beneficial uses.

Draft Beneficial Uses

- Tribal Tradition and Culture
- Tribal Subsistence Fishing
- Subsistence Fishing



Draft Beneficial Use: Tribal Tradition & Culture

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.

Draft Beneficial Use: Tribal Subsistence Fishing

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.

Draft Beneficial Use: Subsistence Fishing

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.

Tribal Subsistence and Subsistence Fishing Beneficial Uses

- Related to risks to human health from fish consumption
- Not being developed to protect or enhance fish populations or aquatic habitats
 - WARM, COLD, AQUA, MIGR, SPWN
- Concern raised to staff – language added to clarify

Draft Beneficial Uses

- Establishing the definitions does not designate any waters with those uses.
- Water-body designation occurs through a subsequent Water Board planning process
 - Requires notice, public participation, hearing and adoption meeting
 - Requires approval by the State Water Board, OAL, EPA

Water Quality Beneficial Use Designations

- **Do Not**

- Implicate water right beneficial uses:

- “Beneficial uses under the Porter-Cologne Act are distinct from the statutory and common law beneficial uses applicable to appropriative water rights.”* (Whereas 16 from Resolution No. 2016-0011)

- Create new water rights

- Affect Federal reserved water rights

- Affect water right priority

- Self-Implement

Implementation of Tribal Tradition and Culture Beneficial Use (once designated in WQCP)

- Recognizes unique beneficial use that encompasses elements that can only be accommodated by flow
 - Tribal ceremonies (immersion)
- Treated same as other designated beneficial uses that may be associated with flow (COLD, REC, etc.)
 - Minimum instream flows or pulse flows for aquatic species
 - Rafting (recreation) flows
- Possible implementation vehicles:
 - Hydropower water quality certifications
 - Water rights implementation of flow objectives in WQCPs

Water Quality Certifications

- Certifications issued for hydropower projects often contain flow-related conditions to protect designated beneficial uses
- If tribal tradition and culture beneficial use designated, could result in requirements to provide flows for protection
 - Would be considered in parallel with other uses
- Opportunity for comment and/or petition for reconsideration of certification conditions

Flow Objectives (Requirements)

- Broad discussion, **not** specific to tribal tradition and culture beneficial use
- May be designated as part of water quality control plan or policy (at state or regional level)
- May be implemented in variety of ways, most likely
 - Water quality certifications
 - Water rights
 - Regulations
- For water rights implementation, Division of Water Rights consulted for consideration of potential impacts
- Opportunities to develop information and comment as part of establishment of flow requirements, including associated environmental document

No Major Changes to Flow Implementation

- State Water Board has authority to address flow needs regardless of water quality beneficial use designations
 - Public Trust
 - Public Interest
 - Reasonable Use
- Defining a water quality beneficial use does not skip any due process associated with instream flow decisions

Examples

- Hydropower Ramping Rates
 - Upper American River Hydroelectric Project (UARP) – one foot per hour for pulse flow releases, minimum flow releases, and recreational releases in specified waterbodies (Condition 3)
- Hydropower Minimum Flow Requirements
 - Specified flows by month and water year type
 - UARP, Gerle Creek, October. between 7 – 23 cubic feet per second based on water year type (critically dry to wet) (Condition 1.C. – Table 5)
- Revised Decision 1644 and its revisions in Order WR 2008-0014

Website

- Project web page:

www.waterboards.ca.gov/water_issues/programs/mercury

- Contact:

- MercuryProvisions@waterboards.ca.gov

Where & When to Submit Comments

- In person:
 - February 7, 2017, Public Hearing to receive oral comments, in Sacramento
- In writing:
 - until February 17, 2017 (at noon)
 - commentletters@waterboards.ca.gov
 - Please indicate in the subject line: “Comment Letter -- Beneficial Uses and Mercury Objectives”

Questions?