



# Proposed beneficial uses SWRCB staff workshop



CALIFORNIA  
**Water Boards**  
STATE WATER RESOURCES CONTROL BOARD  
REGIONAL WATER QUALITY CONTROL BOARDS

## **beneficial use definitions**

State Water Resources Control Board  
January 9th, 2017  
Sacramento, CA

# Agenda

- Purpose of today's meeting
- Background & introduction
- New beneficial uses development

# Purpose of Workshop

- Discuss background
- Discuss draft beneficial uses
- Answer clarifying questions

# 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](mailto:commentletters@waterboards.ca.gov)
    - Please indicate in the subject line: “Comment Letter -- Beneficial Uses and Mercury Objectives”

# What are Beneficial Uses?

- Beneficial uses are the cornerstone of water quality protection and reflect the goals for a water body
- Provide a framework for establishing Water Quality Objectives to protect specific water bodies from pollutants and contaminants

# Examples of Beneficial Uses

- Agricultural Supply
- Aquaculture
- Preservation of Biological Habitats of Special Significance
- Cold Freshwater Habitat
- Commercial and Sport Fishing
- Estuarine Habitat
- Freshwater Replenishment
- Ground Water Recharge
- Industrial Service Supply
- Marine Habitat
- Migration of Aquatic Organisms
- Municipal & Domestic Supply
- Navigation
- Hydropower Generation
- Industrial Process Supply
- Inland Saline Water Habitat
- Preservation of Rare, Threatened & Endangered Species
- Water Contact Recreation
- Non-Contact Water Recreation
- Shellfish Harvesting
- Spawning, Reproduction, & Early Development
- Warm Freshwater Habitat
- Wildlife Habitat

# Draft Beneficial Uses

- Tribal Tradition Culture
- Tribal Subsistence Fishing
- Subsistence Fishing



# Tribal Tradition & 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 Tradition & Culture Use

- Specific to California Native American Tribal practices & sovereignty
- Designed to protect traditional and cultural activities
- Examples include:
  - Water emersion ceremonies
  - Gathering aquatic materials, such as reeds for basket weaving
  - Collection and use of aquatic plants used for food and medicines



# California Native American Tribe

- **CALIFORNIA NATIVE AMERICAN TRIBE:** 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.

# 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.*

# Tribal Subsistence Fishing Use

- Specific to California Native American Tribal practices—  
Respects Native American sovereignty
- Protects people who consume of fish and shellfish at levels consumed by California Native American Tribes
- Does not protect the fish or their habitat



# 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.*

# Subsistence Fishing

- Protects non-tribal people who consume fish and shellfish at levels above the average recreational fisher.
- Consumption may be due to cultural practices (not indigenous), for economic reasons, or both
- Also does not protect the fish or their habitat



# Next Steps

Assuming the State Water Board adopts the beneficial uses:

- Regional Boards may designate the beneficial uses to specific water bodies (Basin Plan Action)
- Water Quality Objectives may be developed (Regionwide or Statewide action)
- Implementation programs may be developed

# Select Frequently Asked Questions

- What guidance will the SWRCB provide for designating these uses?
  - “To designate the Tribal Tradition and Culture or Tribal Subsistence Fishing beneficial uses...a California Native American Tribe must confirm the designation is appropriate.”
  - “No confirmation is required to designate the Subsistence Fishing beneficial use”
  - “The two subsistence fishing beneficial uses assume a higher rate of consumption of fish or shellfish than [other] beneficial uses”



# Select Frequently Asked Questions

- Will the Tribal Traditional and Cultural beneficial use require flow objectives or otherwise affect water diversions?
  - It is not anticipated that flow objectives would be developed to support CUL beneficial use
  - These are Water Quality, not Water Rights beneficial uses
  - As Part of a Clean Water Act section 401 water quality certification, these beneficial uses must be considered

# Select Frequently Asked Questions

- Will the two subsistence fishing beneficial uses protect fish habitat and flow to guarantee a quantity of fish?
  - These uses support human health. Draft definitions were updated winter, 2016
  - Existing beneficial uses protect habitat for fish (e.g. WARM, COLD, SPWN, MIGR)
  - “The Tribal Subsistence Fishing and Subsistence Fishing beneficial uses are not to protect or enhance fish populations or aquatic habitats.”

# Select Frequently Asked Questions

- Are these proposed beneficial uses already being protected through other beneficial uses, or other permits?
- It possible to protect these uses with TMDLs?

# Select Frequently Asked Questions

- Are these proposed beneficial uses already being protected through other beneficial uses, or other permits?
  - Tribal activities and fish consumed at subsistence levels are not covered by existing uses
- Is it possible to protect these uses with TMDLs?
  - TMDLs generally are implemented if beneficial uses are impaired

# Select Frequently Asked Questions

- How will these uses interact with beneficial uses adopted by the North Coast Regional Water Board?
  - “The Tribal Subsistence Fishing Water Quality Objective would not apply to waters designated by the North Coast Regional Water Board’s basin plan with the beneficial uses for Native American Culture (which includes subsistence fishing)...In the future, if the North Coast Regional Water Board amends its basin plan with the Provisions’ beneficial uses for CUL, T-SUB, and SUB, such designation would determine which of the Mercury Water Quality Objectives would apply.”

# Select Frequently Asked Questions

- How does the statewide adoption of these uses affect their incorporation into basin plans?
  - Adoption will make them readily available for (but does ***not*** require) designation
  - Regional Water Boards go through the public process to amend their basin plans to set forth the use or to establish designations

# Select Frequently Asked Questions

- When would the Regional Water Boards designate these beneficial uses?
  - Generally, the need to designate is identified during triennial reviews
  - Regional Water Boards go through the public process to amend their basin plans
- What are the criteria needed to designate?
  - Whether the beneficial use is occurring?

# Select Frequently Asked Questions

- Are the proposed tribal beneficial uses restricted to “tribal” or “sovereign” lands or waters?
  - No. The waterbody may be on tribal lands, historic tribal lands, or land that is or could be used by tribes.



# Select Frequently Asked Questions

- Will information be available identifying the specific tribal activity(ies) that justifies the designation?
  - Yes. Information concerning the types of activities will be publically available, as they relate to health risks and exposure. However, out of respect for Native American culture, specific ceremonial practices that are not relevant to consideration of water quality will not be available.

# Select Frequently Asked Questions

- In the absence of water quality objectives, how are the uses going to be protected?
  - The uses must first be incorporated into basin plans and designated to water bodies
  - Existing water quality objectives may be used or new objectives may be developed
  - The regional water board will develop new objectives if necessary

# Anticipated Schedule

Public comment period	January 3 to February 17, 2017
Public workshop	January 9, 2017
Board hearing	February 7, 2017
Board meeting; considered for adoption	May 2017
US EPA shall propose mercury criteria, if US EPA has not already approved Mercury Provisions	June 30, 2017

# Website

- Project web page:  
[www.waterboards.ca.gov/  
water\\_issues/programs/mercury](http://www.waterboards.ca.gov/water_issues/programs/mercury)
- Sign up for project email notices:
  - Form at the web address listed below, at the “Water Quality” tab, by checking the box for “Mercury – Statewide Provisions”
  - [http://www.waterboards.ca.gov/resources/email\\_subscriptions/swrcb\\_subscribe.shtml](http://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.shtml)
- Contact:
  - [MercuryProvisions@waterboards.ca.gov](mailto:MercuryProvisions@waterboards.ca.gov)

# Submitting Feedback

- **Deadline: 12:00 noon, Friday, February 17, 2017**
  - Addresses and details in notice located at the link below:
    - [http://www.waterboards.ca.gov/public\\_notices/comments/index.shtml](http://www.waterboards.ca.gov/public_notices/comments/index.shtml)
- **Hard copy:**
  - Jeanine Townsend, Clerk to the Board
- **Electronically:**
  - [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)
    - Please indicate in the subject line: “Comment Letter -- Beneficial Uses and Mercury Objectives”

# Questions?



Jessica Strickland, LA River



Urban fishing on the LA River