

SANTA YNEZ BAND OF CHUMASH INDIANS

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May 29, 2024

BY MAIL AND FED EX

Ms. Jane Gray, Chair

Central Coast Regional Water Quality Control Board

895 Aerovista Place, Suite 101

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RE: Request for Addition of TBU Definitions to the Central Coast Regional Basin Plan & Request for Tribal Consultation

The Santa Ynez Band of Chumash Indians, as the only federally recognized Chumash tribe, requests that the Central Coast Regional Water Quality Control Board (“CCRWQCB”) follow the decision of the Los Angeles Water Board to add three new beneficial use definitions to Chapter 2 of its Basin Plan: Tribal Tradition and Culture (CUL), Tribal Subsistence Fishing (T-SUB), and Subsistence Fishing (SUB).

While we are encouraged that the State Water Resources Control Board made an initial statement of California Indian Tribal Traditional and Cultural Use, it has not been adopted and implemented by each of the Regional Water Quality Control Boards.

ATTACHMENT A TO STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2016-0011 -- As referenced in recital 11 in the accompanying resolution, tribes and tribal representatives propose the following beneficial uses:

California Indian Tribal Traditional and Cultural Use: Uses of water that supports the cultural, spiritual and traditional rights and lifeways of California Indian Tribes. This includes but is not limited to: fishing, gathering, and safe consumption of traditional foods and materials, as defined by California Indian Tribes, for subsistence, cultural, spiritual, ceremonial and navigational activities associated with such uses.

The final language settled on for the Beneficial Uses, Tribal Tradition and Culture (CUL), Tribal Subsistence Fishing (T-SUB), Subsistence Fishing (SUB) are located and can be found in Part 2 of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays and Estuaries of California – Tribal and Subsistence Fishing Beneficial Used and Mercury Provisions”.

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

II. BENEFICIAL USES [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).] The Regional Water Quality Control Boards (Regional Water Boards) shall use the beneficial uses and abbreviations listed below, to the extent such activities are defined in a water quality control plan after June 28, 2017. For the State Water Resources

Control Board (State Water Board) or the Regional Water Boards 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. The Tribal Subsistence Fishing and Subsistence Fishing beneficial uses, and the consumption of fish and shellfish component of the Tribal Tradition and Culture beneficial use, relate to the risks to human health from the consumption of noncommercial fish or shellfish. The two subsistence fishing beneficial uses normally involve higher rates of consumption of fish or shellfish than those protected under the Commercial and Sport Fishing and the Tribal Tradition and Culture beneficial uses. The functions of the Tribal Tradition and Culture, Tribal Subsistence Fishing, and Subsistence Fishing beneficial uses are not to protect or enhance fish populations or aquatic habitats. Fish populations and aquatic habitats are protected and enhanced by other beneficial uses, including but not limited to, Fish Spawning, Migration of Aquatic Organisms, Aquaculture, Warm Freshwater Habitat, and Cold Freshwater Habitat, that are designed to support aquatic habitats for the reproduction or development of fish.

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.

2) Tribal Subsistence Fishing (T-SUB): Uses of water involving the non-commercial catching or gathering of natural aquatic resources, including fish and shellfish, for consumption by individuals, households, or communities of California Native American Tribes to meet needs for sustenance.

WE REQUEST THAT EACH REGIONAL WATER QUALITY CONTROL BOARD MUST ADOPT: The Tribal Tradition and Culture (CUL) and Tribal Subsistence Fishing (T-SUB) beneficial uses of water to better protect fish and wildlife.

This is further supported by the United Nations General Assembly adoption of the United Nations Declaration on the Rights of Indigenous Peoples on September 13, 2007:

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 32

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

In December 2010, the United States announced support for the UN Declaration on the Rights of Indigenous Peoples. <http://www.state.gov/documents/organization/153223.pdf>.

As of June 2013, the federal Advisory Council on Historic Preservation (ACHP) approved the UN Declaration on the Rights of Indigenous Peoples. <http://indiancountrytodaymedianetwork.com/2013/06/03/federal-agency-supports-undrip-new-era-tribal-federal-relations-149676>. ACHP will now incorporate the UN Declaration on the Rights of Indigenous Peoples in the National Historic Preservation Act (NHPA) Section 106 review process.

On March 24, 2014, both houses of the California State Legislature adopted Assembly Joint resolution No. 42:

Resolved by the Assembly and the Senate of the State of California, jointly, That the Legislature of California expresses its endorsement of, and commitment to, the principles of the United Nations Declaration on the Rights of Indigenous Peoples adopted by the United Nations General Assembly;

On May 2, 2017, the State Water Resources Control Board (State Water Board) adopted Resolution No. 2017-0027, which approved “Part 2 of the Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California—Tribal and Subsistence Fishing Beneficial Uses and Mercury Provisions”. The provisions define the tribal tradition and culture (CUL), tribal subsistence fishing (T-SUB), and subsistence fishing (SUB) beneficial uses that should be used by Regional Water Quality Control Boards, including Los Angeles Water Board.

The Los Angeles Water Board adopted the Basin Plan amendment and approved the SED on March 10, 2022, by Resolution No. R22-001.

The Tribe wholeheartedly supports the decision of the Los Angeles Water Board and requests that the Central Coast Regional Water Quality Control Board adopt similar provisions. The Tribe appoints as its consultation representatives Sam Cohen, Government & Legal Officer (Cell: 805-245-9083; scohen@chumash.gov) and Nakia Zavalla, THPO & Culture Director (cell: 805-245-0710; nzavalla@chumash.gov).

Sincerely,



Kenneth Kahn, Tribal Chair

CC:

Jeanine Townsend, Clerk to the State Water Board
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