



Bayview Hunter's Point  
Community Advocates



July 29, 2013

Board Chair Felicia Marcus *and*  
Board Members  
California State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

**Re: Beneficial Uses**

Dear Board Chair Marcus and Board Members Spivy-Weber, Doduc, Moore, and D'Adamo

The signatories to this letter formally request that the State Water Quality Control Board adopt two beneficial uses – subsistence fishing (FISH) and tribal cultural uses (CUL) --to be applied state-wide. In so doing, the Board would be following a precedent already established by the North Coast Regional Water Quality Control Board (Region One). It will also ensure that plans to address impaired waters will protect those most vulnerable to toxic exposures such as tribal communities, low income communities, and other communities of color. We further request that the Board conduct proper outreach to California Tribal Nations and Native American communities in order gain wide support for the FISH and CUL definitions. By meeting with tribes the Water Board can verify that California Sovereign Nations have had the opportunity to review and confirm that these definitions are reflective of cultural activities throughout the state. Input from other, non-tribal subsistence fishing communities should also be encouraged through public comment opportunities in order to ensure their health and safety is adequately considered.

The Problem

As part of a research project to assess the effectiveness of California's TMDL program to address the state's impaired waters, Clean Water Action interviewed and met with a wide range of public interest advocates and water experts who had experience in TMDL stakeholder processes. **One of the major problems identified by these advocates is that many remediation plans establish cleanup goals that do not reflect the true beneficial uses of the watersheds; nor do they protect all members of the population from the effects of water pollution.**

As is so often the case, those not being served by TMDLs or other water remediation plans tend to be people already bearing a disproportionate burden of environmental exposures: low income communities, communities of color, and the state's tribal communities. Water quality objectives and

cleanup goals for bioaccumulative contaminants such as mercury and PCBs focus on supporting the beneficial use of commercial and sport fishing (COMM), which is defined as “Uses of water for commercial or recreational collection of fish, shellfish, or other organisms, including, but not limited to, uses involving organisms intended for human consumption or bait purposes”.<sup>1</sup> This definition utterly disregards significant numbers of subsistence fishers in some regions of the state who are consuming much higher levels of contaminated fish than will be safe even if established cleanup goals are eventually achieved. Not only do such targets fail to protect those who fish out of cultural tradition and/or out of economic need, but the focus on fishing alone neglects other fundamental uses of waterways that go back in time to the very beginnings of human habitation in California. The ceremonies, spiritual traditions, and traditional uses of plants and wildlife to support the health and cultures of our tribal communities are not considered and are being lost as water quality and supplies dwindle.

#### *The Need for a Subsistence Fishing Beneficial Use*

In order to protect recreational and commercial fishing, many 303(d) listings in California are based on the impacts on humans who consume fish contaminated by bioaccumulative substances such as mercury or PCBs. However, fish tissue targets based on traditional “sports” fishing averages fail to protect all members of society. For example, both the San Francisco Bay mercury and Delta methylmercury TMDLs established cleanup goals that will allow anglers to safely consume one meal of locally caught fish a week. These goals were established despite advocacy by tribal representatives, organizations representing various other ethnic communities, environmentalists, and environmental justice advocates to set more aggressive goals that would protect Californians eating much higher amounts of fish for cultural and economic reasons.

While morally questionable, setting inadequate cleanup goals is legally defensible as protective of *sport* fishing practices that are officially recognized as beneficial uses of California waters. With the exception of the North Coast Regional Board<sup>2</sup>, California does not recognize subsistence fishing. The end result is environmental injustice as cleanup goals established by TMDLs or other remediation programs do not protect those most vulnerable to the health effects of contaminated fish. Instead, the burden is placed on the impacted communities to change their behavior, thus allocating “the responsibility for addressing risks to those who bear the risks”.<sup>3</sup>

One argument against setting more realistic cleanup goals has been that little is known about the extent of subsistence fishing in California. In fact, this data gap is largely due to the state’s failure to formally recognize subsistence fishing and is a core symptom demonstrating why such a beneficial use must be established. However, the fundamental issue at hand is to protect subsistence fishers and their families by establishing adequate water quality objectives and water remediation goals.

This need is supported by the studies that have been done on fishing practices in the state. While information about fish consumption practices is spotty, studies completed within specific regions or watersheds are strikingly consistent in their findings. Whether done by government agencies, scientists, tribes, or local community groups, in almost all cases, researchers concluded the following:<sup>4</sup>

<sup>1</sup>[http://www.waterboards.ca.gov/sanfranciscobay/water\\_issues/programs/planingtmdls/basinplan/web/bp\\_cj2\\_print.shtml](http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/planingtmdls/basinplan/web/bp_cj2_print.shtml)

<sup>2</sup>See [http://www.waterboards.ca.gov/northcoast/water\\_issues/programs/basin\\_plan/083105-bp/03\\_bu.pdf](http://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/083105-bp/03_bu.pdf)

<sup>3</sup>J. Christian-Smith, P. H. Gleick, et. al., *A Twenty-First Century U.S. Water Policy*. Oxford University Press, 2012, page 66.

<sup>4</sup>See list of studies attached.

- The highest rates of contaminated fish consumption are among ethnic communities with cultural ties to fishing, as well as low income communities who rely on local waters to feed their families. Repeatedly, surveys indicate that Asians, Pacific Islanders, African Americans, and Native Americans are among those most at risk.
- More data needs to be generated about fish consumption in order to make appropriate policy decisions that protect all Californians.
- Fish advisories are often based on recreational angler consumption practices and thus are not adequately protective of subsistence fishers.

While a study currently underway to characterize tribal fishing practices will provide welcome information on which to establish more protective fish tissue targets, it is just the beginning of better understanding the overall reliance by Californians on their waterways for food. Establishing a subsistence fishing beneficial use for tribes and other members of the population will drive better research on actual fishing and consumption practices, superior analysis of water quality and identification of impairments, wiser policy decisions, and more effective cleanup programs. More importantly, it will require water quality objectives and water remediation plans to protect vulnerable populations who are most effected by fish contamination. Consequently, we ask the State Board to adopt a beneficial use that officially recognizes “uses of water that support subsistence fishing<sup>5</sup>”.

#### *The Need to Recognize Tribal Cultural Uses*

Subsistence fishing, while critical to many tribes, is just one of many cultural uses of water. As a result of a long history of discrimination, forced movement, lack of access to traditional lands, the legal loss of water rights, the degradation of water quality resources, and suppression of tribal cultural practices, many of these benefits have been impacted. Consequently, as California’s native communities seek to continue to practice their ancestral traditions, analyses of the state’s waterways and their social benefits ignore tribal cultural practices.

Tribal resources are in jeopardy state-wide and are not being protected. Existing designations do not respond to the diversity of tribal cultural practices across the state, the degree of exposure experienced by tribal members who practice their traditions, or the impacts of water decisions made upstream that influence water quality and supply within traditional tribal territories.

The impacts on tribal populations are devastating, including increased exposure to polluted water during ceremonial and traditional use. This includes contamination through aquatic plants used in, but not limited to gathering, and safe consumption of traditional foods and materials for cultural, subsistence, and ceremonial use. Other impacts include reduced flow of waterways that support plant and wildlife species integral to tribal physical and spiritual health. These impacts lead to increased poverty and previously unheard of health problems, such as increased diabetes, associated with dietary changes when safe fish are no longer available from local waters.

Fortunately, there is a way that the state can reverse the history of neglect of the heritage and physical wellbeing of California’s tribes. Region One defines Native American Culture (CUL) or tribal cultural uses of water as those “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

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<sup>5</sup> Taken from Region One description of beneficial uses, [http://www.waterboards.ca.gov/northcoast/water\\_issues/programs/basin\\_plan/083105-bp/03\\_bu.pdf](http://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/083105-bp/03_bu.pdf), page 2.3.00

traditional ceremonial locations, and ceremonial uses.”<sup>6</sup> We propose that the state initiate meetings directly with Tribal Nation leadership to discuss and to verify that the language adopted by Region One is applicable to tribes throughout California or to determine if alternative language is preferred. Given the diversity of tribal cultural traditions, we further ask the State Board to specifically establish a policy that requires that Regional Boards work with tribes who have cultural connections to affected watersheds, in order to identify these uses and consider them when assessing water quality and establishing cleanup goals and strategies for those waters deemed impaired. This policy should extend to all tribes in the state, both recognized by the U.S. government and those not recognized.

Designating a cultural beneficial use for all tribes in California should be undertaken in order to protect tribal traditions. It is the right of tribes to practice their religious ceremonies and traditions. The resources needed to continue these practices hinge on a healthy ecosystem which is protected, generally, under many state and federal laws. Establishing a cultural beneficial use in all regions of California is the first step toward educating both the state and neighboring water users of the needs for tribal cultures, as well as the rights of Indian people. Establishing a subsistence fishing beneficial use, as Region One did, will further protect tribal health and safety, and extend that protection to other vulnerable populations as well.

Sincerely,

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<sup>6</sup>Ibid.

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Cc: Thomas Howard, Executive Director

## Fish Consumption Studies for California

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