



## REGIONAL WATER QUALITY CONTROL BOARD, CENTRAL VALLEY REGION

### **TRIBAL BENEFICIAL USES DESIGNATIONS: A PRIMER TO THE BASIN PLAN AMENDMENT PROCESS**

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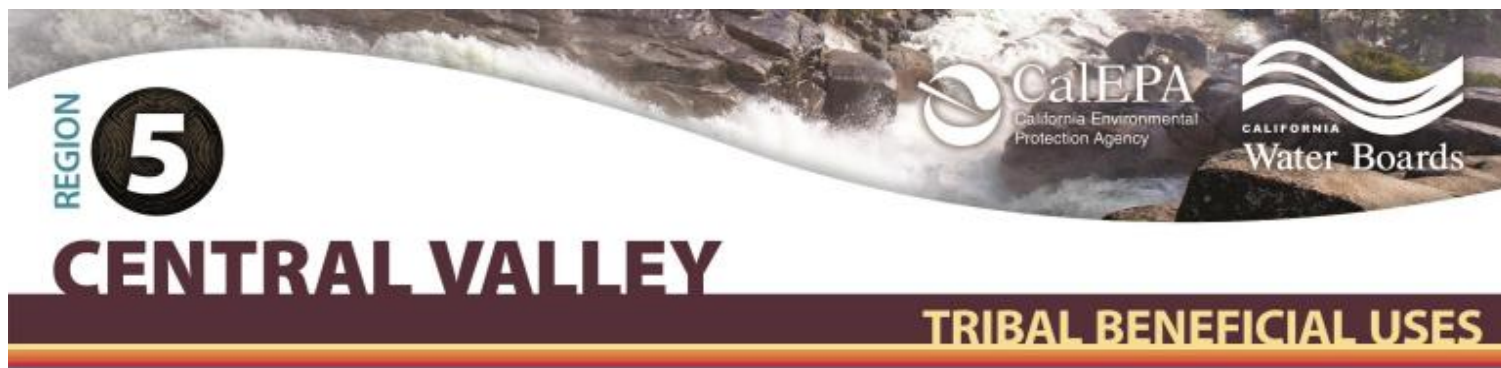
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CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY



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### Introduction to the Water Boards

The Porter-Cologne Water Quality Control Act and the federal Clean Water Act are the cornerstone of today's water protection efforts in California. There are ten California Water Quality Control Boards, including the State Water Resources Control Board (State Water Board) and nine Regional Water Quality Control Boards (Regional Water Boards) (collectively, Water Boards), located throughout California. The State Water Board is responsible for setting statewide policies, adjudicating petitions of Regional Water Board actions, and adopting permits, regulations, and policies that extend beyond the jurisdictional boundaries of two or more Regional Water Boards and for regulating water rights, including water quantity and flow. The Regional Water Boards are responsible for enforcing water quality regulations and planning programs within their Region's boundaries.

### To learn more...

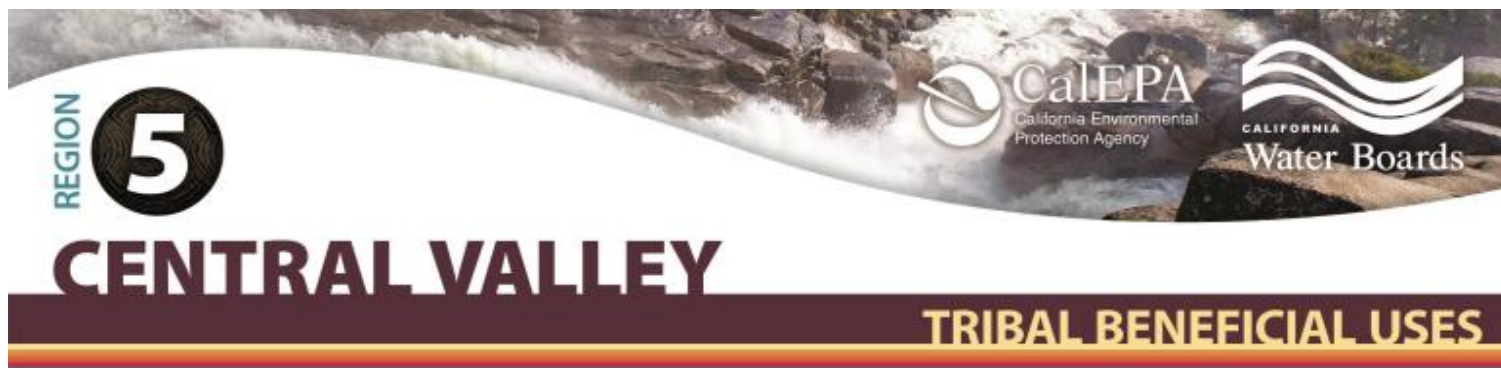
More information about the California Water Boards can be found [here](#)<sup>1</sup>. A map of the Regional Water Boards can be found [here](#)<sup>2</sup>.



*Image 1: Sacramento-San Joaquin River Delta; courtesy of the State Water Resources Control Board.*

<sup>1</sup> [www.waterboards.ca.gov/publications\\_forms/publications/factsheets/docs/boardoverview.pdf](http://www.waterboards.ca.gov/publications_forms/publications/factsheets/docs/boardoverview.pdf)

<sup>2</sup> [https://www.waterboards.ca.gov/waterboards\\_map.html](https://www.waterboards.ca.gov/waterboards_map.html)



## What are Basin Plans?

The Porter-Cologne Water Quality Control Act, found within the California Water Code, requires the nine Regional Water Boards to formulate and adopt water quality control plans, or basin plans, to regulate water quality within the region. Basin plans provide the foundation for the Central Valley Water Quality Control Board's (Central Valley Water Board) regulatory actions. The Basin Plans also fulfill many of the federal Clean Water Act's requirements for water quality standards planning, management and implementation. Basin plans are considered regulations and are cross-referenced in Title 23 of the California Code of Regulations.

The Central Valley Water Board has two Basin Plans for the region, the Sacramento and San Joaquin River Basin Plan and the Tulare Lake Basin Plan. The Central Valley Water Board Basin Plans are located [here](https://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/)<sup>3</sup>.

## What do Basin Plans Contain?

- Designated beneficial uses for both surface and ground waterbodies in the basins. ("Beneficial uses" is the state term that is equivalent to "designated uses" under the federal Clean Water Act.)
- Water quality objectives (WQOs) to protect those beneficial uses ("Water quality objectives" is the state term that is equivalent to "water quality criteria" under the federal Clean Water Act. In California, beneficial uses and the water quality objectives to protect those uses are together considered "water quality standards" under the federal Clean Water Act.)
- Implementation programs to achieve water quality objectives, including a description of actions necessary to achieve objectives, a time schedule for actions to be taken, and a description of the surveillance and monitoring activities needed to determine regulatory compliance with objectives
- An anti-degradation policy to preserve high-quality waters within the region

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<sup>3</sup> [https://www.waterboards.ca.gov/centralvalley/water\\_issues/basin\\_plans/](https://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/)



# CENTRAL VALLEY

## TRIBAL BENEFICIAL USES

### Tribal Beneficial Uses History at the Water Boards

In 2017, the State Water Board adopted mercury water quality objectives to protect the beneficial uses associated with fish consumption and established three new beneficial use definitions—Tribal Traditional Culture (CUL), Tribal Subsistence Fishing (T-SUB), and Subsistence Fishing (SUB)—for inland surface waters, enclosed bays, or estuaries in the state. (State Water Board Resolution 2017-0027.)

### The Beneficial Use Definitions



#### 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.



#### Tribal Subsistence Fishing (T-SUB)

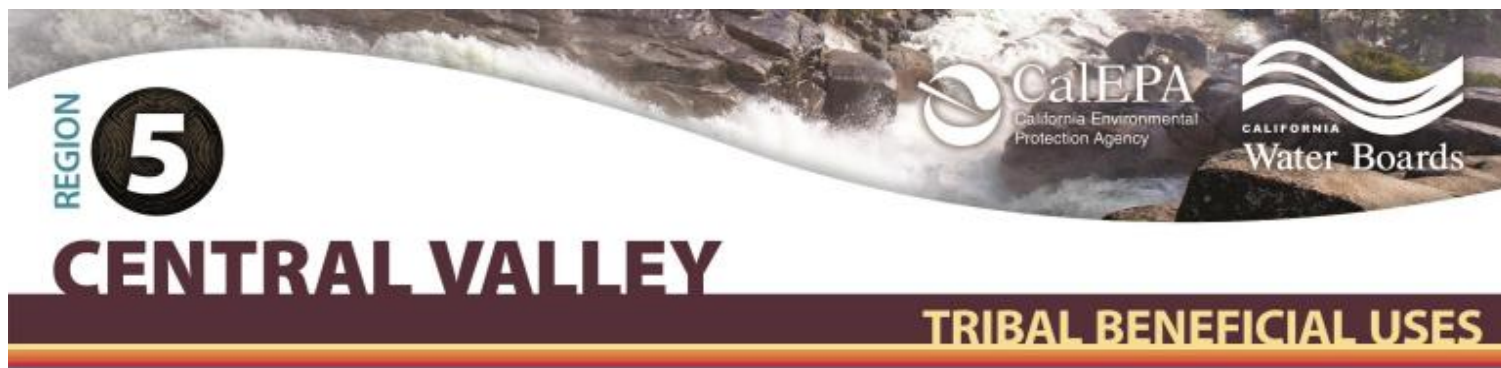
- Uses of water involving the non-commercial catching or gathering of natural aquatic resources, including fish and shellfish, for consumption by individuals, households, or communities of California Native American Tribes to meet needs for sustenance.



#### Subsistence Fishing (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, to meet needs for sustenance.\*

\*The SUB beneficial use does not mention “California Native American Tribe” in its definition but is grouped with the CUL and T-SUB beneficial uses because it may still be of interest to, and can still be utilized by California Native American Tribes, tribal members, as well as other interested persons or members of the public.



## The Statewide Mercury Water Quality Objectives

[The statewide mercury water quality objectives](#)<sup>4</sup> do not supersede any site-specific numeric mercury water quality objectives established in the Central Valley Water Board's Basin Plans.

### Sport Fish Water Quality Objective

- The average methylmercury concentrations shall not exceed 0.2 milligrams per kilogram (mg/kg) fish tissue within a calendar year. The water quality objective applies to the wet weight concentration in skinless fillet in trophic level 3 or trophic level 4 fish, whichever is the highest trophic level fish in the waterbody. Freshwater trophic level 3 fish are between 150 to 500 millimeters (mm) in total length and trophic level 4 fish are between 200 to 500 mm in total length, except for sizes specified in Attachment C, or as additionally limited in size in accordance with the legal size limit for the species caught. Estuarine fish shall be within the legal size limit and greater than 150 mm, or as otherwise specific in Attachment C.

### Tribal Subsistence Fishing Water Quality Objective

- The average methylmercury concentrations shall not exceed 0.04 mg/kg fish tissue within a calendar year. The objective applies to the wet weight concentration in skinless fillet from a mixture of 70 percent trophic level 3 fish and 30 percent trophic level 4 fish as detailed in Attachment C.

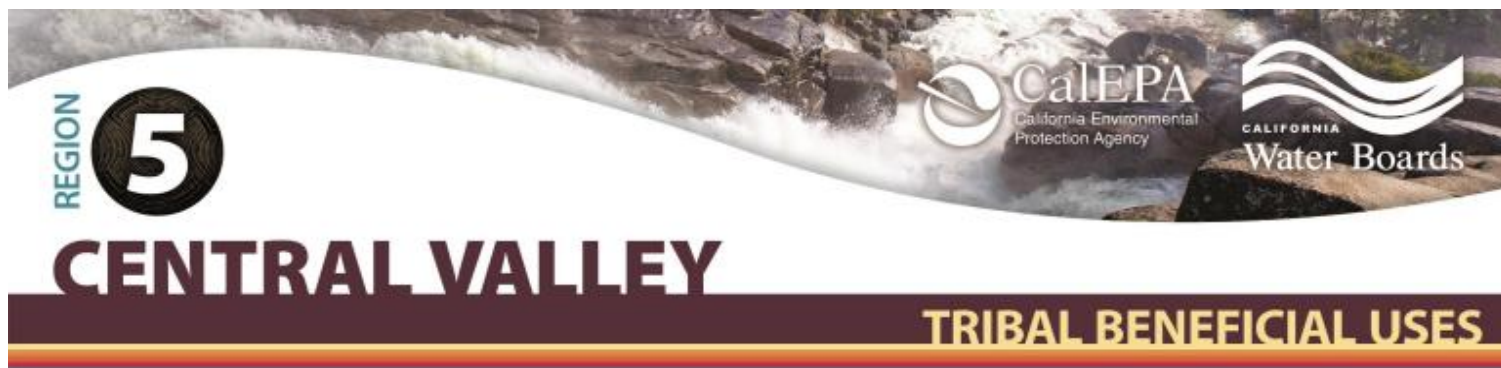
### Subsistence Fishing Water Quality Objective

- Waters with the Subsistence Fishing (SUB) beneficial use shall be maintained free of mercury at concentrations which accumulate in fish and cause adverse biological, reproductive, or neurological effects in people. The fish consumption rate used to evaluate this objective shall be derived from waterbody and population-specific data and information on the subsistence fishers' rate and form (e.g., whole, fillet with skin, skinless fillet) of fish consumption.\*

\*When a water quality control plan designates a waterbody or waterbody segment with the Subsistence Fishing (SUB) beneficial use, development of a region-wide or site-specific

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<sup>4</sup> [https://www.waterboards.ca.gov/water\\_issues/programs/mercury/](https://www.waterboards.ca.gov/water_issues/programs/mercury/)



numeric fish tissue mercury water quality objective is recommended to account for the wide variation of consumption rate and fish species encompassed by the SUB beneficial use.

Under Resolution 2017-0027, California Native American Tribe is defined as 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.

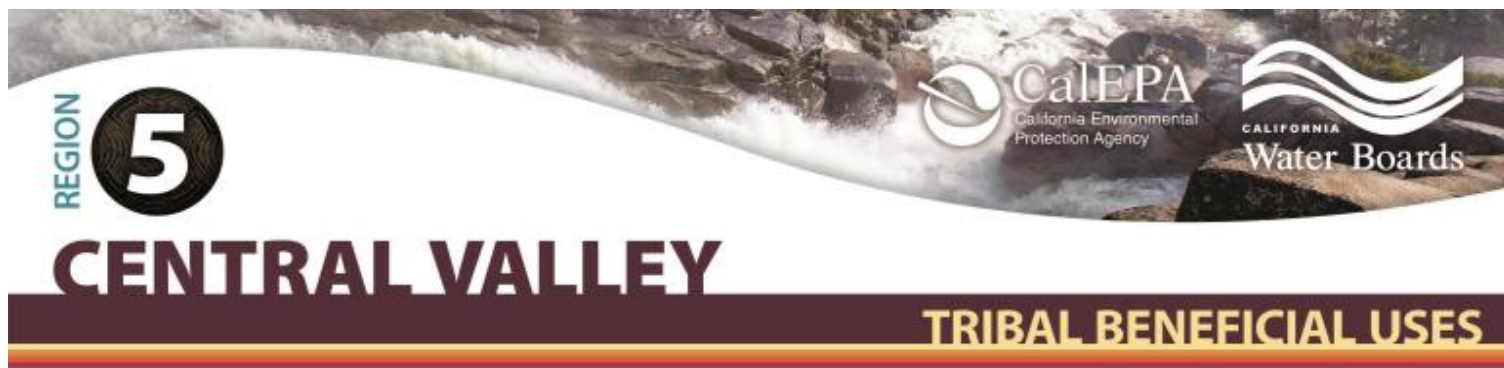
The above Tribal Beneficial Use (TBU) definitions provided consistent definitions for use by the Regional Water Boards. Establishing these definitions, however, did not amend Regional Water Board basin plans or designate these uses to specific waterbodies in the state. Designating specific waterbodies is primarily the responsibility of the Regional Water Boards and occurs through the basin planning amendment process. California Native American Tribes play an important role in this designation process and can influence if, where, when, and how TBUs are designated.

## **Impetus for the Development of Tribal Beneficial Uses**

TBUs were developed as a result of years of activism, studies, and advocacy by Native American Tribes and are the only beneficial uses that specifically mention California Native American Tribes in their definitions. TBUs were established to take into account activities specific to Native American Tribes' traditional and cultural uses of California's waters, including practices not covered by existing beneficial uses, and potential greater fish consumption by California Native American Tribes. California Native American Tribes have potential for increased exposure to water pollutants due to greater ingestion of water, dermal exposure, ingestion of plants, and ingestion of fish and shellfish through tribal traditional and cultural practices and subsistence fishing.

The TBUs and any corresponding water quality objectives are not intended to protect or enhance fish populations; other beneficial uses, such as Fish Spawning and Warm or Cold Freshwater Habitat, are designed to support aquatic habitats for the reproduction or development of fish.





## Tribal Beneficial Uses at the Central Valley Water Board

Since the State Water Board's adoption of Resolution 2017-0027, the Central Valley Water Board has conducted, and is continuing to conduct, tribal outreach and engagement regarding TBUs. The Central Valley Water Board has been receiving TBU designation requests from participating tribes and will continue to do so on a rolling basis. In 2022, the Central Valley Water Board amended its Basin Plans to add TBU definitions and is in the process of obtaining final approval of this regulatory action from the State Water Board, Office of Administrative Law, and U.S. Environmental Protection Agency.



*Image 2: Tubatulabal ceremonial spring basket, Kern Valley, CA, c. 1890; courtesy of the Tubatulabal Tribe.*

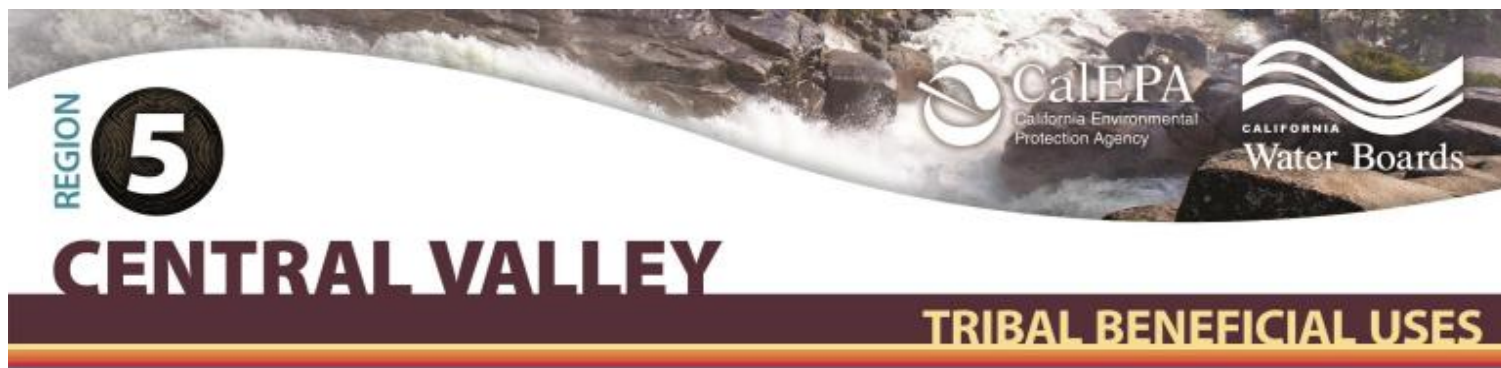
## The Basin Plan Amendment Process

A basin plan amendment is a change or update to a basin plan. Amendments are developed to keep basin plans up-to-date, meet the periodic review requirements of the Federal Clean Water Act section 303(c) and the California Water Code section 13240, and are necessary to preserve, enhance, and restore water quality in the Central Valley.

Each amendment is subject to legal requirements and an extensive public review process that may include scientific peer review. Following these processes, the Central Valley Water Board holds a public hearing to consider adoption of the amendment. Adopted amendments are subject to approval by the State Water Board and Office of Administrative Law and may be subject to approval by the U.S. Environmental Protection Agency. Due to the extensive review and approval process, the timeline of amendments varies.

The designation of waterbodies for TBUs will occur through the regulatory action of amending the basin plans. Figure 1 outlines the steps in the basin plan amendment process that will be





used to designate waterbodies for TBUs. Figures 2 to 5 provide more details on each step in the basin plan amendment process.

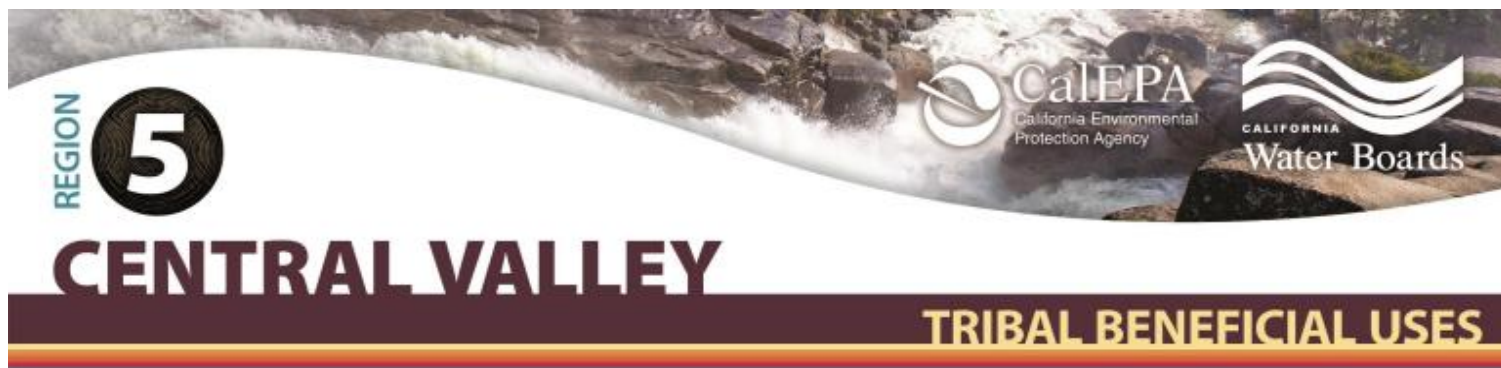
### **Implementation Plans**

Implementation plans, as required by California Water Code section 13050, are specific to California and describe the actions necessary to achieve water quality objectives, recommendations for appropriate action by any entity, a time schedule for the actions to be taken, and a description of surveillance to be undertaken to determine compliance with the water quality objectives. Implementation plans must be developed prior to waterbody designations. Additionally, Water Code section 13141 requires that the basin plans indicate estimates of total cost and identify potential sources of funding of any water quality control program prior to implementation.

Implementation plans are particularly challenging when addressing legacy mercury contamination in the Central Valley. The required time schedule for actions to be taken and compliance with the mercury water quality objectives established by the State Water Board Resolution 2017-0027 is challenging to meet due to the widespread mercury contamination in the Central Valley region.

**Figure 1: The Regional Water Board steps in the basin plan amendment process that will be used to designate waterbodies for TBUs.**





## STEP 1

### Tribal Beneficial Use Designation Request Received by the Regional Water Board

Waterbody designation requests for TBUs may be submitted by California Native American Tribes to the Central Valley Water Board on a rolling basis. Requests should contain evidence supporting use of the specific waterbody for the requested beneficial use or uses. Substantial evidence is necessary to support a basin plan amendment and would become part of the public administrative record. The Central Valley Water Board stated that “substantial evidence” includes not just scientific and technical data, but also a full range of cultural information that includes tribal histories and other forms of tribal knowledge. Tribes are encouraged to contact Regional Water Board staff with any confidentiality concerns before submitting written information to the Board.

## STEP 2

### Project Scoping

#### **Tribal Consultation**

Pursuant to Executive Order B-10-11 and Public Resources Code section 21080.3.1, Regional Water Board staff will invite tribes to consult on the proposed TBU designation basin plan amendment and begin consultation with any tribes that have requested to consult on the project. The tribal consultation will include but will be more extensive than the requirements in Assembly Bill No. 52.

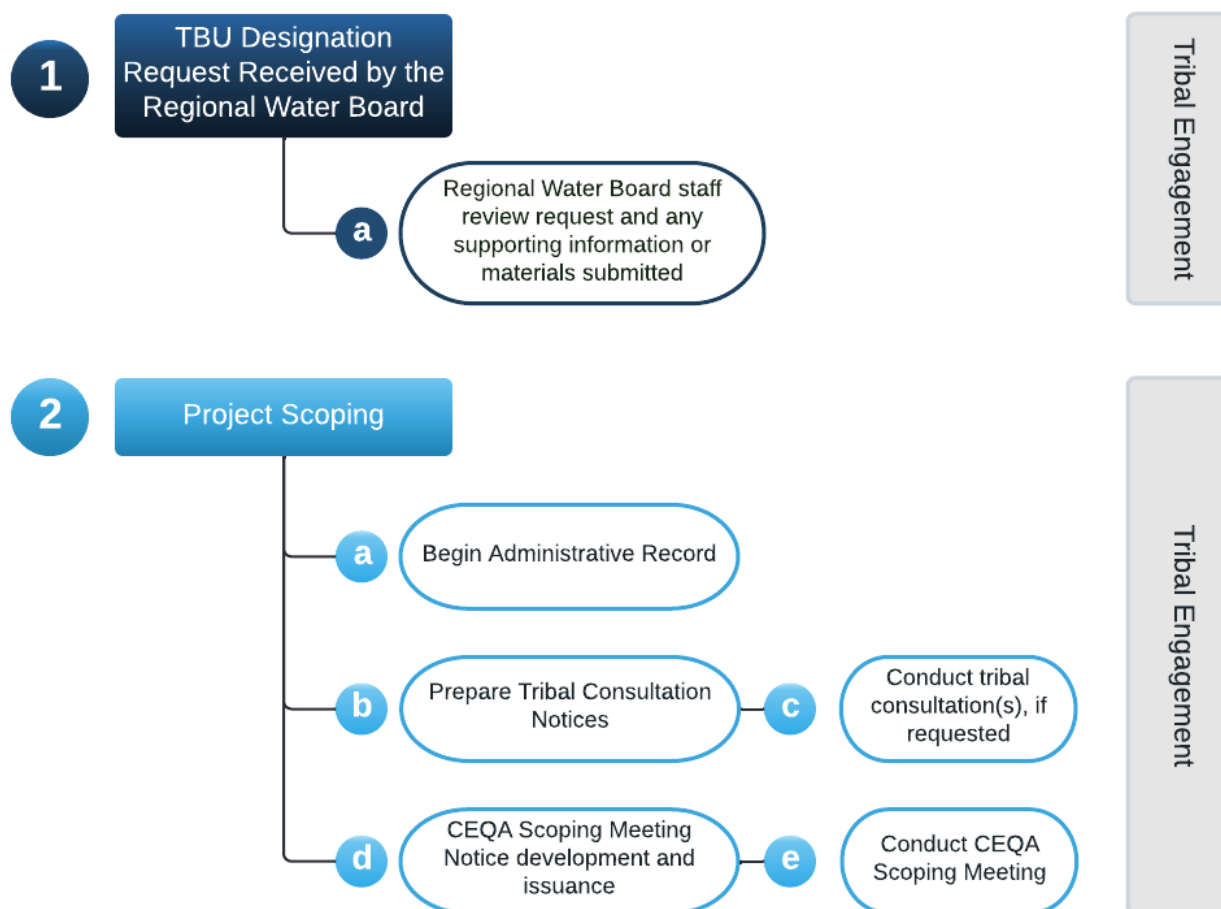
#### **California Environmental Quality Act (CEQA) Scoping Meeting**

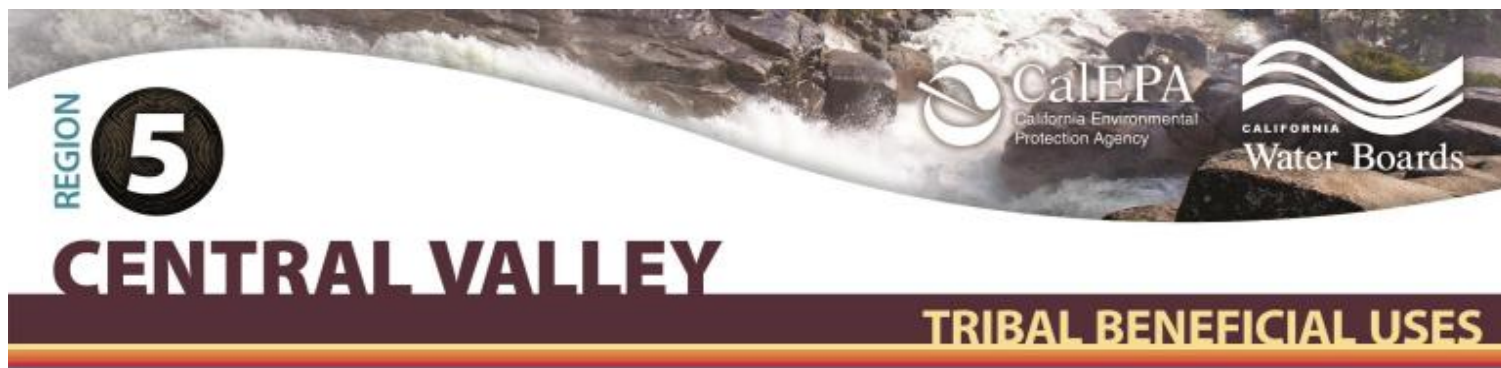
Prior to developing a draft basin plan amendment and environmental documentation, the Central Valley Water Board engages in early public consultation, called scoping. The purpose of scoping is to provide project information and seek public input on the environmental analysis that supports the basin plan amendment and is required by the Water Boards’ basin planning regulations. (Cal. Code Regs., tit. 23, § 3775.5.)

Figure 2 illustrates the details of steps 1 and 2 in the basin plan amendment process.



**Figure 2: Detailed description of Steps 1 and 2 in the Regional Water Board basin plan amendment process.**





### STEP 3

### Information Gathering and Development of Basin Plan Amendment and Supporting Documents

Regional Water Board staff will review information provided with the TBU designation request and will gather additional information based on regulatory requirements.

#### **Substitute Environmental Document**

A basin plan amendment subject to CEQA must include a Substitute Environmental Document (SED). The Draft SED may be comprised of a single document or a compilation of documents and must be circulated publicly prior to a Water Board action approving or adopting a project. (Cal. Code Regs., tit., § 3777.) The SED is in lieu of an environmental document, such as an environmental impact report, required by CEQA. (Cal. Code Regs., tit. 14, § 15250 et seq., and Cal. Code Regs., tit. 23, § 3775 et seq.)

The final SED follows requirements in accordance with the California Code of Regulations, title 23, section 3779.5, and includes the following:

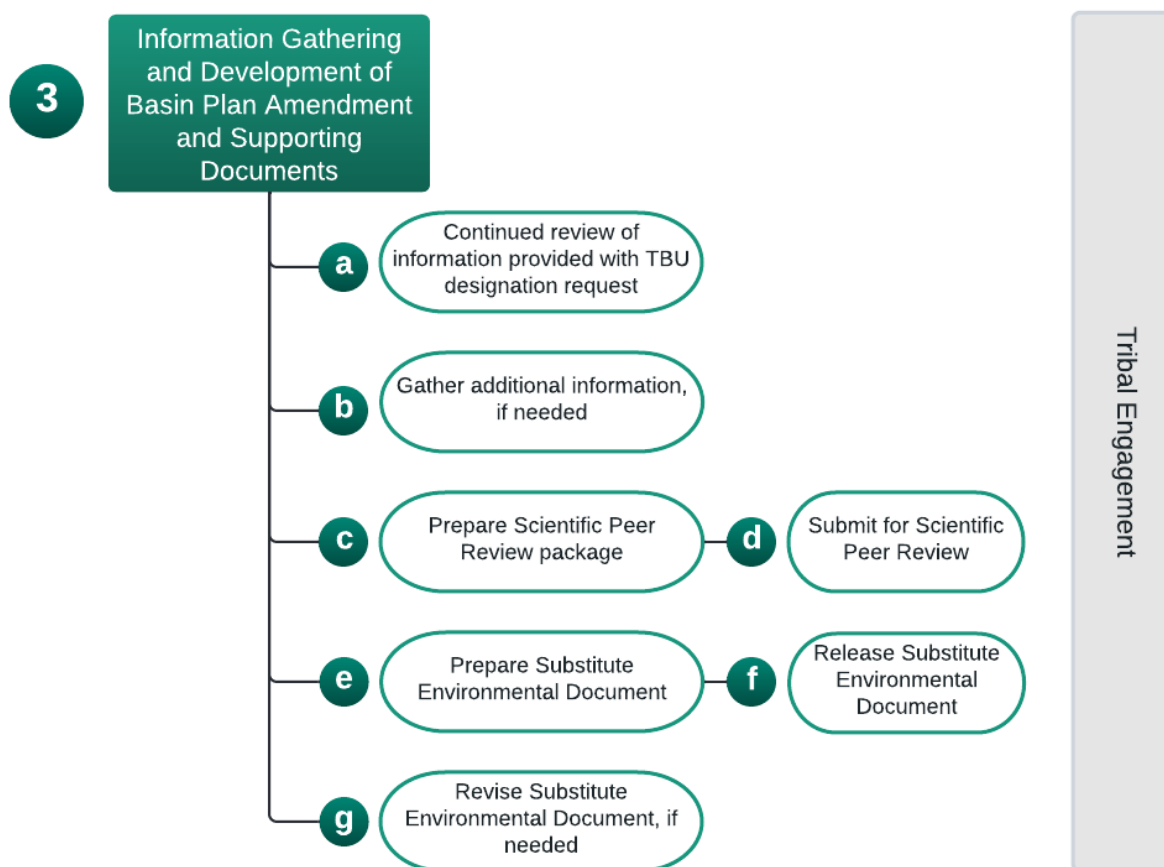
- Staff Report containing an environmental analysis and supporting documentation for the designation
- Completed Environmental Checklist
- Public and tribal comments
- Responses to public and tribal comments
- Proposed Board Resolution adopting the project and the basin plan amendment into the basin plans
- Other documents the Board may prescribe

#### **Peer Review**

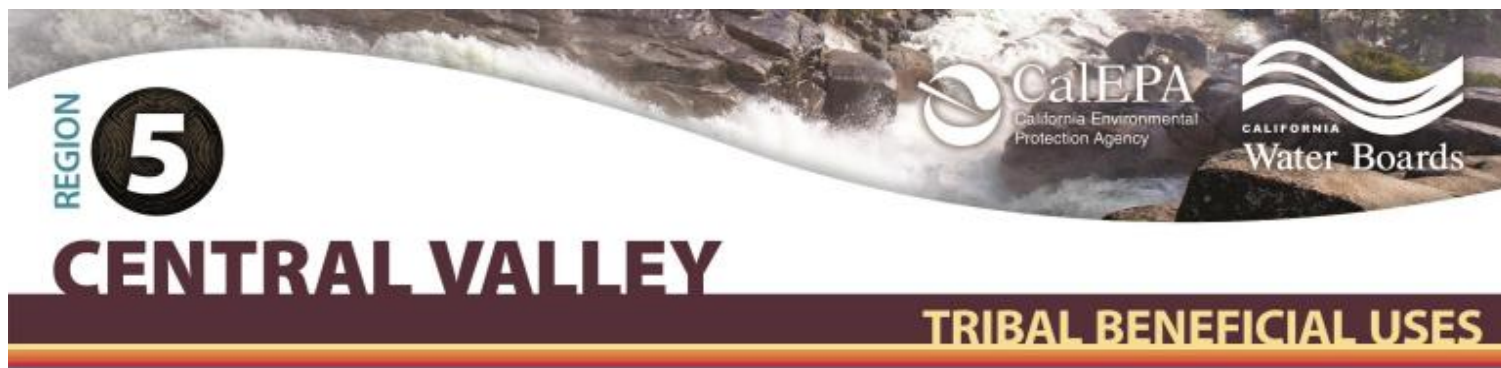
The scientific portion of a basin plan amendment must undergo external scientific review. (Health & Saf. Code, § 57004.) The peer reviewer determines whether the scientific findings, conclusions, and assumptions are based upon sound scientific knowledge, methods, and practices. The peer review process is an external, independent process and is included in the SED.

Figure 3 illustrates the details of step 3 in the basin plan amendment process.

**Figure 3: Detailed description of Step 3 in the Regional Water Board basin plan amendment process.**







#### **STEP 4** Public Workshops and Meetings

Workshops and public meetings are engagement opportunities that occur throughout the basin plan amendment process to ensure transparency and provide opportunities for tribal and public input. Regional Water Board staff will conduct government-to-government meetings with California Native American Tribes 2-3 times per year and will have public outreach meetings periodically.

#### **STEP 5** Public Review Period

In keeping with California's commitment to provide meaningful public involvement in governmental decisions, the Central Valley Water Board receives tribal and public comments for all proposed basin plan amendments.

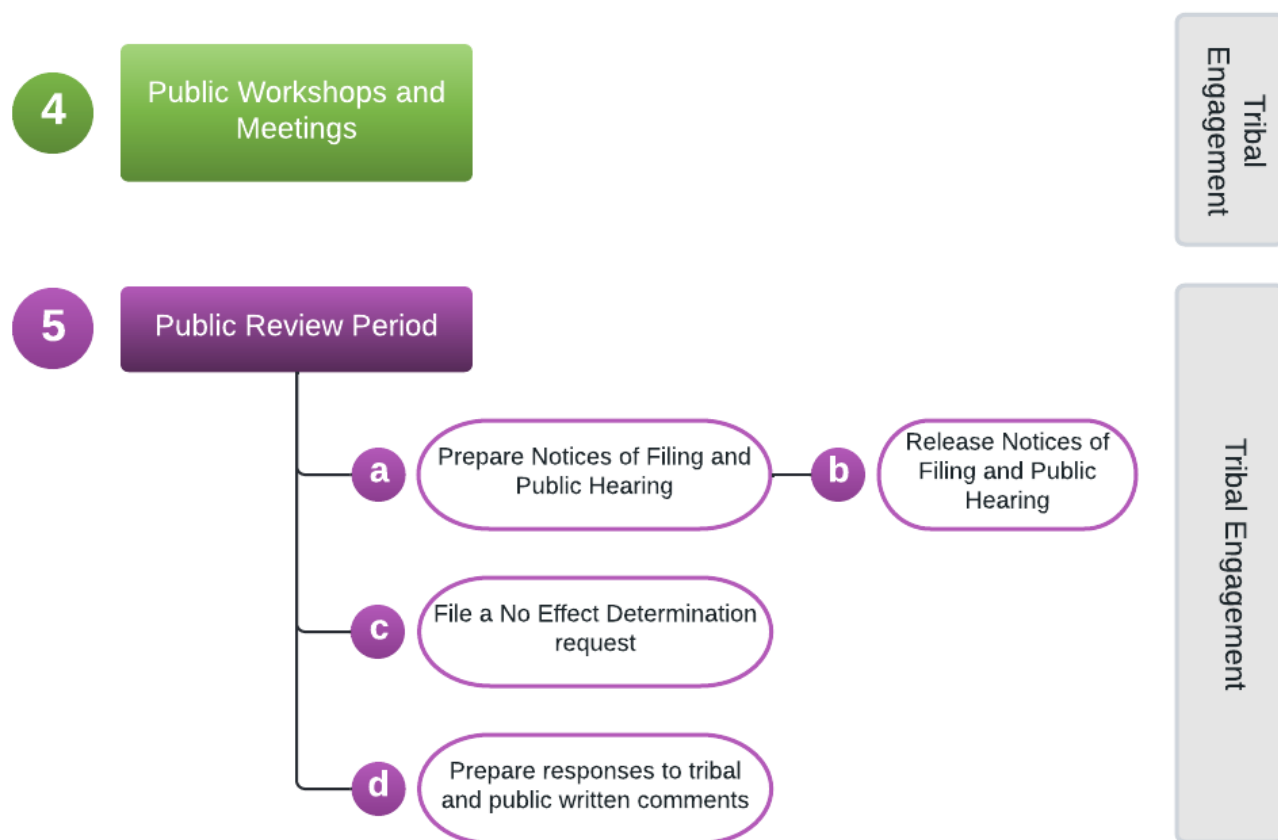
Once the draft SED is complete, the Central Valley Water Board will release Notices of Filing and Public Hearing, which will identify the written comment period and the date of the public hearing when the Central Valley Water Board will consider adoption of the basin plan amendment. The written comment period must be at least 45 days total. (Cal. Code Regs., tit. 23, § 3779) The Notices of Filing and Public Hearing, draft SED, and other basin plan amendment materials will be posted to the Central Valley Water Board website and distributed to tribes and the public. The Notice of Public Hearing must be issued at least 45 days prior the hearing. (40 C. F. R. § 25.5.)

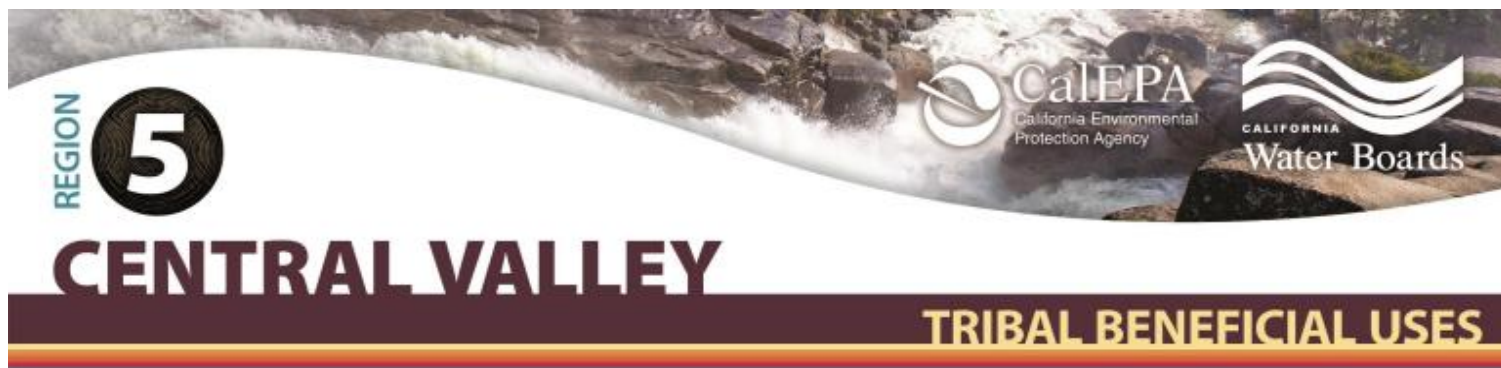
State agencies subject to CEQA filing fees may file a No Effect Determination request with the California Department of Fish and Wildlife if they anticipate the project would have no effect on fish and wildlife. Projects that receive a No Effect Determination are exempt from CEQA filing fees. (Cal. Code Regs., tit. 14, § 753.5.)

During the written comment period, tribes, tribal organizations, members of the public, other public agencies, and other interested persons may submit written comments to the Board. All timely comments and responses to comments are included in the administrative record. If a deadline to comment has been or may be missed, please contact the Board as quickly as possible and a comment extension may be provided.

Figure 4 illustrates the details of steps 4 and 5 in the basin plan amendment process.

**Figure 4: Detailed description of Steps 4 and 5 in the Regional Water Board basin plan amendment process.**





## **STEP 6** Prepare for Public Hearing

The public hearing agenda outlines the schedule and items that will be presented to the Board and is posted online and distributed at least ten days prior to the public hearing. Preceding the public hearing, Regional Water Board staff prepare an agenda package.

Materials in the agenda package include:

- Agenda Title sheet
- Agenda Summary sheet
- Notice of Opportunity to Comment
- Notice of Public Hearing
- Draft SED
- Draft Resolution
- Tribal and public comments
- Responses to tribal and public comments

## **STEP 7** Conduct Public Hearing

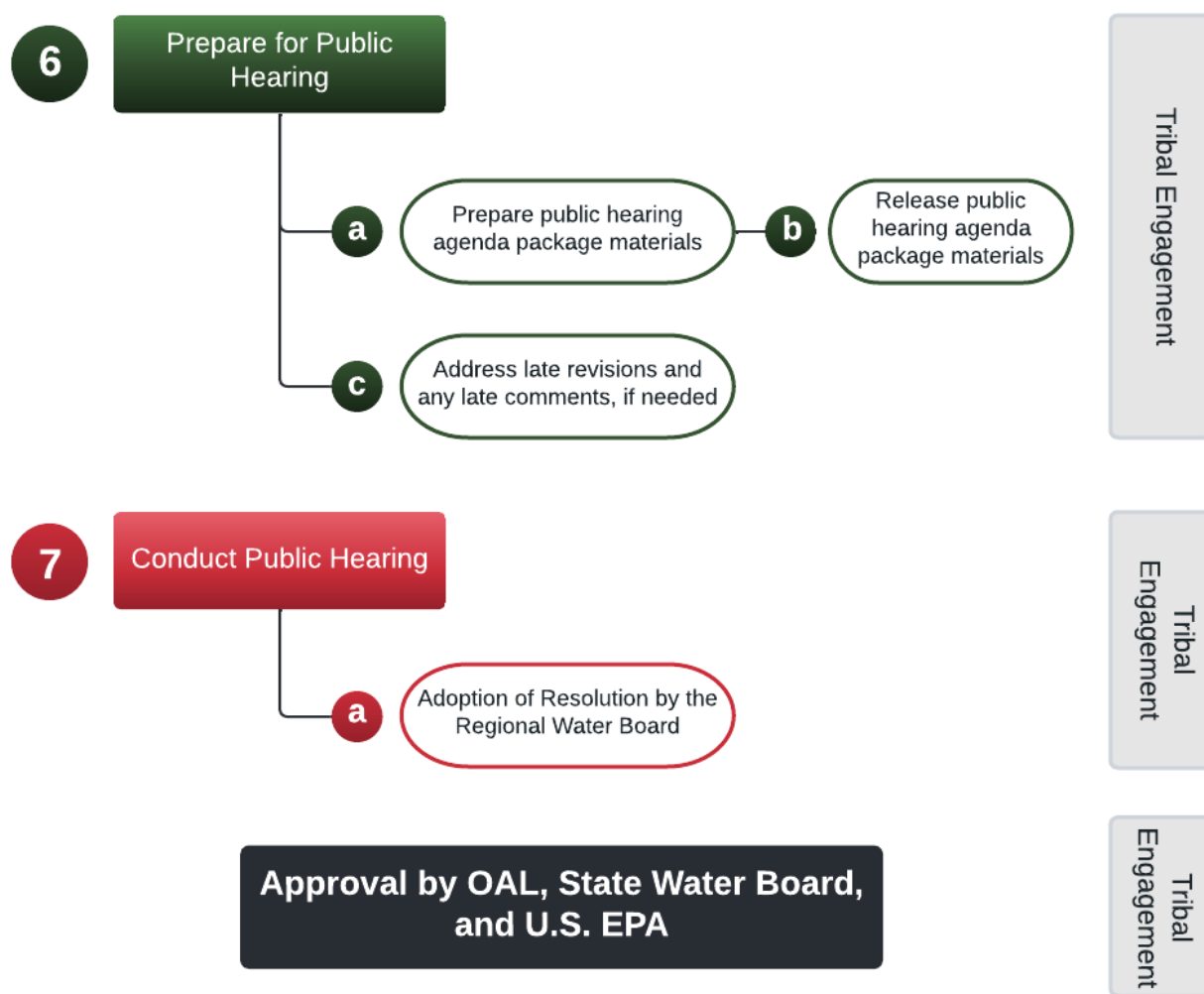
At the public hearing, Regional Water Board staff will present to the Board members, after which there is an opportunity for tribes and members of the public to comment on the agenda item and speak directly to the Board. The Board then may vote on adoption of the basin plan amendment.

Once the Central Valley Water Board adopts a basin plan amendment, it is not yet effective until approved by the State Water Board and the Office of Administrative Law. Any basin plan amendment involving surface water quality standards, including TBU designations, must also be approved by the U.S. Environmental Protection Agency.

Figure 5 illustrates the details of steps 6 and 7 in the basin plan amendment process.



**Figure 5: Detailed description of Steps 6 and 7 in the Regional Water Board basin plan amendment process.**



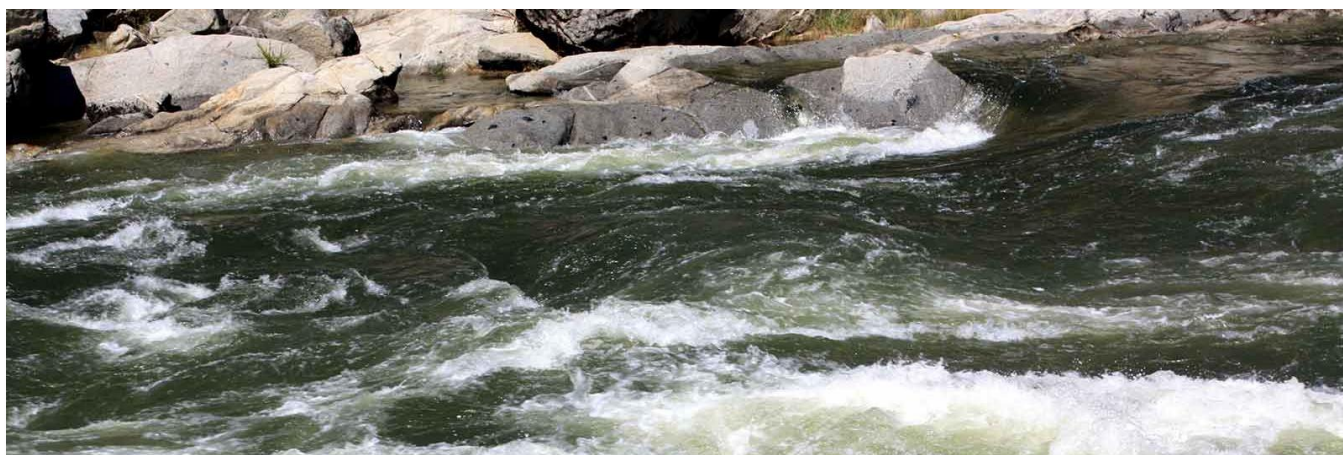
### To learn more...

Visit the Central Valley Water Board and State Water Board's Basin Planning and Tribal Beneficial Uses websites.

[Central Valley Water Board Basin Planning](https://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/)<sup>5</sup>

[Central Valley Water Board Tribal Beneficial Uses](https://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/tribal_beneficial_uses/)<sup>6</sup>

[State Water Board Tribal Beneficial Uses](https://www.waterboards.ca.gov/about_us/public_participation/tribal_affairs/beneficial_uses.html)<sup>7</sup>



*Image 3: San Joaquin River rapids; courtesy of American Rivers.*

<sup>5</sup> [https:// www.waterboards.ca.gov/centralvalley/water\\_issues/basin\\_plans/](https://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/)

<sup>6</sup> [https://www.waterboards.ca.gov/centralvalley/water\\_issues/basin\\_plans/tribal\\_beneficial\\_uses/](https://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/tribal_beneficial_uses/)

<sup>7</sup> [www. waterboards.ca.gov/about\\_us/public\\_participation/tribal\\_affairs/beneficial\\_uses.html](https://www.waterboards.ca.gov/about_us/public_participation/tribal_affairs/beneficial_uses.html)