

**STATE ENVIRONMENTAL REVIEW PROCESS  
FOR THE  
DRINKING WATER STATE REVOLVING FUND PROGRAM**

**STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD  
DIVISION OF FINANCIAL ASSISTANCE**

**September 2025**

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Attachments

Attachment 1a: United States Environmental Protection Agency (USEPA), Region IX Authorization to Allow the California State Water Resources Control Board to Initiate Consultation with the State Historic Preservation Officer and Tribal Historic Preservation Officers for Projects Funded under the Drinking Water State Revolving Fund Program (September 3, 2015); United States Environmental Protection Agency (USEPA), Region IX Authorization to Allow the California State Water Resources Control Board to Initiate Consultation with the State Historic Preservation Officer and Tribal Historic Preservation Officers for Projects Funded under the Drinking Water State Revolving Fund Program (September 3, 2015)

Attachment 1b: [Reserved for] Programmatic Agreement between the United States Environmental Protection Agency, Region 9, the Advisory Council on Historic Preservation, the California State Historic Preservation Officer, and the California State Water Resources Control Board Regarding Compliance with Section 106 of the National Historic Preservation Act, as It Pertains to the Administration of the Drinking Water State Revolving Fund Program

Attachment 2: Allowable CEQA Exemptions and Exceptions

Attachment 3: Tier II Environmental Review Process

## I. INTRODUCTION

This document is intended to meet requirements for the capitalization grant from the United States Environmental Protection Agency (USEPA) to the State Water Resources Control Board (State Water Board). It complements other Drinking Water State Revolving Fund (DWSRF) Program elements: Operating Agreement for Implementing and Managing the Drinking Water State Revolving Fund Program (Operating Agreement), Policy for Implementing the Drinking Water State Revolving Fund (DWSRF Policy), and the Drinking Water State Revolving Fund Intended Use Plan (Intended Use Plan).

Applicants seeking financing from the DWSRF Program should use the Environmental Package and Instructions, attached to the DWSRF Policy. The Environmental Package and Instructions are updated regularly to ensure continued compliance with the DWSRF Program requirements.

The DWSRF Program, currently implemented by the State Water Board's Division of Financial Assistance (DFA), is authorized by the federal Safe Drinking Water Act (Act), 42 U.S.C. § 300j-12. The DWSRF allows states to establish a program capitalized by state and federal funds to provide financial assistance to water systems so that the health protection objectives of the Act can be achieved. Examples of activities funded include improving drinking water treatment; fixing leaky or old pipes (repairing water distribution systems); improving source water supply; replacing old or constructing new water storage tanks; as well as other eligible infrastructure projects.

The implementing federal regulations for the DWSRF Program can be found in 40 C.F.R. part 35, subpart L (DWSRF Regulations). Under 40 C.F.R. § 35.3580, states must conduct environmental reviews of projects in accordance with a State Environmental Review Process (SERP) that is functionally equivalent to the review undertaken by the USEPA under the National Environmental Policy Act (NEPA). States may elect to apply the procedures at 40 C.F.R. part 6 and related subparts or apply their own "NEPA-like" SERP for conducting environmental reviews provided that certain elements are addressed. The State Water Board has elected to apply its own "NEPA-like" SERP.

This document, which replaces the May 2023 SERP document, presents the SERP for the State Water Board's DWSRF Program and details the State of California's "NEPA-like" SERP using the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.; Cal. Code Regs., tit. 14, § 15000 et seq.) as its basis. CEQA is regarded as the foundation of environmental law and policy in California and was modeled after NEPA. Like NEPA, CEQA requires state and local public agencies to conduct environmental reviews for proposed projects and in applicable cases to circulate the documents to other agencies, as well as the public, for comment prior to making decisions. The State Water Board's "NEPA-like" SERP utilizes the environmental documents developed under CEQA and supplemental documents prepared to comply with specified federal environmental laws and regulations. This document details federal environmental review requirements, how California builds upon CEQA, the assistance offered by the State Water Board's DFA Environmental

Review Staff (Environmental Review Staff), and how the DWSRF Program complies with the environmental requirements of the DWSRF Regulations. The Environmental Review Staff will review or complete each project's environmental documents, including CEQA documents, and is responsible for ensuring environmental compliance, coordinating consultations with the relevant state and federal agencies, and preparing draft environmental determinations for the State Water Board. Where there are differences between the State Water Board's process under CEQA and the applicable federal statutes and regulations, the federal statutes and regulations must be complied with.

#### A. Tier I Environmental Review Process

The procedures in this SERP, except for Attachment 3, set forth a "Tier I" environmental review process that applies to all DWSRF projects except those designated to receive a Tier II environmental review (see section B. below). Pursuant to 40 C.F.R. § 35.3580(c), Tier I environmental reviews at a minimum encompass all projects that are assisted by the State in amounts up to the amount of the capitalization grant deposited into the DWSRF.<sup>1</sup> Such projects must be reviewed in accordance with this Drinking Water SERP. Tier I projects must comply with the federal environmental cross-cutting authorities and other applicable federal requirements set forth in sections III.D.1.f and IV.B.1.a (federal cross-cutting authorities). In addition, activities for which the State provides assistance from capitalization grant funds deposited into set-aside accounts must also be reviewed in accordance with this SERP if required under 40 C.F.R. § 35.3580(b) and 40 C.F.R. § 35.3575(b).

#### B. Tier II Environmental Review Process

In accordance with 40 C.F.R. § 35.3580(d), a State may elect to apply an alternative SERP (referred to as Tier II environmental review) under the DWSRF Program, to projects and activities for which the State provides assistance in amounts that are greater than the amount of the capitalization grant deposited into the DWSRF or set aside accounts provided that the process addresses the required elements set forth in 40 C.F.R. § 35.3580(d). The State Water Board has elected to apply Tier II environmental reviews that meet the Tier II federal requirements to certain projects and activities. The State Water Board's Tier II process shall consist of the procedures in this SERP as modified in Attachment 3.

If DFA intends to make nonsignificant changes to this SERP it must submit a letter to the USEPA, Region 9 Assistant Director of the Tribal and State Assistance Branch within the USEPA, Region 9 Water Division explaining why the proposed change is not

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<sup>1</sup> The DWSRF is a revolving account into which the State deposits DWSRF Program funds (e.g., capitalization grants, State match, repayments, net bond proceeds, interest earnings, etc.) for the purposes of providing loans and other types of assistance for drinking water infrastructure projects.

significant. If the USEPA, Region 9 Assistant Director determines that the change is not significant, the Assistant Director will inform the DFA Deputy Director within thirty (30) calendar days whether the change has been approved or denied. Significant changes to the SERP must be approved by the USEPA, Region 9-Regional Administrator in accordance with 40 C.F.R. § 35.3585(h). Notwithstanding the foregoing, if any of the delegations of authority from the USEPA to the State Water Board in this SERP are modified, DFA may update the relevant information to be consistent with the updated delegation authority. Additionally, the USEPA, Region 9 and the State Water Board are currently in the process of developing a programmatic agreement with the State Historic Preservation Officer and the Advisory Council on Historic Preservation (see section IV.B.3), which, if adopted, will be added as Attachment 1b to this SERP.

## **II. SUMMARY OF REQUIREMENTS**

The State Water Board has chosen to implement its own “NEPA-like” SERP for both Tier I and Tier II environmental reviews in accordance with 40 C.F.R. § 35.3580(c) and (d). This SERP complies with the following elements:

- A. Legal foundation, 40 C.F.R. § 35.3580(c)(1)(i)-(iv) and (d)(1);
- B. Interdisciplinary approach and responds to other environmental objectives of the State, 40 C.F.R. § 35.3580(c)(2) and (d)(2);
- C. Decision documentation, 40 C.F.R. § 35.3580(c)(3)(i)-(iv) and (d)(4);
- D. Public notice and participation, 40 C.F.R. § 35.3580(c)(4) and (d)(5); and
- E. Alternatives consideration 40 C.F.R. § 35.3580(c)(5)(i)-(ii) and (d)(3).

In addition, this SERP identifies a list of environmental review exemptions and exceptions<sup>2</sup> to those exemptions (see Attachment 2), consistent with 40 C.F.R. § 35.3580(e).

The State Water Board’s SERP complies with the DWSRF Regulations as detailed below.

### **A. Legal Foundation**

The State of California, pursuant to the Health and Safety Code, § 116760 et seq., authorizes the State Water Board to implement the DWSRF Program in accordance with federal requirements. The State Water Board implements the DWSRF Program in accordance with the DWSRF Policy, the Intended Use Plan, the Operating Agreement, each DWSRF capitalization grant agreement, and state environmental requirements via the CEQA. CEQA includes consideration of mitigation measures (see Cal. Pub. Resources Code, §§ 21002, 21064.5, and 21081 and sections III.D.1 and IV.B.7, below) and legal remedies (see Cal. Pub.

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<sup>2</sup> These exceptions are similar but not identical to USEPA’s extraordinary circumstances for categorical exclusions (see 40 C.F.R. §6.204(b)).

Resources Code, § 21167 et seq.). The DWSRF Program is administered by the State Water Board, DFA. CEQA is the State of California's statutory mechanism for enabling public participation in agency decision making relative to potential environmental effects of proposed agency projects. CEQA sets forth the process by which the public can provide input and challenge agency decision-making based on environmental concerns. When an applicant is a mutual water company, not-for-profit, investor owned, or a private water company, or a Native American tribe, the State Water Board may serve as the CEQA lead agency; otherwise, the State Water Board serves as a CEQA responsible agency. A CEQA responsible agency considers the CEQA documents prepared by the lead agency and reaches its own conclusions on whether and how to approve the project, considering only the effects of the project which it is required by law to carry out or approve.

## **B. Interdisciplinary Approach and Responds to Other Environmental Objectives of the State**

40 C.F.R. § 35.3580(c)(2) requires states to use an interdisciplinary approach for identifying and mitigating adverse environmental effects including those associated with achieving compliance with the federal cross-cutting authorities. 40 C.F.R. § 35.3580(d)(2) requires DWSRF assistance recipients to respond to other environmental objectives of the state. This SERP requires applicants to follow a "NEPA-like" environmental review process that has at its foundation, compliance with CEQA. CEQA analysis discloses environmental impacts; identifies potential impacts and measures to prevent or minimize environmental impacts; discloses agency decision making; provides for and enhances public participation; and fosters intergovernmental coordination for a proposed project or activity. Through CEQA analysis, the applicant provides sufficient information to consider the whole of an action (not only its constituent parts), so it can be determined whether the action will have a significant effect on the environment. In addition to requiring a project to comply with CEQA, and in certain circumstances when a project is exempt from CEQA, the State Water Board requires additional studies to demonstrate compliance with the federal cross-cutting authorities. The Environmental Package and Instructions list the required materials that must be submitted as part of the Financial Assistance Application (for either Planning or Construction) to have a complete application. The Environmental Review Staff reviews the submitted material to determine the completeness and adequacy of the material, as well as compliance with applicable state and federal environmental requirements.

## **C. Decision Documentation**

The Environmental Review Staff records how the applicant has complied with CEQA and applicable federal cross-cutting authorities for a proposed project in the Environmental Summary Clearance (ESC) document (e.g., issuance of an environmental impact report/notice of determination). The ESC is considered in the final evaluation for financing by DFA management and, in some instances, by the State Water Board during a public meeting. The ESC includes any special

environmental conditions that will be required of the proposed project to avoid, minimize, and/or mitigate impacts of the project on the environment to levels that are less than significant. In some instances, implementation of a project will have significant effects. Appropriate documentation for these situations (e.g., development of a statement of overriding considerations) must be submitted for the Environmental Review Staff to review and include in the decision documentation. All special environmental conditions provided by relevant state and federal agencies and officers will be incorporated into the final financing agreement. For example, if the State Historic Preservation Officer requires tribal monitoring, then the financing agreement will include that special condition.

DWSRF Regulations require that a State fully document the information, processes, and premises that influence its decision to reaffirm or modify a decision contained in a previously issued environmental impact statement/environmental impact report (EIS/EIR)/record of decision/notice of determination (ROD/NOD); environmental assessment/initial study (EA/IS)/finding of no significant impact, negative declaration, or mitigated negative declaration (FONSI/ND/MND); or categorical exclusion/exemption following a mandatory five year environmental reevaluation of a Tier I project or activity. The State Water Board will provide public notice when a decision that is issued five years earlier is reaffirmed or revised. This reaffirmation ensures that current and accurate information about the impacts of the project on the environment is being considered. Therefore, to satisfy this regulatory requirement, the State Water Board requires applicants to follow the procedures described in sections III.D.1.b. and IV.A.3. depending on whether there is a change to the project or activity.

#### **D. Public Notice and Participation**

CEQA and the federal regulations, 40 C.F.R. § 35.3580(c)(4) and (d)(5), provide public notice and the opportunity for public comment on proposed projects as detailed in the CEQA Guidelines). CEQA provides opportunities for the public to comment on and challenge the lead agency's environmental documents prior to adoption/certification and approval of a proposed project. The purpose of CEQA is to (1) disclose to the public the significant environmental effects of a proposed project, (2) prevent or minimize damage to the environment through development of project alternatives, mitigation measures, and mitigation monitoring, (3) disclose to the public the agency decision making process utilized to approve projects through findings and statements of overriding consideration, (4) enhance public participation in the environmental review process through public notice and public review, and (5) improve interagency coordination through early consultations, scoping meetings, notices of preparation and circulation of environmental documents at the Governor's Office of Land Use and Climate Innovation, State Clearinghouse (SCH) for public review (Pub. Resources Code, §§ 21000-21006).

The State Water Board will also apply the requirements of 40 C.F.R. § 35.3580(c)(4) and (d)(5) to its public notification and participation process by ensuring that public notice is provided via the SCH when a categorical exclusion/exemption is issued or rescinded; or a FONSI/ND/MND is issued but before it becomes effective; a decision in a Tier I project that is issued five years earlier is reaffirmed or revised; and prior to initiating an EIS/EIR. Except with respect to a public notice of a categorical exclusion/exemption or reaffirmation of a previous decision, the State Water Board will initiate a formal public comment period during which no action on a project or activity will be allowed. A public hearing or meeting must be held for all Tier I projects and activities except for those having little or no environmental effect. (See sections III.D.1.d and IV.B.1.b.). For Tier II projects or activities determined by the State to be controversial, a public hearing must be held in accordance with 40 C.F.R. § 35.3580(d)(5).

#### **E. Alternatives Consideration**

DWSRF Regulations require the applicant to evaluate and determine the environmental impacts of each project alternative (beneficial and adverse consequences). For further discussion, see sections III.D.1.g. and IV.B.1.c.

### **III. PLANNING PROJECTS**

The State Water Board requires applicants to submit a completed Environmental Package for planning. The package must include a Scope of Work that outlines the tasks to be performed, the deliverables to be developed, and the anticipated budget for the planning/design of the project prior to the approval of the financing agreement. The following sections describe the Tier I environmental review process for planning projects. Modifications to this process for Tier II projects are set forth in Attachment 3.

Upon request by the potential applicant, but prior to the actual submittal of the Environmental Package, the Environmental Review Staff is available to answer questions regarding DWSRF Program environmental requirements, including range of actions, potential alternatives, mitigation measures, and any potential effects. Depending on the project, early consultation may also include other state and federal agencies.

#### **A. CEQA Compliance**

Most planning projects are exempt from CEQA because the main purpose of planning projects is to identify and evaluate reasonable project alternatives and select a preferred alternative to construct. The CEQA lead agency will determine the appropriate category of exemption for the project, and will file the Notice of Exemption (NOE) with the relevant County Clerk's office and the SCH. The applicant will provide date-stamped copies of the NOE along with the Environmental Package to DFA.

Upon approval of the financing agreement, if the State Water Board is the CEQA lead or responsible agency, the Environmental Review Staff will file an NOE with the SCH.

For planning projects that do not qualify for a CEQA exemption (authorized exemptions are listed in Attachment 2), an appropriate CEQA document shall be prepared. Compliance with the applicable federal cross-cutting authorities for Tier I planning projects will be required. All CEQA exemptions, including statutory exemptions, for Tier I are subject to the CEQA exceptions and extraordinary circumstances (see Attachment 2; 40 C.F.R. § 35.3580(e), which prohibit application of exemptions where there are extraordinary circumstances in which a normally excluded project may have a significant environmental effect).

## **B. Public Participation**

If a project is exempt, CEQA does not require a public agency to record its decision or the reasons for its decision (See Cal. Code Regs., tit. 14, §§ 15060-15062). To comply with the DWSRF Regulations, the State Water Board requires that applicants file an NOE with the relevant County Clerk and the SCH for CEQA exempt planning projects. The filing and posting of the NOE provide public notice of the proposed planning project and starts a 35-day statute of limitations period on legal challenges to the CEQA lead agency's decision that the project is exempt from CEQA. This information is posted for public review on the SCH website (<https://ceqanet.lci.ca.gov/>). When the State Water Board files an NOE either as a lead or responsible agency, it serves to provide public notice that state and/or federal funds will be used to support the project.

## **C. Application Activities for Planning**

### **1. Environmental Package Requirements**

#### **a. Complete Package**

The Environmental Package and the following documents must be submitted for DWSRF financing of a planning project (if applicable):

- Date-stamped copy of NOE or NOD filed with the County Clerk and the SCH,
- CEQA document that has been adopted and is being relied upon (most planning projects will not have a CEQA document), and
- Resolution and/or minutes from the public hearing or meeting at which an NOE or any CEQA documents were approved.

#### **b. Initial Review**

The Environmental Review Staff will review the Environmental Package to assure compliance with the DWSRF Program requirements. If additional

information is required, the Environmental Review Staff will request more information, reports or studies.

c. Federal Consultation

Most planning projects will not trigger federal environmental requirements or require federal consultations. Unlike construction projects that involve ground-disturbing activities, planning projects are not likely to have an impact on the environment. If a Tier I planning project involves construction activities or exploratory investigations, related to ground-disturbing activities, the appropriate environmental documents demonstrating compliance with the state and federal requirements must be prepared and the requisite consultations must be conducted prior to start of the project activities. See section IV.B.3. for more information about the Federal Consultation process.

**2. Documentation of Environmental Compliance**

The Environmental Review Staff will determine if the environmental documents are complete and adequate and will document DWSRF Program compliance in an ESC document.

a. Environmental Review Completion

The Environmental Review Staff will provide copies of the ESC document to the Project Manager for inclusion in the project's master file.

Special environmental conditions may be included in the financing agreement if the Scope of Work includes the development of environmental documents for the construction project. These special environmental conditions may, include, but are not limited to:

- Preparation of a biological resources assessment and submittal of that document to the Environmental Review Staff.
- Preparation of a Historic Properties Identification Report. Confidential cultural resource documents and information should be submitted directly to the DFA's Cultural Resources Staff.
- Preparation of a CEQA document for public comment and review.

b. Notice of Exemption/Notice of Determination

Following financing agreement approval, the Environmental Review Staff will file an NOE or an NOD for the planning project with the SCH to inform the public of the State Water Board's financing decision and the location of the environmental documents. This action completes the CEQA environmental review process.

## **D. Post-financing Activities**

The applicant shall complete all the listed environmental deliverables outlined in the financing agreement and submit with the Environmental Package for the construction project.

### **1. Planning Project Implementation**

#### **a. CEQA Document Preparation**

The California Code of Regulations, title 14, division 6, chapter 3, provides a complete list of CEQA documents and how they are appropriately implemented. The common CEQA documents submitted to the State Water Board for DWSRF construction projects that are prepared during the project planning phase include:

- Notice of Exemption – A form filed with the SCH and County Clerk’s office when a public agency decides that a project is exempt from CEQA.
- Initial Study (IS) – An IS is a preliminary analysis conducted by the lead agency to determine if a project may have a significant effect on the environment. The initial study also aids in determining what type of environmental document to prepare.
- Negative Declaration (ND) – When an Initial Study determines that the project will not have an impact on the environment and mitigation measures are not necessary, an ND is prepared.
- Mitigated Negative Declaration (MND) – When a project is expected to have an impact, but the impact will not be significant with the implementation of mitigation measures, an MND and a Mitigation Monitoring and Reporting Program (MMRP) is prepared.
- Environmental Impact Report (EIR) – When a project: 1) is expected to have a significant impact on the environment; 2) may be controversial; or 3) is expected to have impacts that cannot be mitigated, an EIR is prepared. An EIR may include an MMRP.
- Supplemental - Documentation of minor additions or changes necessary to make a previously certified EIR adequately apply to the project in the changed situation shall be given the same kind of notice and public review as is given to the draft EIR.
- Subsequent - Documentation of substantial changes or new information of substantial importance to a previously certified EIR or adopted ND/MND shall be given the same kind of notice and public review as is given to the draft EIR or ND/MND.
- Addendum - Documentation of minor technical changes or necessary additions to a previously certified EIR or an adopted ND/MND.

Addendum can be included in or attached to the final EIR or adopted ND/MND or combined with CEQA/NEPA documents.

b. Five-Year Reaffirmation

DWSRF Regulations require reevaluation of a proposed project or activity for which an environmental document was adopted more than five years prior to the approval of financing. (40 C.F.R. § 35.3580(c)(3)(iii).) If the applicant determines that the project has not changed in description or work proposed, the Environmental Review Staff will review the previously prepared environmental documents and decisions. If the Environmental Review Staff agree that the environmental documents and decision remain appropriate, the applicant must prepare a memorandum affirming that the previously prepared environmental evaluation and the resulting environmental document still apply to the project. The memorandum shall be signed by the applicant's authorized representative and reviewed and approved by the Environmental Review Staff. The Environmental Review Staff will document this activity in the ESC and/or the project file.

c. Addendum/Supplemental/Subsequent CEQA Documents

For a project that has changes, subsequent to the adoption of the original CEQA document, but prior to the approval of the financing agreement or amendment thereto (e.g., project footprint is enlarged or reduced; project treatment process has changed; or the impact of the project on the environment has changed), the CEQA lead agency must determine the appropriate subsequent CEQA document to prepare consistent with the CEQA Guidelines and federal regulations.

d. Public Comment, Notice, and Hearing Requirements

Under the federal regulations, except with respect to a public notice of an exemption or reaffirmation of a previous decision, the State must provide a formal public comment period during which time no action on a project will be allowed. The CEQA Guidelines are consistent with this requirement. The CEQA process provides opportunities for the public, responsible agencies, and trustee state agencies<sup>3</sup> to comment on and/or challenge the CEQA lead agency's environmental document prior to adoption/certification and approval of the project. For example, the minimum public comment period is 30 days for an MND and 45 days for

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<sup>3</sup> "Trustee Agency' means a state agency having jurisdiction by law over natural resources affected by a project which are held in trust for the people of the State of California." (See Cal. Code Regs., tit. 14, § 15386.)

an EIR. A record of the comments received and responses made to the commenter is prepared prior to the CEQA lead agency's adoption or certification of the CEQA document. Additionally, following approval of the project (i.e., adoption/certification of the CEQA document), the posting of an NOD with the County Clerk and/or the SCH serves as a final opportunity for the public to challenge a project. The public has 35 days to challenge the project following posting of an NOE and 30 days for an NOD. These requirements are comparable to those in NEPA and consistent with the DWSRF requirements.

- The lead agency's decision-making body must consider and adopt/certify the CEQA document if appropriate after considering the entire record. This decision is recorded either in a resolution or in the meeting minutes. CEQA requires that an NOD be filed within five business days following adoption/certification of the CEQA document and approval of the project. Additionally, at this time, the California Department of Fish and Wildlife (CDFW) filing fees are paid by the lead agency.
- If the State Water Board is the lead agency, the Environmental Review Staff will prepare a CEQA Consideration, Adoption and Determination document for signature by the Deputy Director to make CEQA findings as applicable and approve the project. This document denotes that the CEQA document that was prepared for the project complies with the CEQA Statutes and Guidelines. Following the Deputy Director's approval of the CEQA Consideration, Adoption and Determination document, an NOD or NOE will be filed with the SCH and the CDFW filing fees paid if applicable.

The State Water Board will also apply the public notice and participation requirements of 40 C.F.R. § 35.3580(c)(4) to DWSRF projects. When a five-year reaffirmation memo is prepared, or a project is determined to fall under a CEQA exemption that is listed in Attachment 2 or otherwise approved by the USEPA, the Environmental Review Staff will record this activity in the ESC and/or the project file and file an NOE or NOD to provide public notice.

Under 40 C.F.R. § 35.3580(c)(4), the lead agency must hold a public hearing or meeting for any projects covered under an EIS/EIR but not for projects having little or no environmental effect. Many projects covered by an MND or ND may qualify as having little or no environmental effect and thus would not require a public hearing or meeting. The applicant should consult with the Environmental Review Staff to determine whether a public hearing is required. A public hearing or meeting will not be required for exempt projects.

If the CEQA lead agency has not met the public comment, notice, and hearing requirements, the State Water Board will ensure compliance with 40 C.F.R. § 35.3580(c)(4).

- The lead agency must provide a copy of the final updated environmental document and the corresponding public participation and notification documents to the State Water Board.
- If the State Water Board is the lead agency, the Environmental Review Staff will oversee preparation of the documents and file the appropriate documents with the SCH.

In most cases involving an Addendum, if public notice and comment requirements have already been satisfied for the underlying CEQA document, the State Water Board will not require the applicant to provide additional public notice. However, the Environmental Review Staff may require a public review of an Addendum if the changes to the project or other factors (e.g., legal challenges, public concerns) warrant a public comment period. The Environmental Review Staff will record this activity in the ESC and/or the project file.

e. Exemptions

CEQA provides categories for exempting projects with minimal impact or that have received designation by the Legislature:

- Categorical Exemption (CE) – Projects are categorically exempt when the project is included in a list of classes of projects that have been determined not to have a significant effect on the environment. A CEQA categorical exemption cannot be applied if there are extraordinary circumstances in which a normally excluded action may have a significant environmental effect. (See Attachment 2). If a project falls into one of the categorical exemptions listed in Attachment 2, and no exception applies, a Notice of Exemption will be prepared. All Tier I projects, including those that are categorically exempt, must comply with the requirements of the federal cross-cutting authorities (see 40 C.F.R. § 35.3575).
- Statutory Exemption (SE) – Projects are statutorily exempt if they have been designated by the Legislature as such. The applicable statutory exemptions for the DWSRF Program are included in Attachment 2. As required by 40 C.F.R. § 35.3580(e), the CEQA statutory exemptions

are subject to exceptions (see Attachment 2).<sup>4</sup> As with categorical exemptions, all Tier I projects, including those that are statutorily exempt, must comply with the requirements of the federal cross-cutting authorities (see 40 C.F.R. § 35.3575).

- Common Sense/General Rule Exemption – Projects are exempt where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. As with categorical and statutory exemptions, all Tier I projects, including those that are common sense/general rule exempt, must comply with the requirements of the federal cross-cutting authorities (see 40 C.F.R. § 35.3575).

Under this SERP, only CEQA exemptions that are listed in Attachment 2 may be used.

f. Federal Cross-cutting Authorities and Determination of Federal Lead Agency

The applicants for DWSRF construction financing must thoroughly analyze the environmental consequences of their project. The required environmental documents for the construction application are typically prepared as part of the planning project. Therefore, in planning, applicants prepare appropriate documents to comply with CEQA and federal cross-cutting authorities. The federal cross-cutting authorities that may need to be addressed, include, but are not limited to:

- Archeological and Historic Preservation Act (54 U.S.C. §§ 312501-312508)
- Clean Air Act (42 U.S.C. § 7401 et seq.)
- Coastal Barriers Resources Act (54 U.S.C. §§ 312501-312508)
- Coastal Zone Management Act (16 U.S.C. § 1451 et seq.)
- Endangered Species Act (16 U.S.C. § 1531 et seq.)
- Farmland Protection Policy Act (7 U.S.C. § 4201 et seq.)
- Floodplain Management (Executive Order No. 11988 (1977), as amended by Executive Order No. 12148 (1979))
- Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 et seq.)
- National Historic Preservation Act (54 U.S.C. § 300101 et seq.)
- Sole Source Aquifer, § 1424(e) of the Safe Drinking Water Act (42 U.S.C. § 300h-3e)

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<sup>4</sup> All exemptions under Tier I and Tier II must provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect, in accordance with 40 C.F.R. § 35.3580(e).

- Wetlands Protection (Executive Order No. 11990 (1977), as amended by Executive Order No. 12608 (1997))
- Wild and Scenic Rivers Act (16 U.S.C. § 1271 et seq.)
- Any other applicable federal requirements

The CEQA or federal lead agency will determine the appropriate environmental documents to prepare for the project and will coordinate with DFA to ensure the development of environmental documentation that fulfills the state and federal environmental requirements of the DWSRF construction application.

Exceptions to this include when other federal agencies are involved with a project (e.g., permitting, leasing, funding, or project is on federal land). When this occurs, the Environmental Review Staff will coordinate with the applicant, the USEPA and other federal agencies to determine who will be the federal lead agency on the project. The federal lead agency may be responsible for developing studies that demonstrate compliance with the federal cross-cutting authorities. In some instances, the federal agencies may share or take full responsibility for preparing environmental documents to achieve compliance with the federal cross-cutting authorities. The Environmental Review Staff will facilitate this discussion among the appropriate federal agencies and the USEPA.

g. Environmental Analysis of Alternatives

DWSRF regulations at 40 C.F.R § 35.3580(c)(5) require the following:

- Comparative evaluation among alternatives, including the beneficial and adverse consequences on the existing environment, the future environment, and individual sensitive environmental issues that are identified by project management or through public participation; and
- Devising appropriate near-term and long-range measures to avoid, minimize, or mitigate adverse impacts.

The Environmental Review Staff will review the applicant's alternatives analysis and ensure compliance with the DWSRF requirements above. The State Water Board will include a statement on the NOD filed with the SCH that the alternatives analysis and other documentation will be made available to the public upon request.

For certain projects covered under a FONSI/ND/MND it may be appropriate to limit alternatives to (i) a "no project/no action" alternative, and (ii) the selected project.

Alternatives analysis is not required for projects that fall within a CEQA exemption listed in Attachment 2 hereto.

## **2. Project Re-evaluation due to Change in Project Scope**

The Environmental Review Staff must be notified when changes to the Scope of Work occur. This is required to ensure that the appropriate environmental documentation for the construction project is developed during the planning phase.

## **3. Project Environmental Compliance Tracking**

DFA utilizes the Loans and Grants Tracking System (LGTS) to track project status, compliance, and any special environmental conditions. Information from the LGTS may provide pertinent documentation to the USEPA to help satisfy the DWSRF Program compliance with the federal cross-cutting authorities.

## **IV. CONSTRUCTION PROJECTS**

The DWSRF Program requires applicants seeking DWSRF financing for construction projects to comply with all applicable state and federal environmental requirements before the start of any project-related construction activities. The activities and requirements below are in addition to and/or supportive of those discussed in the previous sections. Note that modified requirements may apply to any projects identified for Tier II environmental review (see Attachment 3).

### **A. Pre-application Activities**

#### **1. Early Consultation between Environmental Review Staff and Applicants**

The Environmental Review Staff is available for consultation prior to submittal of the construction application to answer questions regarding environmental requirements for applicants seeking DWSRF financing. The applicant is also encouraged to review the information (e.g. Guidelines for Preparing Historic Property Identification Report) posted on the State Water Board website [https://www.waterboards.ca.gov/drinking\\_water/services/funding/SRF.html](https://www.waterboards.ca.gov/drinking_water/services/funding/SRF.html)

##### **a. Review for Tier II Applicability**

An initial question will be whether the project is subject to Tier I or Tier II review. See section B of the Introduction. Modified requirements apply to Tier II projects, as described in Attachment 3.

##### **b. Review for Potential DWSRF Flags**

Additionally, the State Water Board has prepared a “Potential DWSRF Flags Worksheet” that allows the applicant to provide initial information on aspects of the project that could result in review delays. The worksheet is posted online at:

[https://www.waterboards.ca.gov/drinking\\_water/services/funding/documents/srf/dwsrf\\_potential\\_flags\\_worksheet.pdf](https://www.waterboards.ca.gov/drinking_water/services/funding/documents/srf/dwsrf_potential_flags_worksheet.pdf)

### c. Determination of CEQA Lead Agency

As with planning activities, it is important for the applicant to determine who will be the CEQA lead agency for the construction activities. CEQA compliance is outlined in the CEQA Statutes and CEQA Guidelines. Under CEQA, a lead agency is the public agency that has the principal responsibility for carrying out or approving a project and, therefore, has the primary responsibility for preparing the CEQA documents. A responsible agency has the authority to comment on a document, to mitigate or disapprove a project to avoid significant effects, to approve a project despite its impacts, and to impose fees on a project applicant.

- If the applicant is a public agency, the applicant (or another public agency) will serve as the CEQA lead agency and the State Water Board will be a CEQA responsible agency.
  - The CEQA lead agency will ensure that the appropriate documents have been developed in compliance with the CEQA Guidelines. Filing the NOE or NOD with the County Clerk and the SCH certifies that the applicant has complied with CEQA and has approved the project.
- If an applicant is not a public agency, it cannot serve as the CEQA lead agency. A public agency must assume the lead agency role. For the DWSRF projects, the State Water Board often assumes the lead agency role where the applicant is not a public agency, but the applicant should consult with Environmental Staff to determine which agency will serve as lead agency.
- If the State Water Board is the CEQA lead agency, the Environmental Review Staff will ensure that the NOE is completed and/or a CEQA document has been adopted/certified. If the CEQA document was developed through the DWSRF planning process, the Environmental Review Staff will publicly notice and circulate the document through the SCH. At the end of the review period, the environmental document is approved by the DFA's Deputy Director through a CEQA Consideration, Adoption, and Determination document. Following the Deputy Director's approval of the CEQA Consideration, Adoption, and Determination document, an NOE or NOD will be filed with the SCH and the CDFW filing fees paid if applicable.

## **2. Environmental Package**

The Environmental Package and Instructions for Construction, includes the state and federal environmental requirements. Because the DWSRF SERP utilizes CEQA to analyze project-specific environmental impacts, CEQA documents and other materials demonstrating CEQA compliance must be submitted as part of the Environmental Package. Additionally, because the DWSRF Program seeks to match funding sources with projects and receives

a capitalization grant from the USEPA to fund projects, each applicant must provide documentation that the project complies with the appropriate federal cross-cutting authorities, except where the project is designated by the State Water Board as a project subject to Tier II environmental review.

If CEQA or the federal cross-cutting authorities documents are incomplete, the Environmental Review Staff will assist the applicant to correct any document deficiencies.

### **3. Five-year Re-affirmation Requirements for Environmental Documents**

Under 40 C.F.R. § 35.3580(c)(3)(iii), the State Water Board must reaffirm or modify a decision contained in a previously issued categorical exclusion/exemption, EA/FONSI (IS/ND or IS/MND) or EIS/ROD (EIR) following a mandatory five-year environmental reevaluation of a proposed project or activity prior to the approval of the financing agreement. This reaffirmation ensures that current and accurate information about the impact of the project on the environment is being considered, and that the environmental conditions that were originally considered by such documents are still valid.

Where a project's environmental document was adopted more than five years prior to the approval of financing, if the applicant determines that the project has not changed in description or work proposed, the Environmental Review Staff will review the previously prepared environmental documents and decisions. If the CEQA lead agency and the Environmental Review Staff determine after review that the environmental documents and decision remain appropriate, the applicant must prepare a memorandum affirming that the previously prepared environmental evaluation and the resulting environmental document still apply to the project. The memorandum shall be signed and approved by the applicant's authorized representative and reviewed and approved by the Environmental Review Staff. The Environmental Review Staff will document this activity in the ESC and/or the project file.

### **4. Project Scope Change**

For projects that have changed after the adoption of the original CEQA document (e.g., project footprint is enlarged or reduced; project treatment process has changed; impact of the project on the environment has changed; or there are minor technical changes), the CEQA lead agency must determine the appropriate CEQA document to prepare consistent with the CEQA Guidelines.

- For projects that do not qualify for an exemption, the lead agency must provide a formal public comment period during which time no action on a project will be allowed consistent with the CEQA Guidelines. If a Supplemental or Subsequent ND/MND/EIR is required, CEQA specifies the required public comment period.

CEQA does not require public comment for an Addendum. In most cases involving an Addendum, where the underlying CEQA document has already undergone a public comment period, the State Water Board will not require the Addendum to be posted for public comment. However, the Environmental Review Staff may require posting of an Addendum for public comment if the changes in the Addendum or other factors (e.g., legal challenges, public concerns) warrant a public comment period. The Environmental Review Staff will record this activity in the ESC and will file a NOD at the SCH to provide public notice.

- Under 40 C.F.R. § 35.3580(c)(4), a public hearing or meeting must be held for all projects and activities except for those having little or no environmental effect. Many projects covered by an MND or ND may qualify as having little or no environmental effect and thus would not require a public hearing or meeting. The applicant should consult with the Environmental Review Staff to determine whether a public hearing is required. A public hearing or meeting will not be required for exempt projects. If the CEQA lead agency has not met the public noticing requirements, the State Water Board will ensure compliance with 40 C.F.R. § 35.3580(c)(4).
- The lead agency must provide a copy of the final updated environmental document and the corresponding public participation and notification documents to the State Water Board.
- If the State Water Board is the lead agency, the Environmental Review Staff will oversee preparation of the documents and file the appropriate documents with the SCH.

## **B. Application Activities for Construction**

### **1. Complete Environmental Package**

Applicants seeking DWSRF construction financing are required to provide information demonstrating compliance with the CEQA and the applicable federal cross-cutting authorities<sup>5</sup> by completing the Environmental Package of the DWSRF Construction Application ([https://www.waterboards.ca.gov/drinking\\_water/services/funding/documents/srf/dwsrf\\_policy/h4\\_dwsrf\\_application\\_const\\_environmental.pdf](https://www.waterboards.ca.gov/drinking_water/services/funding/documents/srf/dwsrf_policy/h4_dwsrf_application_const_environmental.pdf)).

The completed Environmental Package documents will include some, if not all, of the following:

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<sup>5</sup> Where the project is designated by the State Water Board as a project subject to Tier II environmental review, the federal cross-cutting authorities will not apply. (See Attachment 3.)

- Draft and final CEQA documents (or copy of the NOE if project was exempt from CEQA)
- Copy of the MMRP
- Other supporting CEQA documents, if applicable
- Copy of the adopting/certifying resolution or copy of the meeting minutes when the CEQA document and the MMRP were adopted/certified
- Copy of the NOE/NOD filed with the SCH
- Copy of the date-stamped NOE/NOD filed with the County Clerk
- Biological assessment that includes:
  - Official USFWS Information for Planning and Consultation (IPaC) generated species list, if applicable
  - NMFS species list, if applicable
  - CDFW California Natural Diversity Database search with appropriate maps and tables displaying search results and species information
- Cultural Resources Report that includes historic properties and meets the National Historic Preservation Act, Section 106 requirements
- Air quality analysis and appropriate air quality standards
- Federal Emergency Management Act Floodplain Map
- Wetland Delineation Report
- Analysis of the effect of each proposed project alternative on the environment
- Other documents that have been prepared that show compliance with applicable federal cross-cutting authorities
- Copies of any secured permits

a. Federal Cross-Cutting Authorities and Determination of Federal Lead Agency

Documentation of compliance with the applicable federal cross-cutting authorities, if required, can be included in the CEQA document or can be submitted separately. The federal cross-cutting authorities that may need to be addressed, include, but are not limited to:

- Archeological and Historic Preservation Act (54 U.S.C. §§ 312501-312508)
- Clean Air Act (42 U.S.C. § 7401 et seq.)
- Coastal Barriers Resources Act (16 U.S.C. § 3501 et seq.)
- Coastal Zone Management Act (16 U.S.C. § 1451 et seq.)
- Endangered Species Act (16 U.S.C. § 1531 et seq.)
- Farmland Protection Policy Act (7 U.S.C. § 4201 et seq.)
- Floodplain Management (Executive Order No. 11988 (1977), as amended by Executive Order No. 12148 (1979))
- Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 et seq.)
- National Historic Preservation Act (54 U.S.C. §§ 300101 et seq.)
- Sole Source Aquifer, § 1424(e) of the Safe Drinking Water Act (42 U.S.C. § 300h-3e)

- Wetlands Protection (Executive Order No. 11990 (1977), as amended by Executive Order No. 12608 (1997))
- Wild and Scenic Rivers Act (16 U.S.C. § 1271 et seq.)
- Any other applicable federal requirements

The CEQA or federal lead agency will determine the appropriate environmental documents to prepare for the project and will coordinate with DFA to ensure the development of environmental documentation that fulfills the state and federal environmental requirements of the DWSRF construction application.

Exceptions to this include when other federal agencies are involved with a project (e.g., permitting, leasing, funding, or project is on federal land). When this occurs, the Environmental Review Staff will coordinate with the applicant, the USEPA and other federal agencies to determine who will be the federal lead agency on the project. The federal lead agency may be responsible for developing studies that demonstrate compliance with the federal cross-cutting authorities. In some instances, the federal agencies may share or take full responsibility for preparing environmental documents to achieve compliance with the federal cross-cutting authorities. The Environmental Review Staff will facilitate this discussion among the appropriate federal agencies and the USEPA.

b. Public Comment, Notice, and Hearing Requirements

The public notice and participation requirements discussed in section III.D.1.d with regard to planning projects (reiterated in this section) apply to construction projects as well. The applicants must document compliance with these public notice, comment, and hearing or meeting requirements.

Under the federal regulations, except with respect to a public notice of an exemption or reaffirmation of a previous decision, the State must provide a formal public comment period during which time no action on a project will be allowed. The CEQA Guidelines are consistent with this requirement. The CEQA process provides opportunities for the public, responsible agencies, and trustee state agencies<sup>6</sup> to comment on and/or challenge the CEQA lead agency's environmental document prior to adoption/certification and approval of the project. For example, the minimum public comment period is 30 days for an MND and 45 days for an EIR. A record of the comments received and responses made to the commenter is prepared prior to the CEQA lead agency's adoption or certification of the CEQA document. Additionally,

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<sup>6</sup> "Trustee Agency' means a state agency having jurisdiction by law over natural resources affected by a project which are held in trust for the people of the State of California." (See Cal. Code Regs., tit. 14, § 15386.)

following approval of the project (i.e., adoption/certification of the CEQA document), the posting of an NOD with the County Clerk and/or the SCH serves as a final opportunity for the public to challenge a project. The public has 35 days to challenge the project following posting of an NOE and 30 days for an NOD. These requirements are comparable to those in NEPA and consistent with the DWSRF requirements.

- The lead agency's decision-making body must consider and adopt/certify the CEQA document if appropriate after considering the entire record. This decision is recorded either in a resolution or in the meeting minutes. CEQA requires that an NOD be filed within five business days following adoption/certification of the CEQA document and approval of the project. Additionally, at this time, the CDFW filing fees are paid by the lead agency.
- If the State Water Board is the lead agency, the Environmental Review Staff will prepare a CEQA Consideration, Adoption and Determination document for signature by the Deputy Director to make CEQA findings as applicable and approve the project. This document denotes that the CEQA document that was prepared for the project complies with the CEQA Statutes and Guidelines. Following the Deputy Director's approval of the CEQA Consideration, Adoption and Determination document, an NOD or NOE will be filed with the SCH and the CDFW filing fees paid if applicable.

The State Water Board will also apply the public notice and participation requirements of 40 C.F.R. § 35.3580(c)(4) to DWSRF projects. When a five-year reaffirmation memo is prepared, or a project is determined to fall under a CEQA exemption (allowable exemptions are listed in Attachment 2) or otherwise approved by the USEPA, the Environmental Review Staff will record this activity in the ESC and/or the project file and file an NOE or NOD to provide public notice.

Under 40 C.F.R. § 35.3580(c)(4), the lead agency must hold a public hearing or meeting for any projects covered under an EIS/EIR but not for projects having little or no environmental effect. Many projects covered by an MND or ND may qualify as having little or no environmental effect and thus would not require a public hearing or meeting. The applicant should consult with the Environmental Review Staff to determine whether a public hearing is required. A public hearing or meeting will not be required for exempt projects.

If the CEQA lead agency has not met the public comment, notice, and hearing requirements, the State Water Board will ensure compliance with 40 C.F.R. § 35.3580(c)(4).

- The lead agency must provide a copy of the final updated environmental document and the corresponding public participation and notification documents to the State Water Board.

- If the State Water Board is the lead agency, the Environmental Review Staff will oversee preparation of the documents and file the appropriate documents with the SCH.

In most cases involving an Addendum, if public notice and comment requirements have already been satisfied for the underlying CEQA document, the State Water Board will not require the applicant to provide additional public notice. However, the Environmental Review Staff may require a public review of an Addendum if the changes to the project or other factors (e.g., legal challenges, public concerns) warrant a public comment period. The Environmental Review Staff will record this activity in the ESC and/or the project file.

c. Environmental Analysis of Alternatives

The alternatives analysis requirements discussed in section III.D.1.g with regard to planning projects (reiterated in this section) also apply to construction projects. DWSRF regulations at 40 C.F.R. § 35.3580(c)(5) require the following:

- Comparative evaluation among alternatives, including the beneficial and adverse consequences on the existing environment, the future environment, and individual sensitive environmental issues that are identified by project management or through public participation; and
- Devising appropriate near-term and long-range measures to avoid, minimize, or mitigate adverse impacts.

The Environmental Review Staff will review the applicant's alternatives analysis and ensure compliance with the DWSRF requirements above. The State Water Board will include a statement on the NOD filed with the SCH that the alternatives analysis and other documentation will be made available to the public upon request.

For certain projects covered under a FONSI/ND/MND it may be appropriate to limit alternatives to (i) a "no project/no action" alternative, and (ii) the selected project.

Alternatives analysis is not required for projects that fall within a CEQA exemption listed in Attachment 2 hereto.

d. Exemptions

Environmental Package materials must document the applicability of any CEQA exemption that is relied upon for the project. CEQA provides categories for exempting projects with minimal impact or that have received designation by the Legislature:

- **Categorical Exemption (CE)** – Projects are categorically exempt when the project is included in a list of classes of projects that have been determined not to have a significant effect on the environment. A CEQA categorical exemption cannot be applied if there are extraordinary circumstances in which a normally excluded action may have a significant environmental effect, including if the project is located in an environmentally sensitive area (such as wetlands, floodplains, coastal zones, scenic rivers, fish and wildlife habitat); may impact a hazardous waste site (such as a leaking underground storage tank site); may have a significant effect on the environment due to unusual or other circumstances; will result in a cumulative environmental impact; cause damage to a scenic highway; or cause a substantial change to historical resources (Cal. Code Regs., tit. 14, § 15300.2). If a project falls into one of the categorical exemptions listed in Attachment 2, a CEQA document need not be developed, but the federal cross-cutting authorities may still apply.
- **Statutory Exemption (SE)** – Projects are statutorily exempt if they have been designated by the Legislature as such. Projects eligible for statutory exemptions are the same as those for planning activities. The applicable statutory exemptions for the DWSRF Program are included in Attachment 2. As with categorical exemptions, the federal cross-cutting authorities may still apply.
- **Common Sense/General Rule Exemption** - Projects are exempt where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. The federal cross-cutting authorities may still apply.

Under this SERP, only CEQA exemptions that are listed in Attachment 2 may be used.

## **2. Initial Review**

The Environmental Review Staff will review the environmental documents to verify that all the appropriate items have been submitted; any missing items will be identified and requested. Once the information has been determined to be complete, the Environmental Review Staff will document compliance with state and federal requirements and conduct relevant federal consultations.

## **3. Federal Consultation**

The State Water Board will comply with all applicable federal cross-cutting authorities and will require the applicants to comply with all applicable federal cross-cutting authorities pursuant to the DWSRF Regulations 40 C.F.R. § 35.3575, except as discussed in Attachment 3.

If consultation with federal agencies is complete and has been submitted as part of the Environmental Package, the Environmental Review Staff will consider the submitted information. If questions or deficiencies are noted, the Environmental Review Staff will contact the appropriate federal agency to obtain additional information.

Exceptions to this include when another federal agency is involved with a project (e.g., permitting, funding, or the project is on federal land). The Environmental Review Staff will work with the USEPA to identify a federal lead agency for the project. The federal lead agency typically ensures compliance with the federal cross-cutting authorities.

Consultations under the Endangered Species Act (ESA) and under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act)

- For a more detailed explanation of the respective roles and responsibilities for the USEPA and the State Water Board related to the ESA and Magnuson-Stevens Act, see <https://www.epa.gov/ca/ca-swr cb-delegation-letters>.

Consultation under the National Historic Preservation Act (NHPA) and Archaeological and Historic Preservation Act (AHPA)

- On September 3, 2015, the USEPA notified the California State Historic Preservation Officer (SHPO) that it was designating the State Water Board to act on the USEPA's behalf when initiating Section 106 of the NHPA consultation process in connection with projects funded under the DWSRF Program (Attachment 1a.) However, the USEPA will remain responsible for participating in the consultation process when: 1) the State Water Board determines that the "Criteria of Adverse Effect" under 36 C.F.R. § 800.5 applies to an undertaking; 2) there is a disagreement between the State Water Board and the SHPO regarding the scope of the area of potential effects, identification of historic properties, or evaluation of effects; 3) there is an objection from consulting parties or the public regarding findings or determinations or the implementation of agreed provisions; or 4) there is potential for a foreclosure situation or intentional adverse effects as described under 36 C.F.R. § 800.9 (b) and (c).

The State Water Board shall initiate Section 106 of the NHPA consultation process with the SHPO for each of its affected projects; and prepare any required documents and responses for the SHPO submittal and consultation (e.g., archaeological monitoring plan.) The USEPA will conduct consultation if a Tribe requests USEPA's involvement.

- At the time of development of this SERP, the USEPA, Region 9 and the State Water Board are in the process of developing a programmatic agreement with the Advisory Council on Historic Preservation and the SHPO that would govern project review under Section 106 of the NHPA. If this programmatic agreement is executed, it will be added as Attachment 1b to this SERP, and its provisions will become operative and will supersede any contradictory provisions in this SERP. The USEPA retains responsibility for compliance with the AHPA requirements. The State Water Board will coordinate with the USEPA to complete the consultation with the National Park Service where appropriate
- Any project modifications and/or mitigation measures identified by the applicant or agreed upon during consultation between the State Water Board, the SHPO and/or the Tribal Historic Preservation Officer should be incorporated into and made enforceable in any approval of the DWSRF financing agreement.

The USEPA or other lead federal agency/department remains legally responsible for all determinations issued under the AHPA, ESA, Magnuson-Stevens Act, and NHPA and is responsible for government-to-government relationships with federally recognized Indian Tribes.

If the USEPA or the State Water Board is serving as the lead agency, then, following receipt of the relevant documentation, the State Water Board or the USEPA will conduct consultation with the appropriate federal agencies.

#### **4. Documentation of Environmental Compliance**

The Environmental Review Staff completes the ESC to document project compliance with state and federal environmental requirements. It may also include special environmental conditions that apply to the project and be included in the financing agreement. The ESC along with the MMRP, consultation documentation, and CEQA Determination, are included in the project master file.

#### **5. Board Item Preparation for Non-routine or Controversial Projects**

The State Water Board considers non-routine or controversial project financing approvals at its public meetings. Possible issues that may render a project non-routine or controversial, include, but are not limited to: 1) unavoidable significant water quality impacts; or 2) the applicant facing a legal challenge. Applications for non-routine or controversial projects will need to add approximately three months to the project review schedule because a separate administrative process is required to place an item on the State Water Board's agenda.

## **6. Notice of Exemption/Notice of Determination**

Once the Deputy Director of DFA (or the State Water Board for controversial or non-routine projects) approves a project, the Environmental Review Staff will file the appropriate notification (NOE or NOD) with the SCH. Time limits for legal challenges to CEQA documents are discussed in sections III.D.1.d and IV.B.1.b. above.

## **7. Special Environmental Conditions**

Special environmental conditions placed on a project will be included in the applicant's financing agreement. Special environmental conditions may include mitigation measures from the MMRP, avoidance and minimization measures from a state or federal agency, or additional condition(s) required by the State Water Board.

### **C. Post-Financing Activities**

#### **1. Project Re-Evaluation due to Change in Project Scope**

If there are changes to the project scope, the Environmental Review Staff will review the changes and direct the CEQA lead agency to implement the appropriate CEQA process and any additional environmental documentation or federal consultation if necessary.

#### Compliance Follow-up

To ensure compliance with the special environmental conditions in the financing agreement, the Environmental Review Staff will take the following actions:

- Whenever possible, accompany technical staff on site visits to verify compliance and attend the applicant's preconstruction meetings to discuss the environmental measure(s) with the applicant and the construction contractors.
- Review quarterly progress reports to follow-up on and ensure implementation of environmental measures.
- Coordinate with other relevant state and federal agencies if the applicant is out of compliance with environmental conditions per the executed financing agreement. When this occurs, the State Water Board will coordinate with the USEPA and other relevant federal agencies to take appropriate legal actions to correct any non-compliance as quickly as possible.

#### **2. Project Environmental Compliance Tracking**

DFA utilizes the LGTS to track project status, compliance, and any special environmental conditions. Information from the LGTS may provide pertinent

documentation to the USEPA to help satisfy the DWSRF Program's compliance with the federal cross-cutting authorities.

## **ATTACHMENTS**

ATTACHMENT 1a

United States Environmental Protection Agency, Region IX Authorization to Allow the California State Water Resources Control Board to Initiate Consultation with the State Historic Preservation Officer and Tribal Historic Preservation Officers for Projects Funded under the Drinking Water State Revolving Fund Program (September 3, 2015)

ATTACHMENT 1b

[Reserved]

Programmatic Agreement between the United States Environmental Protection Agency, Region 9, the Advisory Council on Historic Preservation, the California State Historic Preservation Officer, and the California State Water Resources Control Board Regarding Compliance with Section 106 of the National Historic Preservation Act, as It Pertains to the Administration of the Drinking Water State Revolving Fund Program

At the time of development of this SERP, the USEPA, Region 9 and the State Water Board are in the process of developing a programmatic agreement with the SHPO and the Advisory Council on Historic Preservation that would govern project review under Section 106 of the NHPA. If this programmatic agreement is executed, it will be added as Attachment 1b to this SERP, and its provision will become operative and will supersede any contradictory provisions in this SERP.

## ATTACHMENT 2 Allowable CEQA Exemptions and Exceptions

This attachment lists the CEQA exemptions that may be used for projects reviewed under this SERP, if such exemptions are applicable to the proposed project. The exemptions listed below may be used for both Tier I and Tier II projects unless otherwise specified below. Only the CEQA exemptions listed in this SERP or otherwise approved by USEPA may be used to satisfy the environmental review requirements of this SERP.

This attachment also lists the exceptions<sup>7</sup> that must be applied to exemptions under this SERP. For Tier II projects, the exceptions shall apply to the extent required by CEQA. For Tier I projects, due to federal requirements, the CEQA exceptions to the categorical exemptions shall apply to all exemptions, including the common sense exemption and the CEQA statutory exemptions. (See 40 C.F.R. § 35.3580(e).)

### **Exceptions to Exemptions**

(California Code of Regulations, title 14, division 6, chapter 3, article 19, §15300.2)

(a) Location. Classes 3, 4, 5, 6, and 11<sup>8</sup> are qualified by consideration of where the project is to be located - a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply to all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

(b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

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<sup>7</sup> These exceptions are similar but not identical to USEPA's extraordinary circumstances for categorical exclusions (see 40 C.F.R. § 6.204(b)).

<sup>8</sup> For the purpose of this SERP, for Tier I projects, the Location exception applies to all exemptions and is not limited to these classes.

(d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.

(e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to § 65962.5 of the Government Code.

(f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

**Common Sense/General Rule Exemption:**

(California Code of Regulations, title 14, division 6, chapter 3, article 18, §15061(b)(3))

Projects are exempt where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

**Statutory Exemptions:**

**Feasibility and Planning Studies**

(California Code of Regulations, title 14, division 6, chapter 3, article 18, § 15262)

A project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the preparation of an EIR or Negative Declaration but does require consideration of environmental factors. This section does not apply to the adoption of a plan that will have a legally binding effect on later activities.

**Emergency Projects**

(California Code of Regulations, title 14, division 6, chapter 3, article 18, § 15269)

The following emergency projects are exempt from the requirements of CEQA.

(a) Projects to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to the California Emergency Services Act, commencing with § 8550 of the Government Code. This includes projects that will remove, destroy, or significantly alter an historical resource when that resource represents an imminent threat to the public of bodily harm or of damage to adjacent property or when the project has received a determination by the State Office of Historic Preservation pursuant to § 5028(b) of Public Resources Code.

(b) Emergency repairs to publicly or privately owned service facilities necessary to maintain service essential to the public health, safety or welfare. Emergency repairs

include those that require a reasonable amount of planning to address an anticipated emergency.

(c) Specific actions necessary to prevent or mitigate an emergency. This does not include long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short-term, but this exclusion does not apply (i) if the anticipated period of time to conduct an environmental review of such a long-term project would create a risk to public health, safety or welfare, or (ii) if activities (such as fire or catastrophic risk mitigation or modifications to improve facility integrity) are proposed for existing facilities in response to an emergency at a similar existing facility.

#### Other Statutory Exemption

(California Code of Regulations, title 14, division 6, chapter 3, article 18, § 15282)

(k) The installation of new pipeline or maintenance, repair, restoration, removal, or demolition of an existing pipeline as set forth in § 21080.21 of the Public Resources Code, as long as the project does not exceed one mile in length.

#### **Public Resources Code, section 21080.47 (Tier II projects only)**

##### **21080.47.**

(a) For purposes of this section, the following definitions apply:

(1) "Community water system" means a public water system that serves at least 15 service connections used by yearlong residents or regularly serves at least 25 yearlong residents within the area served by the public water system.

(2) "Disadvantaged community" means a community with an annual median household income that is less than 80 percent of the statewide annual median household income.

(3) "Inadequate onsite sewage treatment system" has the same meaning as defined in Section 13288 of the Water Code.

(4) "Nontransient noncommunity water system" means a public water system that is not a community water system and that regularly serves at least 25 of the same persons more than six months per year.

(5) "Onsite sewage treatment system" has the same meaning as defined in Section 13290 of the Water Code.

(6) (A) "Project" means either of the following:

(i) A project that consists solely of the installation, repair, or reconstruction of one or more of the following:

(I) Drinking water groundwater wells with a maximum flow rate of up to 250 gallons per minute.

(II) Drinking water treatment facilities with a footprint of less than 2,500 square feet that are not located in an environmentally sensitive area.

(III) Drinking water storage tanks with a capacity of up to 250,000 gallons.

(IV) Booster pumps and hydropneumatic tanks.

(V) Pipelines of less than three miles in length in a road right-of-way or up to seven miles in length in a road right-of-way when the project is required to address threatened or current drinking water violations.

(VI) Water service lines.

(VII) Minor drinking water system appurtenances, including, but not limited to, system and service meters, fire hydrants, water quality sampling stations, valves, air releases and vacuum break valves, emergency generators, backflow prevention devices, and appurtenance enclosures.

(ii) A project to provide sewer service to a disadvantaged community served by one or more inadequate sewage treatment systems.

(B) "Project" does not include either of the following categories of projects:

(i) Facilities that are constructed primarily to serve irrigation or future growth.

(ii) Facilities that are used to dam, divert, or convey surface water.

(7) "Project labor agreement" has the same meaning as in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(8) "Public water system" means a system for the provision of water for human consumption through pipes or other constructed conveyances that has 15 or more service connections or regularly serves at least 25 individuals daily at least 60 days out of the year, and shall include, but not be limited to, any of the following:

(A) Any collection, treatment, storage, and distribution facilities under the control of, and used primarily in connection with, the public water system.

(B) Any collection or pretreatment storage facilities not under the control of the operator of the public water system, but that are used primarily in connection with the public water system.

(C) Any system for the provision of water for human consumption through pipes or other constructed conveyances that treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption.

(9) "Skilled and trained workforce" has the same meaning as provided in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

(10) "Small community water system" means a community water system that serves no more than 3,300 service connections or a yearlong population of no more than 10,000 persons.

(11) "Small disadvantaged community water system" means either a small community water system that serves one or more disadvantaged communities or a nontransient noncommunity water system that primarily serves one or more schools that serve one or more disadvantaged communities.

(12) "State small water system" means a system for the provision of piped water to a disadvantaged community for human consumption that serves at least 5, but not more than 14, service connections and does not regularly serve drinking water to more than an average of 25 individuals daily for more than 60 days out of the year.

(b) (1) This division does not apply to a project that meets the requirements of subdivision (c) and subdivision (d) or (e), as appropriate, and that primarily benefits a small disadvantaged community water system or a state small water system in any of the following ways:

(A) Improving the small disadvantaged community water system's or state small water system's water quality, water supply, or water supply reliability.

(B) Encouraging water conservation.

(C) Providing drinking water service to existing residences within a disadvantaged community, a small disadvantaged community water system, or a state small water

system where there is evidence that the water exceeds maximum contaminant levels for primary or secondary drinking water standards or where the drinking water well is no longer able to produce an adequate supply of safe drinking water.

(2) Before determining a project is exempt under this section, the lead agency shall contact the State Water Resources Control Board to determine whether claiming the exemption under this section will affect the ability of the small disadvantaged community water system or the state small water system to receive federal financial assistance or federally capitalized financial assistance.

(c) The project meets all of the following:

(1) Does not affect wetlands as defined in the United States Fish and Wildlife Service Manual Part 660 FW 2 (June 21, 1993), or an environmentally sensitive habitat area within the coastal zone, as defined in Section 30107.5.

(2) Unusual circumstances do not exist that would cause a significant effect on the environment.

(3) Is not located on a hazardous waste site that is included on any list compiled pursuant to Section 65962.5 of the Government Code.

(4) Does not have the potential to cause a substantial adverse change in the significance of a historical resource.

(5) The construction impacts are fully mitigated consistent with applicable law.

(6) The cumulative impact of successive reasonably anticipated projects of the same type as the project, in the same place, over time, is not significant.

(d) (1) For a project undertaken by a public agency that is exempt from this division pursuant to this section, except as provided in paragraph (2), an entity shall not be prequalified or shortlisted or awarded a contract by the public agency to perform any portion of the project unless the entity provides an enforceable commitment to the public agency that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades.

(2) Paragraph (1) does not apply if any of the following requirements are met:

(A) The public agency has entered into a project labor agreement that will bind all contractors and subcontractors performing work on the project or contract to use a skilled and trained workforce, and the entity agrees to be bound by that project labor agreement.

(B) The project or contract is being performed under the extension or renewal of a project labor agreement that was entered into by the public agency before January 1, 2021.

(C) The entity has entered into a project labor agreement that will bind the entity and all of its subcontractors at every tier performing the project or contract to use a skilled and trained workforce.

(e) For a project undertaken by a private entity that is exempt from this division pursuant to this section, the project applicant shall do both of the following:

(1) Certify to the lead agency that either of the following is true:

(A) The entirety of the project is a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(B) If the project is not in its entirety a public work, all construction workers employed in the execution of the project will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code, except that

apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate. If the project is subject to this subparagraph, then, for those portions of the project that are not a public work, all of the following shall apply:

(i) The project applicant shall ensure that the prevailing wage requirement is included in all contracts for the performance of the work.

(ii) All contractors and subcontractors shall pay to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

(iii) (I) Except as provided in subclause (III), all contractors and subcontractors shall maintain and verify payroll records pursuant to Section 1776 of the Labor Code and make those records available for inspection and copying as provided by that section.

(II) Except as provided in subclause (III), the obligation of the contractors and subcontractors to pay prevailing wages may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Section 1741 of the Labor Code, which may be reviewed pursuant to Section 1742 of the Labor Code, within 18 months after the completion of the project, by an underpaid worker through an administrative complaint or civil action, or by a joint labor-management committee through a civil action under Section 1771.2 of the Labor Code. If a civil wage and penalty assessment is issued, the contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages pursuant to Section 1742.1 of the Labor Code.

(III) Subclauses (I) and (II) do not apply if all contractors and subcontractors performing work on the project are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the project and provides for enforcement of that obligation through an arbitration procedure.

(iv) Notwithstanding subdivision (c) of Section 1773.1 of the Labor Code, the requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing shall not apply if otherwise provided in a bona fide collective bargaining agreement covering the worker. The requirement to pay at least the general prevailing rate of per diem wages does not preclude use of an alternative workweek schedule adopted pursuant to Section 511 or 514 of the Labor Code.

(2) Certify to the lead agency that a skilled and trained workforce will be used to perform all construction work on the project. All of the following requirements shall apply to the project:

(A) The applicant shall require in all contracts for the performance of work that every contractor and subcontractor at every tier will individually use a skilled and trained workforce to complete the project.

(B) Every contractor and subcontractor shall use a skilled and trained workforce to complete the project.

(C) (i) Except as provided in clause (ii), the applicant shall provide to the lead agency, on a monthly basis while the project or contract is being performed, a report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code. A monthly report provided to the lead agency pursuant to this clause shall be a public record under the California Public Records Act (Division 10

(commencing with Section 7920.000) of Title 1 of the Government Code) and shall be open to public inspection. An applicant that fails to provide a monthly report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code shall be subject to a civil penalty of ten thousand dollars (\$10,000) per month for each month for which the report has not been provided. Any contractor or subcontractor that fails to use a skilled and trained workforce shall be subject to a civil penalty of two hundred dollars (\$200) per day for each worker employed in contravention of the skilled and trained workforce requirement. Penalties may be assessed by the Labor Commissioner within 18 months of completion of the project using the same procedures for issuance of civil wage and penalty assessments pursuant to Section 1741 of the Labor Code, and may be reviewed pursuant to the same procedures in Section 1742 of the Labor Code. Penalties shall be paid to the State Public Works Enforcement Fund.

(ii) Clause (i) does not apply if all contractors and subcontractors performing work on the project are subject to a project labor agreement that requires compliance with the skilled and trained workforce requirement and provides for enforcement of that obligation through an arbitration procedure.

(f) If the lead agency determines that a project is not subject to this division pursuant to this section, and the lead agency determines to approve or carry out that project, the lead agency shall file a notice of exemption with the Office of Planning and Research and the county clerk of the county in which the project is located in the manner specified in subdivisions (b) and (c) of Section 21152.

(g) This section shall remain in effect only until January 1, 2032, and as of that date is repealed.

### **Public Resources Code, section 21080.48 (Tier II projects only)**

#### **21080.48.**

(a) This division does not apply to a project, as defined in Section 21080.47, that is a community water system that is funded pursuant to the Safe Drinking Water, Wildfire Prevention, Drought Preparedness, and Clean Air Bond Act of 2024 (Division 50 (commencing with Section 90000)) or the State Water Resources Control Board's Safe and Affordable Funding for Equity and Resilience program that does not otherwise include any construction activities if the project does both of the following:

(1) Results in long-term net benefits to climate resiliency, biodiversity, and sensitive species recovery.

(2) Includes procedures and ongoing management for the protection of the environment.

(b) A project exempt from this division pursuant to this section remains subject to all other applicable federal, state, and local laws and regulations and shall not weaken or violate any applicable environmental or public health standards.

(c) This section shall remain in effect only until January 1, 2030, and as of that date is repealed.

#### **Categorical Exemptions:**

Class 1: Existing Facilities

(California Code of Regulations, title 14, division 6, chapter 3, article 19, § 15301)

Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. The types of “existing facilities” itemized below are not intended to be all-inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion.

**Class 2: Replacement or Reconstruction**

(California Code of Regulations, title 14, division 6, chapter 3, article 19, § 15302)

Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced.

**Class 3: New Construction or Conversion of Small Structures**

(California Code of Regulations, title 14, division 6, chapter 3, article 19, § 15303)

Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel.

**Class 4: Minor Alterations to Land**

(California Code of Regulations, title 14, division 6, chapter 3, article 19, § 15304)

Class 4 consists of minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes.

**Class 6: Information Collection**

(California Code of Regulations, title 14, division 6, chapter 3, article 19, § 15306)

Class 6 consists of basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. These may be strictly for information gathering purposes, or as part of a study leading to an action which a public agency has not yet approved, adopted, or funded.

ATTACHMENT 3  
Tier II Environmental Review Process

In accordance with 40 C.F.R. § 35.3580(d), a State may elect to apply an alternative SERP (referred to as Tier II environmental review) to certain projects and activities for which the State provides assistance in amounts that are greater than the amount of the capitalization grant deposited into the DWSRF or set aside accounts provided that the process addresses the required elements set forth in 40 C.F.R. § 35.3580(d). The State Water Board has elected to apply Tier II environmental reviews to certain projects and activities that meet the DWSRF Regulations. The State Water Board's Tier II process shall consist of the procedures described in this SERP and the procedures set forth in the CEQA statute (Pub. Resources Code, § 21000 *et seq.*) and CEQA Guidelines (Cal. Code Regs., tit. 14, div. 6, ch. 3, § 15000 *et seq.*), with the following modifications:

- Review under the federal cross-cutting authorities described in sections III.D.1.f and IV.B.1, and the associated federal consultations shall not be required for Tier II projects.
- Reevaluation or reaffirmation where the environmental review document was completed more than 5 years earlier (see sections III.D.1.b. and IV.A.3) will not automatically be required for all Tier II projects.
- The State Water Board will not require a public comment period for an addendum prepared for a Tier II project.
- The State Water Board may specify the projects and activities, if any, that will be subject to Tier II environmental review in its DWSRF Policy and/or annual Intended Use Plan or other documents.
- The applicants will not be required to file an NOE with the County Clerk and the SCH for planning projects and submit it to the State Water Board as part of the planning application package. The State Water Board will file an NOE with the SCH for the planning projects following the approval of financing agreements.
- In the event that the State Water Board enters into a financing agreement that includes both planning and construction activities for a Tier II project, the following shall apply:
  - The environmental review for the project construction activities must be completed prior to the start of construction activities. After execution of the financing agreement, no ground-disturbing activities or construction of the project may proceed unless and until the State Water Board completes its own environmental review process.
  - The State Water Board will file a NOE or NOD upon completion of the environmental review for the project construction.
- As described in Attachment 2, this SERP allows additional CEQA exemptions to be used for Tier II projects.
- As described in Attachment 2, for Tier II projects, the exceptions to exemptions are applied consistent with CEQA.

The Tier II environmental review process must provide for comparative evaluation among alternatives and account for beneficial and adverse consequences to the existing and future environment in accordance with 40 C.F.R. 35.3580(d)(3). The Tier II environmental review process must also provide for notice to the public of the proposed projects and activities and for the opportunity to comment on alternatives and to examine environmental review documents in accordance with 40 C.F.R. 35.3580(d)(5). For projects determined by the State Water Board to be controversial, a public hearing must be held.