



**CVCWA**  
**Central Valley Clean Water Association**  
*Representing Over Fifty Wastewater Agencies*



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**TERRIE MITCHELL** – Vice Chair, Sacramento Regional CSD  
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February 11, 2016

***Via Electronic Mail Only***

Felicia Marcus, Chair  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814  
[commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

RE: February 16, 2016 Board Meeting – Resolution Directing Staff to Develop Beneficial Uses Pertaining to Tribal Traditional and Cultural, Tribal Subsistence Fishing, and Subsistence Fishing

Dear Ms. Marcus:

The Central Valley Clean Water Association (CVCWA) appreciates the opportunity to comment on the Draft Resolution Directing Staff to Develop Beneficial Uses Pertaining to Tribal Traditional and Cultural, Tribal Subsistence Fishing, and Subsistence Fishing (Draft Resolution). CVCWA is a non-profit association of public agencies located within the Central Valley region that provide wastewater collection, treatment, and water recycling services to millions of Central Valley residents and businesses. We approach these matters with the perspective of balancing environmental and economic interests consistent with state and federal law. In this letter, we provide the following comments regarding the State Water Resources Control Board's (State Board) proposed approach for developing such beneficial uses. Specifically, CVCWA comments on the fact that this process has not consisted of a public participation process that first asks if development of such beneficial uses are necessary, questions the water bodies (or types of water bodies) such uses would apply, and contemplates what types of water quality objectives and criteria would be used to protect such beneficial uses.

Resolved clauses 10 through 12 explain the State Board’s process to date with respect to engaging Tribal and environmental justice representatives for obtaining their input on developing beneficial uses for Indian Tribal Traditional and Cultural, Indian Tribal Subsistence Fishing, and Subsistence Fishing Uses (collectively referred to hereafter as “New Uses”). From that process, and based on the Draft Resolution, the State Board now looks to direct staff to engage in a public participation process to seek input on the new beneficial use categories. CVCWA is concerned that this process to date as has failed to include public participation in asking fundamental questions prior to moving forward with developing new beneficial uses.

First, it does not appear that there has been a broad public process that first asks and discusses if there is a need for New Uses. There are many beneficial uses in the water quality control plans throughout the state, and most plans include categories that arguably capture and protect the activities described in the New Uses, or at least already protect most of the activities. Thus, there is great uncertainty as to the need for additional beneficial uses as described in this Draft Resolution.

Second, to our knowledge, there has been no discussion on how those New Uses will be applied to various water bodies throughout the state, and once applied, what types of permit limitations may result to protect such uses. While we recognize that the Draft Resolution states that no such designations occur until the State Board or Regional Boards amend water quality control plans to include such designations, it appears that there should be some initial discussion with all interested stakeholders as to the types of water bodies that might be subject to such designations. Otherwise, New Uses are developed without any clear understanding of the types of water bodies the New Uses are intended to protect. Too often in the past, well-meaning resolutions and policies have resulted in wide-spread, blanket beneficial use designations that have created odd and improper beneficial use applications (e.g., municipal and domestic use is applied to effluent dominated waterways through the tributary rule and/or the sources of drinking water policy). The State Board and Regional Boards need to ensure that adoption of New Uses do not result in such unintended results, and the public should have a clear understanding of the types of water bodies for which these New Uses are intended to protect.

Next, CVCWA and its members are deeply concerned how application of such beneficial uses could impact discharges from publicly owned treatment works (POTWs), and the use of recycled water. POTWs provide significant public health benefits by treating wastewater, and in many cases, by treating wastewater to levels safe for reuse purposes. Broad New Uses that have no identified water quality objectives must still be protected, and Regional Boards result to best professional judgment in determining what objectives and/or criteria are necessary for protecting such uses. These decisions result in permit limitations that may or may not be reasonable to meet for individual dischargers. The draft New Uses as included in Attachment A to the resolution include terms that are very subjective, and difficult to interpret. For example, references to cultural, spiritual and ceremonial activities are broad terms that may have significantly different meanings to many people.

In light of the many issues that can result from the creation of New Uses, CVCWA recommends that the State Board direct staff to engage in a public process, with all interested stakeholders, to, at the very least, 1) determine if such New Uses are necessary, 2) discuss what types of water bodies would be appropriate for application of such New Uses, and 3) discuss how water quality objectives/criteria would be identified and implemented to protect such New Uses when water bodies are designated with such uses. Without such process and discussion, it is difficult to determine the true intent and impact that may result from the creation of such New Uses.

Accordingly, CVCWA recommends that the Draft Resolution be revised as follows:

- ~~1. Directs State Water Board staff to develop proposed beneficial use categories, including definitions, pertaining to tribal traditional and cultural use, tribal subsistence fishing use, and subsistence fishing use by other cultures and individuals.~~
- ~~2. Directs State Water Board staff to consider the beneficial uses presented in Attachment A when developing the aforementioned beneficial use categories.~~
31. Directs State Water Board staff to utilize the applicable public participation process to discuss development of beneficial uses pertaining to tribal traditional and cultural use, tribal subsistence fishing use, and subsistence fishing use, including but not limited to, determining whether or not to develop proposed beneficial use categories, identifying the types of water bodies that such beneficial uses might apply should such beneficial uses be deemed necessary, and identifying how such beneficial uses would be interpreted and implemented in the state's water quality programs. The State Water Board staff shall when developing the beneficial use categories and seek input from representatives of the tribes, environmental justice organizations, the regulated community, and all other interested entities and individuals during this public participation process.
42. After completion of the public participation process identified in paragraph 3, will consider adopting the beneficial use categories and definitions proposed by staff as part of the Mercury Amendment to the statewide Water Quality Control Plan for Inland Surface Waters, Enclosed Bays and Estuaries, no later than April 2017, to create a consistent set of beneficial uses to be used by the Water Boards.

Felicia Marcus, Chair

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We appreciate your consideration of these comments. If you have any questions or if CVCWA can be of further assistance, please contact me at (530) 268-1338 or [eofficer@cvcwa.org](mailto:eofficer@cvcwa.org).

Sincerely,



Debbie Webster,  
Executive Officer