



## REGION 9

SAN FRANCISCO, CA 94105

*Sent Via Email Only*

Dear Tribal Leader –

The purpose of this letter is to share information regarding the California Drinking Water State Revolving Fund (DWSRF) and the Clean Water State Revolving Fund (CWSRF) Programs as they relate to new consultation procedures with tribes under Section 106 of the National Historic Preservation Act (NHPA). These new procedures will provide greater opportunity for California tribes to provide comment on effects to historic properties within DWSRF and CWSRF-funded projects.

In addition, the U.S. Environmental Protection Agency (EPA) is partnering with the State Water Resources Control Board (SWRCB), the California State Historic Preservation Officer (SHPO), and the Advisory Council on Historic Preservation (ACHP) to develop two NHPA Programmatic Agreements for the DWSRF and CWSRF Programs. The purpose of the Programmatic Agreements is to streamline the Section 106 consultation process for Program applicants, including small and disadvantaged communities. The development of the Programmatic Agreements will not modify the tribal consultation process required under Section 106.

### **Background**

The EPA provides DWSRF and CWSRF capitalization grants to state agencies to fund critical drinking water and wastewater infrastructure projects. These state agencies use the capitalization grant funds to provide loans to communities. EPA has delegated the implementation of the DWSRF and CWSRF Programs in California to the SWRCB.

Projects carried out with the DWSRF and CWSRF capitalization grants may have effects on properties included in or eligible for inclusion, in the National Register of Historic Places. The NHPA, 54 U.S.C. § 300101 *et seq.*, and its implementing regulations, 36 CFR Part 800, require Federal agencies to consider the effects of their undertakings on historic properties. Therefore, prior to issuing DWSRF or CWSRF loans, the SWRCB is required to consider the effects of an undertaking on historic properties and provide the State Historic Preservation Officer (SHPO) and/or the Tribal Historic Preservation Officer (THPO) with an opportunity to comment on such undertakings.

In March 1990, EPA enacted a Nationwide Programmatic Agreement with the ACHP and the National Council of State Historic Preservation Officers. The Agreement authorizes EPA CWSRF grant recipients to initiate consultation with SHPOs under the Section 106 NHPA process for CWSRF projects. A copy of the Agreement can be found at <http://bit.ly/section-106>.

On September 3, 2015, EPA informed the California SHPO that EPA was authorizing the SWRCB to initiate NHPA Section 106 consultation with SHPO for DWSRF projects in accordance with 36 CFR § 800.2(c)(4). A copy of the letter can also be found at <http://bit.ly/section-106>.

### **Revised SRF Tribal Consultation Procedures**

The SWRCB currently requires DWSRF and CWSRF loan applicants to notify Federally recognized tribes culturally affiliated with their project area of their intention to seek funding under the SRF. Under the revised procedures, in addition to the applicant notification requirement, the SWRCB will also initiate offers of consultation with Federally recognized tribes.

In accordance with 36 CFR § 800.2(c)(4), EPA retains responsibility for all Section 106 findings and determinations. These procedures, therefore, are not intended to modify or limit EPA's trust responsibility with tribes, nor mandate that Federally recognized tribes consult with the SWRCB if they prefer to consult with EPA.

### **Programmatic Agreements Under Development**

EPA, in consultation with the SWRCB, California SHPO, ACHP, and other consulting parties, is in the process of developing two new NHPA Programmatic Agreements in California, one each for the DWSRF and CWSRF programs. The purpose of these new Programmatic Agreements is to provide efficiencies within the Section 106 consultation process. The DWSRF Programmatic Agreement will replace the September 3, 2015 authorization letter. The CWSRF Programmatic Agreement will build on the 1990 Nationwide Programmatic Agreement but will not supersede that agreement or modify its terms. No changes or modifications are being proposed for the DWSRF or CWSRF tribal consultation process.

Over the coming months, EPA will notify Federally recognized tribes of the opportunity to comment on the draft Programmatic Agreements, and, if interested, EPA encourages tribes to participate in their development. Additional information about the Programmatic Agreements can be found at <http://bit.ly/section-106>.

If you have any questions about this letter, please contact Elizabeth Borowiec, of my staff, at (415) 972-3419 or [borowiec.elizabeth@epa.gov](mailto:borowiec.elizabeth@epa.gov).

Sincerely,

*Original Signed Electronically on December 1, 2023*

Tomás Torres, Director  
Water Division

cc: Lisa Machado, Division of Financial Assistance  
California State Water Resources Control Board