

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

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

May 2023

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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: 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: 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: 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)

Attachment 7: CEQA Exceptions and Exemptions

Attachment 8: 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 (Attachment 1) to complete 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'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) prior to approval of a DWSRF financing agreement. 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 July 2020 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 8, 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.¹ 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 8.

USEPA may approve non-significant changes to this SERP. A letter from the Deputy Director of DFA explaining why a proposed change is not significant will be reviewed by the USEPA Region 9 Assistant Director of the Tribal and State Assistance Branch. If the

¹ 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.

change is non-significant, the USEPA Assistant Director will inform the DFA Deputy Director within thirty (30) calendar days whether the change has been approved or disapproved. Significant changes to the SERP must be approved by the USEPA Regional Administrator in accordance with 40 C.F.R. § 35.3585(h).

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 exceptions² to those exemptions (see Attachment 7), 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 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 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. 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;

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

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 (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 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 Planning and Research, 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 (Attachment 1) for planning. The application 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 8.

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.

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 listed in Attachment 7, 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, under both Tier I and Tier II are subject to the CEQA exceptions and extraordinary circumstances (see Attachment 7; 40 CFR 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.opr.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 Application Requirements

a. Complete Application

An application for DWSRF financing for a planning project includes an Environmental Package. 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,
- 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 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.

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 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 and approved by the applicant's authorized representative and reviewed and approved by the Environmental Review Staff. The Environmental Review Staff will record 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 agencies³ 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, 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

³ "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.)

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 7 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 7). If a project falls into one of the categorical exemptions listed in Attachment 7, 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 7. As required by 40 CFR § 35.3580(e), the CEQA statutory exemptions are subject to exceptions (see Attachment 7).⁴ 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).

⁴ 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 CFR 35.3580(e).

Under this SERP, only CEQA exemptions that are listed in Attachment 7 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)
- Bald and Golden Eagle Protection Act (16 U.S.C. §§ 668-668c)
- 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.)
- Environmental Justice (Executive Order 12898)
- Farmland Protection Policy Act (7 U.S.C. § 4201 et seq.)
- Fish and Wildlife Coordination Act (16 U.S.C. § 661 et seq.)
- Floodplain Management (Executive Order 11988, as amended by Executive Orders 12148 and 13690)
- Historic Sites Act (54 U.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. § 1361 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 et seq.)
- Safe Drinking Water Act (42 U.S.C. § 300f et seq.)
- Wild and Scenic Rivers Act (16 U.S.C. § 1271 et seq.)
- Wilderness Act (16 U.S.C. § 1131 et seq.)

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 section 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 7 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 to support the DWSRF financing of construction 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 8).

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 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

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 8.

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

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 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 and comply 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 (Attachment 1) 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 record 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 Application

Applicants seeking DWSRF construction financing are required to provide information demonstrating compliance with the CEQA and the applicable federal cross-cutting authorities⁵ 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).

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

⁵ 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 8.)

- 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 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 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 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)
- 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 et seq.)
- Coastal Zone Management Act (16 U.S.C. § 1451 et seq.)
- Endangered Species Act (16 U.S.C. § 1531 et seq.)
- Environmental Justice (Executive Order 12898)
- Farmland Protection Policy Act (7 U.S.C. § 4201 et seq.)
- Fish and Wildlife Coordination Act (16 U.S.C. § 661 et seq.)
- Floodplain Management (Executive Order 11988, as amended by Executive Orders 12148 and 13690)
- Historic Sites Act (54 U.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. § 1361 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 et seq.)
- Safe Drinking Water Act (42 U.S.C. § 300f et seq.)
- Wild and Scenic Rivers Act (16 U.S.C. § 1271 et seq.)
- Wilderness Act (16 U.S.C. § 1131 et seq.)

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 agencies⁶ to comment on and/or challenge the CEQA lead

⁶ “‘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.)

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, 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 that is listed in Attachment 7 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 section 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 7 hereto.

d. Exemptions

Application 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 7, 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 7. 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 7 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, as well as identifying which federal consultations are required, if any.

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 8.

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.

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 (Attachments 3 and 6) and/or the National Marine Fisheries Service (Attachments 4a, 4b and 6).
- The State Water Board may make a “no effect” determination and must provide written notification and a brief statement of the basis of “no effect” determinations to the USEPA (Attachment 5).
- The State Water Board may initiate 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 request 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 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 the 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 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 6) 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 consultation (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 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 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 6.

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, and CEQA Determination, are included in the project master file used by the Deputy Director of DFA to determine funding.

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) climate change 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 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 Lohofener, 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

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)

ATTACHMENT 7

CEQA Exceptions and Exemptions

This attachment lists the environmental review exceptions⁷ and exemptions under CEQA that may be applied to both Tier I and Tier II projects reviewed under the SERP. 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, section 15300.2)

(a) Location. Classes 3, 4, 5, 6, and 11⁸ 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 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.

(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.

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

⁸ For the purpose of this SERP, the Location exception applies to all exemptions and is not limited to these classes.

(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 Section 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, section 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, section 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, section 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 Section 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 Section 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, section 15282)

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

Categorical Exemptions:

Class 1: Existing Facilities

(California Code of Regulations, title 14, division 6, chapter 3, article 19, section 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, section 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, section 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, section 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, section 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 8

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 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.