

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

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

**July 2020**



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## EXECUTIVE SUMMARY

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, 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 (Attachment [1](#)) for completion of the funding application packages. This attachment is updated regularly to ensure continued compliance with the DWSRF Program requirements.

The DWSRF Program, currently implemented by the State Water Board, 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 finished 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) prior to approval of a DWSRF financing agreement. Pursuant to 40 C.F.R. §35.3580(c), SERPs must be functionally equivalent to the review conducted by the USEPA under the National Environmental Policy Act (NEPA). States may elect to apply the procedures at 40 C.F.R. Part 6 or apply their own “NEPA-like” SERP for conducting environmental reviews provided that certain elements are met.

This 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, §§ 21000-21189.7; 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 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. The present DWSRF SERP was prepared when the DWSRF Program was implemented by the California Department of Public Health. The DWSRF Program was transferred to the State Water Board in 2014. This document serves to replace the existing DWSRF SERP by detailing federal

environmental review requirements, how California builds upon CEQA, the assistance offered by the State Water Board's Environmental Review Staff (Environmental Review Staff), and how the DWSRF Program complies with the environmental requirements of the DWSRF Regulations.

The State Water Board will conduct environmental reviews in accordance with this SERP for all equivalency projects financed through the DWSRF Program. CEQA-only review will be applied to projects identified by the State Water Board as non-equivalency. 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 followed.

## Table of Contents

Executive Summary	3
<b>I. Introduction</b>	<b>7</b>
A. Legal Foundation	7
B. Interdisciplinary Approach	7
C. Decision Documentation	8
D. Public Notice and Participation	8
E. Alternatives Consideration	9
<b>II. Planning Projects</b>	<b>9</b>
A. Pre-application Activities	10
1. Early Consultation between Environmental Review Staff and Applicants	10
2. CEQA Compliance	11
3. Public Participation	11
B. Application Activities for Planning	11
1. Environmental Review Process	11
a. Complete Application	12
b. Initial Review	12
c. Federal Consultation	12
2. Documentation of Environmental Compliance	12
a. Environmental Review Completion	13
b. Board Item Presentation for Non-routine or Controversial Projects	13
c. Notice of Exemption/Notice of Determination	13
C. Post-financing Activities	14
1. Planning Project Implementation	14
a. CEQA Document Preparation	14
b. Public Comment	14
c. Exemptions	15
d. Cross-cutting Federal Authorities and Determination of Federal Agency	16
e. Environmental Analysis of Alternatives	17
2. Project Re-evaluation due to Change in Project Scope	18
3. Project Environmental Compliance Tracking	18
<b>III. Construction Projects</b>	<b>18</b>
A. Pre-application Activities	18
1. Early Consultation between Environmental Review Staff and Applicants	18
2. Environmental Package	19
3. CEQA Approval	19

4. Five-Year Re-affirmation Requirements for Environmental Documents	20
B. Application Activities for Construction	21
1. Complete Application	21
2. Initial Review	22
3. Federal Consultation	23
4. Documentation of Environmental Compliance	25
5. Board Item Preparation for Non-routine or Controversial Projects	25
6. Notice of Exemption/Notice of Determination	25
7. Special Environmental Conditions	25
C. Post-financing Activities	25
1. Project Re-evaluation due to Change in Project Scope	25
2. Compliance Follow-up	26
3. Project Environmental Compliance Tracking	26

## Attachments

Attachment [1](#): Drinking Water State Revolving Fund, Environmental Package and Instructions

Attachment [2](#): 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 [3](#): USEPA, Region IX, Designation of Non-Federal Representation under Section 7 of the Federal Endangered Species Act and Section 305 (b)(2) of the Magnuson-Stevens Act Letter to Mr. Ren Lohofener, Regional Director, US Fish and Wildlife Services, Pacific Southwest Region Headquarters (July 22, 2016)

Attachment [4a](#): USEPA, Region IX, Designation of Non-Federal Representation under Section 7 of the Federal Endangered Species Act and Section 305 (b)(2) of the Magnuson-Stevens Act Letter to Ms. Maria Rea, Assistant Regional Administrator, National Marine Fisheries Service, California Central Valley Area Office (July 22, 2016)

Attachment [4b](#): USEPA, Region IX, Designation of Non-Federal Representation under Section 7 of the Federal Endangered Species Act and Section 305 (b)(2) of the Magnuson-Stevens Act Letter to Ms. Lisa Van Atta, Assistant Regional Administrator, National Marine Fisheries Service, California Coastal Office (July 22, 2016)

Attachment [5](#): United States Department of Interior, Fish and Wildlife Service, Pacific Southwest Region, Memorandum on Regional Policy on “No Effect” Determinations (December 6, 2013)

Attachment 6: CEQA Exemptions

Attachment [7](#): United States Environmental Protection Agency, Region IX, Designation of Non-Federal Representation under Section 7 of the Federal Endangered Species Act

and Section 305(b) of the Magnuson Stevens Act Letter to Mr. Darrin Polhemus, Deputy Director, State Water Resources Control Board, Division of Financial Assistance (July 22, 2016)

## I. INTRODUCTION

Because California has chosen to implement its own SERP, pursuant to 40 C.F.R. §35.3580(c), this SERP includes the following elements:

- A. *Legal foundation,*
- B. *Interdisciplinary approach,*
- C. *Decision documentation,*
- D. *Public notice and participation, and*
- E. *Alternatives consideration.*

In addition, this SERP identifies categorical exclusions and extraordinary circumstances in accordance with 40 C.F.R. §35.3580(e).

The DWSRF environmental review complies with the general DWSRF Regulations as detailed below.

### A. *Legal foundation:*

The State of California, pursuant to Health and Safety Code, section 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 Operating Agreement, each DWSRF capitalization grant agreement, and state environmental requirements via the CEQA. CEQA includes consideration of mitigation measures (paragraphs II.A.1, II.B.2.a, and III.C.2, below) and legal remedies (paragraphs I.D, II.A.3, and II.C.1.b, below; Cal. Pub. Resources Code § 21167 *et seq.*). The DWSRF Program is administered by the State Water Board, Division of Financial Assistance (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, 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:*

40 C.F.R. §35.3580(c)(2) requires states to use an interdisciplinary approach for identifying and mitigating adverse environmental effects associated with achieving compliance with the federal environmental authorities (cross-cutting federal authorities). This SERP requires applicants 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 cross-cutting federal authorities. The Environmental Package and Instructions (Attachment [1](#)) 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 state and federal environmental requirements.

*C. Decision documentation:*

The Environmental Review Staff records how the applicant has complied with CEQA and cross-cutting federal 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 and/or information contained in this document is considered in the final evaluation for financing by the DFA management and, in some instances, by the State Water Board during a public meeting. The ESC will include 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 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 project information is reaffirmed and re-noticed if the 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 for a project or activity was issued more than five years prior to the decision by the State Water Board to fund the project. More specifically, the State Water Board must document the information, process, and premises that lead to its decision to reaffirm or modify a decision following a mandatory five-year environmental reevaluation of a proposed project or activity. Additionally, the State Water Board must 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 II.C.1.b. and III.A.4. 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) provide public notice and the opportunity for public comment on proposed projects as detailed in the CEQA guidelines (<http://resources.ca.gov/ceqa/>). 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 the Governor's Office of Planning and Research, State Clearinghouse (SCH) review (Pub. Resources Code, §§ 21000-21006).

The State Water Board will also apply the requirements of 40 C.F.R. §35.3580(c)(1)(4) 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 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 will be held for all projects and activities covered by an EIS/EIR except for those having little or no environmental effect (e.g., projects with a FONSI/ND/MND or categorically excluded/exempt).

E. *Alternatives consideration:*

DWSRF Regulations require the applicant to evaluate and determine the environmental impacts of each project alternative. If this information is not in the Engineering Report or the CEQA document, then the State Water Board will accept this information in a technical memorandum. Regardless of whether the evaluation of project alternatives is contained in the Engineering Report, CEQA documents, or a technical memorandum, the evaluation must include:

- A “no project/no action” alternative.
- Comparative analysis among the alternatives that includes discussions of beneficial and adverse impacts on the existing environmental, future environmental, and individual sensitive environmental issues associated with the project.
- Analysis of direct, indirect, and cumulative impacts on sensitive environmental resources, if applicable.
- Appropriate mitigation measures to mitigate adverse impacts associated with the alternatives, if appropriate.
- Thorough discussion of the rationale for selection of the chosen alternative for the project.

All projects must consider a no project/no action alternative. The environmental analysis of alternatives is presented in the CEQA and cross-cutting federal authorities supporting documents submitted with the construction application.

## **II. PLANNING PROJECTS**

The applicants that apply for DWSRF financing for planning activities, seek funding to support the development and evaluation of potential project alternatives. The evaluation will lead to the selection of a preferred project alternative that resolves a drinking water compliance issue and/or improves drinking water infrastructure. The State Water Board requires applicants to submit a completed Environmental Package (Attachment [1](#)) for planning. As part of the application process, the applicant needs to provide information about the proposed project environment and any sensitive environments or unusual attributes of the potential project site, so that any impacts due to planning activities can be assessed. Following completion of planning activities, the applicant should have all the appropriate documents to submit for the environmental review associated with the Construction Application.

The activities and requirements below are in addition to and/or supportive of those discussed in the Introduction.

## A. Pre-application Activities

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

Upon request by the potential applicant, but prior to the actual submittal of the application, 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.

Two important decisions that the applicant must make prior to completing and submitting the Environmental Package for Financial Assistance for Planning (the Planning Application), are:

➤ Who will be the CEQA lead agency?

Under CEQA, the 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. (Pub. Resources Code, § 21067.) 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. (Pub. Resources Code, § 21069.)

- If the applicant is a public agency, then the applicant will serve as the CEQA lead agency. The State Water Board will be a CEQA responsible agency. If the applicant is not a public agency, then it cannot serve as the CEQA lead agency. Rather, another public agency must assume the lead agency role. For DWSRF projects, the State Water Board often assumes the lead agency role for non-public agencies.

➤ Is the project exempt from CEQA?

Generally, planning projects are exempt under CEQA, unless there are ground-disturbing<sup>1</sup> activities. See below for more detailed discussion regarding CEQA compliance.

Once a determination is made that the planning project meets the exemption criteria, the Environmental Package for the Planning Application can be completed.

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<sup>1</sup> Ground-disturbing/groundbreaking activities include construction activities such as project site preparation/clearing, test well drilling, repair, rehabilitation, or replacement of a treatment works, project for enhanced energy efficiency, etc.

The applicant may contact the State Water Board Project Manager (Project Manager) to be directed to the assigned Environmental Review Staff for further clarification on DWSRF Program environmental requirements. The applicant is also encouraged to review the information posted on the DFA Environmental Section's (Environmental Section) webpage [https://www.waterboards.ca.gov/drinking\\_water/services/funding/SRF.html](https://www.waterboards.ca.gov/drinking_water/services/funding/SRF.html)

## **2. CEQA Compliance**

As stated previously, most planning projects fall under a CEQA exemption because the main purpose of planning projects is to identify and evaluate the reasonable project alternatives and select a preferred alternative to construct. The CEQA lead agency will determine the appropriate planning-related exemption and complete and file the Notice of Exemption (NOE), as appropriate, to comply with CEQA.

- If the applicant is the CEQA lead agency, the applicant will complete the NOE form and file it with the County Clerk's office and the SCH. The applicant will provide date-stamped copies of the NOE along with the Environmental Package. Following approval of the financing agreement by the Deputy Director of DFA/State Water Board, the Environmental Review Staff will file an NOE with the SCH as a responsible CEQA agency.
- If the State Water Board is the CEQA lead agency, then the Environmental Review Staff will prepare an NOE form and file it with the SCH, upon approval of financing for the planning project.

For planning projects that are exempt, federal cross-cutters will likely not apply because the proposed construction project has not yet been defined for the environmental impacts of the project to be evaluated for each cross-cutting federal authority. Typically, the initial planning process does not involve ground-disturbing activities. For planning projects that include ground-disturbing activities, development of a CEQA document and compliance with cross-cutting federal authorities are required. The applicant should discuss any ground-disturbing activities with the Environmental Review Staff.

## **3. Public Participation**

If a project is exempt, CEQA does not require a public agency to record its decision or the reasons for its decision (Pub. Res. Code, §§ 15060-15062). To comply with the DWSRF Regulations, the State Water Board requires that applicants file an NOE with the 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 (<http://www.ceganet.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 this activity.

## **B. Application Activities for Planning**

### **1. Environmental Review Process**

#### **a. Complete Application**

The complete Planning Application includes the General, Technical, Financial and Environmental Packages. As part of the Environmental Package, the following documents must be submitted (if applicable):

- Date-stamped copy of NOE or NOD filed with the County Clerk and the SCH, and
- CEQA document that has been adopted and is being relied upon (most projects will not have a CEQA document).

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

Once the applicant submits a complete Planning Application, an Environmental Review Staff will be assigned to review the project materials, including the Environmental Package, the General Package and the Technical Package to obtain information on the water system, the problem being addressed by the planning project, and the status of the proposed Scope of Work for planning activities.

The applicant must prepare and submit a Scope of Work that includes the tasks to be performed, the deliverables to be developed, and the anticipated budget for the planning/design of the project prior to the execution of the financing agreement. Typically, the Scope of Work will include a task item for preparation of appropriate environmental documents for the proposed project alternative. This task item should include resources to support development of appropriate environmental documents for the project, as well as any documents that need to be prepared to meet the requirements for applicable cross-cutting federal authorities.

Once the required documents for the Environmental Package for planning have been received, the Environmental Review Staff will conduct a thorough review of the items to ensure that the information submitted is complete and adequate, enabling the State Water Board to make an environmental determination. If additional information is required, then the Environmental Review Staff will request more information, reports or studies.

#### **c. Federal Consultation**

Most planning projects will not have additional federal environmental requirements or consultations because the work entails planning documentation such as plans and specifications, environmental documents, engineering reports, and feasibility studies. The primary exception to this is a planning project that will have ground-disturbing activities as an element of the project. If the project will have ground-disturbing activities, then 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.

## **2. Documentation of Environmental Compliance**

The Environmental Review Staff will review the submitted materials, determine if the materials are complete and adequate and then document the environmental compliance in an ESC document. The ESC document summarizes the project activities and special environmental conditions for the project.

Additionally, the Environmental Review Staff will review the project Scope of Work and determine:

- Whether the project has planned and budgeted for the development of appropriate environmental documents for the project. If not, recommendations will be made to amend the Scope of Work.
- Whether there is the potential for hazardous materials to be generated during the planning phase (e.g., evaluation of treatment technologies). If so, special environmental conditions will be prepared to be included in the financing agreement.

### **a. Environmental Review Completion**

Once the Environmental Package is found to be complete and adequate, the Environmental Review Staff will prepare an ESC and a draft CEQA determination documenting compliance with CEQA. The Environmental Review Staff will provide copies of these documents to the Project Manager for inclusion in the project's master file.

Special environmental conditions will likely be an element of the financing agreement if the Scope of Work includes funding for environmental review to support construction activities. 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 cultural resources assessment including evaluation of historical resources and submittal of that document to the Environmental Review Staff.
- Preparation of a CEQA document for public comment and review.
- Coordination with local agencies if arsenic or other hazardous material treatment technology is being piloted as a task within this project.

### **b. Board Item Presentation for Non-routine or Controversial Projects**

The State Water Board considers non-routine or controversial project financing approvals at its public board meetings. Possible issues that may render a planning project non-routine or controversial, include, but are not limited to: 1) the

applicant is requesting planning fees above what has been designated in the Intended Use Plan; 2) the applicant is facing a legal challenge; or 3) the applicant requests atypical financing terms. For non-routine or controversial projects, the applicants will generally need to add at least 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.

c. 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.

- If the applicant is the CEQA lead agency, then an NOE/NOD for the project will be filed with the SCH prior to submittal of the application. The State Water Board will file an NOE/NOD once the financing agreement for the project has been approved in compliance with its responsibilities as a CEQA responsible agency.
- If the State Water Board is the lead agency, an NOE/NOD will be filed with the SCH, once the financing agreement for the project has been approved.

**C. Post-financing Activities**

**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:

- Initial Study (IS) – An IS is a preliminary analysis prepared for determining what environmental impacts a project may have, the appropriate level of review, and what type of CEQA document should be prepared.
- 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 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.



## b. Public Comment

As mentioned in the Introduction, the CEQA process provides opportunities for the public 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. 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 the cross-cutting federal authorities.

A record of the comments received and of responses made to the commenter is prepared prior to the CEQA lead agency's adoption or certification of the CEQA document.

- If the applicant is the lead agency, then the applicant's decision-making body must consider and adopt/certify the CEQA document 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 days following adoption/certification of the CEQA document. 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, then Environmental Review Staff will prepare a Consideration and Adoption document for signature by the Deputy Director. This document signifies that the CEQA document that was prepared for the project complies with CEQA Statutes and Guidelines. Following the project's financing agreement approval by the Deputy Director/State Water Board, an NOD for the project is filed with the SCH and the CDFW filing fees are paid by the State Water Board.

As discussed above, the State Water Board will also apply the requirements of 40 C.F.R. §35.3580(c)(1)(4) to its public notification and participation.

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 determines after review that the environmental documents and decision remain appropriate because the project has not changed, the applicant must prepare a memorandum affirming that the previously prepared environmental evaluation and the resulting environmental document still apply to the project. The Environmental Review Staff will record this activity in a subsequent NOD that will be filed with the SCH, which will notify the public through publication on its website.

For projects that have changes (e.g., project footprint is enlarged or reduced; project treatment process has changed; impact of the project on the environment has changed), the applicant or CEQA lead agency must determine the appropriate CEQA document to prepare and must provide a formal public comment period during which time no action on a project will be allowed. The applicant must hold a public hearing or meeting for any projects covered under an EIS/EIR except for those having little or no environmental impact (e.g., categorically exempt/MND/ND). 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 applicant must provide the public, responsible agencies, and trustee state agencies under CEQA an opportunity to review and comment on the CEQA documents for the proposed DWSRF projects and notify the Environmental Review Staff of any meetings regarding CEQA review of the DWSRF project.

- If the applicant is the lead agency, then the applicant 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.

Finally, if the planning project will involve ground-disturbing activities, then the applicant or lead agency will be required to comply with the appropriate state and federal environmental requirements prior to implementation of this ground-breaking, planning activity.

#### c. Exemptions

CEQA also 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 has been determined to have a minor footprint, is not in a sensitive area, or 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 the project is located in an environmentally sensitive area; 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; cause a substantial change to historical resources, wetlands, floodplains, coastal zones, scenic rivers, fish and wildlife habitat; cause significant public controversy about a potential environmental impact of the proposed action; will have a disproportionately high and adverse human health or environmental effect on any community, including minority, low-income, or Indian tribal communities; cause significant air quality effects; or cause significant effects on patterns and types of land

use. (Cal. Code Regs., tit. 14, § 15300.2). If a project falls into one of the categorical exemptions listed in Attachment 6, a CEQA document need not be developed, but the federal cross-cutting authorities may still apply; and

- Statutory Exemption (SE) – Projects are statutorily exempt if they have been designated by the Legislature as such. The applicable statutory exemption for the DWSRF Program is included in Attachment 6. As with categorical exemptions, the federal-cross cutting authorities may still apply.

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

All applicants for DWSRF construction financing must thoroughly analyze the environmental consequences of their project. The required engineering and 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 cross-cutting federal authorities. The cross-cutting federal authorities that may need to be addressed, include:

- Archeological and Historic Preservation Act (54 U.S.C. §§312501-312508)
- Bald and Golden Eagle Protection Act (16 U.S.C. §§ 668-668c)
- Clean Air Act (42 U.S.C. § 7401)
- Coastal Barriers Resources Act (16 U.S.C. § 3501)
- Coastal Zone Management Act (16 U.S.C. § 1451)
- Endangered Species Act (16 U.S.C. § 1531)
- Environmental Justice (Executive Order 12898)
- Farmland Protection Policy Act (7 U.S.C. § 4201)
- Fish and Wildlife Coordination Act (16 U.S.C. § 661)
- Floodplain Management (Executive Order 11988, as amended by Executive Orders 12148 and 13690)
- Historic Sites Act (54U.S.C. §320101 *et seq.*)
- Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. §§ 1801 *et seq.*)
- Marine Mammal Protection Act (16 U.S.C. §§ 703 *et seq.*)
- Migratory Bird Treaty Act (16 U.S.C. §§ 703 *et seq.*)
- National Historic Preservation Act (54 U.S.C. §§ 300101 *et seq.*)
- Protection of Wetlands (Executive Order 11990 (1977), as amended by Executive Order 12608 (1997))
- Rivers and Harbors Act (33 U.S.C. § 403)
- Safe Drinking Water Act (42 U.S.C. § 300f)
- Wild and Scenic Rivers Act (16 U.S.C. § 1271)
- Wilderness Act (16 U.S.C. §1131 *et seq.*)

Once a preferred project has been identified, the CEQA lead agency will determine the appropriate environmental documents to prepare and will oversee development of complete and adequate environmental documentation that fulfills state and federal environmental needs of the DWSRF construction application.

- If the applicant is the CEQA lead agency, then the applicant is encouraged to consult with appropriate professionals to prepare this information. The Environmental Review Staff is available to answer questions.
- If the State Water Board is the CEQA lead agency, then the Environmental Review Staff will work closely with the selected consultant and applicant to ensure the environmental document that is prepared is adequate and is consistent with the CEQA Guidelines (<http://resources.ca.gov/ceqa/>).

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

#### e. Environmental Analysis of Alternatives

DWSRF Regulations require the applicant to evaluate and determine the environmental impacts of each project alternative. If this information is not in the Engineering Report or the CEQA document, then the State Water Board will accept this information in a technical memorandum. Regardless of whether the evaluation of project alternatives is contained in the Engineering Report, CEQA documents, or a technical memorandum, the evaluation must include:

- A “no project/no action” alternative.
- Comparative analysis among the alternatives that includes discussions of beneficial and adverse impacts on the existing environmental, future environmental, and individual sensitive environmental issues associated with the project.
- Analysis of direct, indirect, and cumulative impacts on sensitive environmental resources, if applicable.
- Appropriate mitigation measures to mitigate adverse impacts, if appropriate.
- Thorough discussion of the rationale for selection of the chosen alternative for the project.

All projects must consider a no project/no action alternative. The environmental analysis of alternatives is presented in the CEQA and cross-cutting federal authorities supporting documents submitted with the construction application.

## **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 to support the DWSRF financing of construction is developed during the planning phase.

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

The Environmental Section 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 cross-cutting federal authorities.

### **III. CONSTRUCTION PROJECTS**

The applicants for DWSRF financing for construction projects are seeking to implement a project that has been designed, and for which the environmental evaluation has been completed. The DWSRF Program requires compliance 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.

#### **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 for construction activities. The applicant may contact the Project Manager and ask to be directed to the assigned Environmental Review Staff for further clarification on the DWSRF Program environmental requirements. The applicant is also encouraged to review the information 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)

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).

The questions regarding environmental compliance include:

- Have the environmental documents been prepared for the proposed project?

- Were environmental documents prepared to meet “cross-cutting federal authorities” requirements?
- Will the project have an impact on any cultural resources and require consultation with the State Historic Preservation Officer and/or Tribal Historic Preservation Officer?
- Will the project impact any state or federally listed species?
- Will the project require consultations with the United States Fish and Wildlife Service (USFWS) and/or the National Marine Fisheries Service (NMFS)?
- Will the project’s air quality emissions (construction and operation) exceed the federal *de minimis* levels, and require a General Conformity Determination?
- Will the project require a Clean Water Act, Section 404 Permit and a Section 401 Certification?
- Is there any significant controversy related to the project’s environmental documents?
- Were the project’s environmental documents approved more than five years from the expected approval date of the DWSRF financing agreement?

As with planning activities, it is important for the applicant to determine who will be the CEQA lead agency for the construction activities. 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, then the applicant will serve as the CEQA lead agency. The State Water Board will be a CEQA responsible agency.
- If the applicant is not a public agency, then it cannot serve as the CEQA lead agency. Rather, another public agency must assume the lead agency role. For the DWSRF projects, the State Water Board often assumes the lead agency role for the non-public agency.

## **2. Environmental Package**

The Environmental Package and Instructions (Attachment [1](#)) for Construction Application guides the applicant through the required state and federal environmental requirements. Because the DWSRF SERP utilizes the CEQA process 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 partially fund

projects, each applicant must provide documentation that the project complies with the appropriate cross-cutting federal authorities.

If CEQA or cross-cutting federal authorities documents are incomplete, the Environmental Review Staff will work with the applicant to identify missing elements and discuss how the work will get completed.

### **3. CEQA Approval**

CEQA approval process is described in the CEQA Statutes and CEQA Guidelines (<http://resources.ca.gov/ceqa/>).

- If the applicant is the CEQA lead agency, the applicant will ensure that the appropriate documents have been developed and comply with the CEQA Guidelines. Filing the NOD with the County Clerk and the SCH certifies that the applicant has complied with CEQA and has approved the project.
- If the State Water Board is the CEQA lead agency, then the Environmental Review Staff will ensure that the CEQA document has been adopted/certified. If the CEQA document was developed through the DWSRF planning, 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 an Adoption and Consideration memo. Upon approval for project financing agreement, an NOD will be filed with the SCH.

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

Under 40 C.F.R. §35.3580, 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. This requirement ensures that the environmental conditions that were originally considered by such documents are still valid. Specifically, the CEQA document must have been adopted or certified less than five years before the expected approval date of the DWSRF financing agreement. This reaffirmation ensures that current and accurate information about the impact of the project on the environment is being considered.

If the CEQA lead agency determines after review that the environmental documents and decision remain appropriate because the project has not changed, the applicant must prepare a memorandum affirming that the previously prepared environmental evaluation and the resulting environmental document still apply to the project. The Environmental Review Staff will record this activity in a subsequent NOD that will be filed with the SCH.

For projects that have changes (e.g., project footprint is enlarged or reduced; project treatment process has changed; impact of the project on the environment has changed), the applicant or CEQA lead agency must determine the appropriate CEQA document to prepare and must provide a formal public

comment period during which time no action on a project will be allowed. The applicant must hold a public hearing or meeting for any projects covered under an EIS/EIR except for those having little or no environmental impact (e.g., categorically exempt/MND/ND). 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). Where the applicant is the CEQA lead agency, the applicant must provide the public, responsible agencies, and trustee state agencies under CEQA an opportunity to review and comment on the CEQA documents for the proposed DWSRF projects and notify the Environmental Review Staff of any meetings regarding CEQA review of the DWSRF project. Where the State Water Board is the CEQA lead agency, the State Water Board will provide the public, responsible agencies, and trustee state agencies under CEQA an opportunity to review and comment on the CEQA documents for the proposed DWSRF projects.

- If the applicant is the lead agency, then the applicant 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 Application**

All applicants applying for DWSRF construction financing are required to provide information showing compliance with the CEQA and the applicable cross-cutting federal authorities 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)).

Documentation of compliance with the applicable federal cross-cutting federal authorities can be included in the CEQA document. Cross-cutting federal authorities that may need to be addressed, include:

- Archeological and Historic Preservation Act (54 U.S.C. §§312501-312508)
- Bald and Golden Eagle Protection Act (16 U.S.C. §§ 668-668c)
- Clean Air Act (42 U.S.C. § 7401)
- Coastal Barriers Resources Act (16 U.S.C. § 3501)



- Coastal Zone Management Act (16 U.S.C. § 1451)
- Endangered Species Act (16 U.S.C. § 1531)
- Environmental Justice (Executive Order 12898)
- Farmland Protection Policy Act (7 U.S.C. § 4201)
- Fish and Wildlife Coordination Act (16 U.S.C. § 661)
- Floodplain Management (Executive Order 11988, as amended by Executive Orders 12148 and 13690)
- Historic Sites Act (54U.S.C. §320101 *et seq.*)
- Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. §§ 1801 *et seq.*)
- Marine Mammal Protection Act (16 U.S.C. §§ 703 *et seq.*)
- Migratory Bird Treaty Act (16 U.S.C. §§ 703 *et seq.*)
- National Historic Preservation Act (54 U.S.C. §§ 300101 *et seq.*)
- Protection of Wetlands (Executive Order 11990 (1977), as amended by Executive Order 12608 (1997))
- Rivers and Harbors Act (33 U.S.C. § 403)
- Safe Drinking Water Act (42 U.S.C. § 300f)
- Wild and Scenic Rivers Act (16 U.S.C. § 1271)
- Wilderness Act (16 U.S.C. §1131 *et seq.*)

Once a complete construction application is received, the Environmental Review Staff will begin formal review of the material. The completed Environmental Package documents will include some, if not all, of the following:

- 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 resolution or copy of the meeting minutes when the CEQA document and the MMRP were adopted/certified
- Copy of the date-stamped 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
  - 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 cross-cutting federal authorities
- Copies of any secured permits

CEQA also 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 has been determined to have a minor footprint, is not in a sensitive area, or 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 the project is located in an environmentally sensitive area; 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; cause a substantial change to historical resources, wetlands, floodplains, coastal zones, scenic rivers, fish and wildlife habitat; cause significant public controversy about a potential environmental impact of the proposed action; will have a disproportionately high and adverse human health or environmental effect on any community, including minority, low-income, or Indian tribal communities; cause significant air quality effects; or cause significant effects on patterns and types of land use. (Cal. Code Regs., tit. 14, § 15300.2). If a project falls into one of the categorical exemptions listed in Attachment 6, a CEQA document need not be developed, but the federal cross-cutting authorities may still apply; and
- **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 6. As with categorical exemptions, the federal-cross cutting authorities may still apply.

## **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 begin documenting compliance with state and federal requirements, as well as identifying which federal consultations are required, if any.

## **3. Federal Consultation**

The State Water Board will comply with all applicable cross-cutting federal authorities and will require the applicants to comply with all applicable cross-

cutting federal authorities pursuant to the DWSRF regulation 40 C.F.R. §35.3575.

If consultation with federal agencies is complete and has been submitted as part of the Environmental Package, then 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 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 cross-cutting federal authorities.

#### Consultation under the Endangered Species Act (ESA)

- 50 C.F.R. §402.08 provides that the non-federal representative can “conduct informal consultation or prepare a biological assessment.” The USEPA designated the State Water Board to conduct informal consultation under Section 7 of the ESA with the USFWS (Attachment [3](#)) and/or the National Marine Fisheries Service (Attachments [4a](#), [4b](#) and [7](#)).
- The State Water Board may make a “no effect” determination (Attachment [5](#)) and must provide written notification and a brief statement of the basis of “no effect” determinations to the USEPA.
- The State Water Board may initiate and undertake informal consultation under Section 7 of the ESA. However, the USEPA or other lead Federal agency/department must make all “not likely to adversely affect” determinations for informal consultation and seek concurrence under the ESA from the USFWS and/or the NMFS as applicable. Concurrence must be in writing. Any project modifications and/or conservation measures identified by the USFWS and/or the NMFS as part of the “not likely to adversely affect” concurrence should typically be incorporated into and made enforceable in any approval of the DWSRF financing agreement.
- The State Water Board may not initiate formal consultation under Section 7 of the ESA. The USEPA or other lead Federal agency/department must initiate formal consultation and seek a written biological opinion from the USFWS and/or the NMFS under the ESA. As a result of its Biological Opinion, the USFWS and/or NMFS often requires project modifications and/or reasonable and prudent conservation measures to avoid jeopardy. Any such modifications and/or measures identified in the Biological Opinion should typically be incorporated into and made enforceable in any approval of the DWSRF financing agreement.

#### Consultation under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act)

- 50 C.F.R. §600.920(c) provides that a federal agency can designate a nonfederal representative to conduct consultations on Essential Fish Habitat (EFH) required under the Magnuson-Stevens Act. The USEPA designated the State Water Board as its non-federal representative for purposes of EFH consultations with the NMFS (Attachments [4a](#), [4b](#) and [7](#)) if a project may adversely affect EFH.
- Depending upon the circumstances, the State Water Board may initiate consultations with the NMFS on EFH as part of an ESA consultation on the project. Alternatively, after discussions with the NMFS and the USEPA, and with the USEPA's agreement, the State Water Board may utilize one of the other consultation approaches outlined in 50 C.F.R. §600.920. The USEPA ultimately remains responsible for compliance with the Magnuson-Stevens Act.
- Any project modifications and/or conservation measures identified by the NMFS should be incorporated into and made enforceable in any approval of the DWSRF financing agreement.

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 [2](#)). 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 the 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 approval (e.g. archaeological monitoring plan.)
- The USEPA retains the 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, State, SHPO and/or Tribal Historic Preservation Officer should

typically 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 federal lead agency, then, following receipt of the relevant documentation, the State Water Board will conduct consultation with the appropriate federal agencies.

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 Attachments [3](#), [4a](#), [4b](#) and [7](#).

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

As discussed in the Introduction and Planning sections of this document, the Environmental Review Staff uses the ESC to document project compliance with state and federal environmental requirements. The ESC is an internal document that will be included in the project master file and considered by the Deputy Director when determining whether to fund a project. The ESC includes special environmental conditions that will apply to the project. This document along with the MMRP, CEQA Determination, and documentation of compliance with cross-cutting federal authorities are provided to the Project Manager for inclusion 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) the applicant is requesting construction funds above what has been designated in the Intended Use Plan; 2) the applicant is facing a legal challenge; or 3) the applicant requests atypical financing terms. Applicants of 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 (or the State Water Board for controversial or non-routine projects) approves the project's financing agreement, the Environmental Review Staff have five days to file the appropriate notification (NOE or NOD) with the SCH. Time limits for legal challenges to CEQA documents are discussed in paragraph II.C.1b above.

#### **7. Special Environmental Conditions**

Following funding approval of the project, the list of special environmental conditions will be incorporated into the DWSRF financing agreement.

## **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 determine if any additional environmental documentation or federal consultation is necessary. The applicant must provide the new information to the Project Manager as soon as possible for coordination with the Environmental Review Staff.

### **2. Compliance Follow-up**

Special environmental conditions placed on a project will be included in the applicant's financing agreement. Special environmental conditions may include the 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. To ensure compliance with the special environmental conditions, the Environmental Review Staff will take the following actions:

- Prepare a list of special environmental conditions to be included in the DWSRF financing agreement.
- 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 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.

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

The Environmental Section 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 cross-cutting federal authorities.

## ATTACHMENTS

ATTACHMENT [1](#)

Drinking Water State Revolving Fund Environmental Package  
and Instructions



## ATTACHMENT [2](#)

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 [3](#)

United States Environmental Protection Agency, Region IX, Designation of Non-Federal Representation under Section 7 of the Federal Endangered Species Act and Section 305 (b)(2) of the Magnuson-Stevens Act Letter to Mr. Ren Lohoefener, Regional Director, US Fish and Wildlife Services, Pacific Southwest Region Headquarters (July 22, 2016)

#### ATTACHMENT 4

Attachment [4a](#): United States Environmental Protection Agency, Region IX, Designation of Non-Federal Representation under Section 7 of the Federal Endangered Species Act and Section 305 (b)(2) of the Magnuson-Stevens Act Letter to Ms. Maria Rea, Assistant Regional Administrator, National Marine Fisheries Service, California Central Valley Area Office (July 22, 2016)

Attachment [4b](#): United States Environmental Protection Agency, Region IX, Designation of Non-Federal Representation under Section 7 of the Federal Endangered Species Act and Section 305 (b)(2) of the Magnuson-Stevens Act Letter to Ms. Lisa Van Atta, Assistant Regional Administrator, National Marine Fisheries Service, California Coastal Office (July 22, 2016)

ATTACHMENT [5](#)

US Department of Interior, US Fish and Wildlife Service, Pacific Southwest Region,  
Memorandum on Regional Policy on “No Effect” Determinations (December 6, 2013)

## Attachment 6 CEQA Exemptions

### A Exemptions

#### Categorical Exempt Activities:

##### **Class 1: Existing Facilities**

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

##### **Class 2: Replacement or Reconstruction**

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

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

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

##### **Class 4: Minor Alterations to Land**

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

##### **Class 6: Information Collection**

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

#### Statutory Exempt Activities:

##### **Feasibility and Planning Studies**

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

ATTACHMENT [7](#)

United States Environmental Protection Agency, Region IX, Designation of Non-Federal Representation under Section 7 of the Federal Endangered Species Act and Section 305 (b) of the Magnuson-Stevens Act Letter to Mr. Darrin Polhemus, Deputy Director, State Water Resources Control Board, Division of Financial Assistance (July 22, 2016)