

APPENDIX I: STATE ENVIRONMENTAL REVIEW PROCESS

**STATE WATER RESOURCES CONTROL BOARD
CLEAN WATER STATE REVOLVING FUND PROGRAM**

April 2017

Table of Contents

I.	Introduction	5
II.	Pre-Application Activities	6
	A. Early Consultation Between ERU Staff and Applicants	6
	B. CEQA Compliance	6
	1. Notice of Exemption.....	7
	2. Initial Study	7
	3. Negative Declaration.....	7
	4. Mitigated Negative Declaration	7
	5. Environmental Impact Report	7
	6. Mitigation Monitoring and Reporting Program.....	8
	7. Addendum, Supplemental, or Subsequent CEQA Documents	8
	8. Joint CEQA/NEPA Documents	8
	C. Public Participation.....	9
	D. CEQA Approval Process	10
	E. Five Year Re-evaluation Requirements for Environmental Documents	11
III.	Application Activities	11
	A. Environmental Review Process.....	11
	1. Complete Application.....	11
	2. Initial Review.....	12
	3. Federal Consultation.....	12
	B. Documentation of Environmental Compliance	14
	1. CEQA Review	14
	2. Alternative Analysis Review	14
	3. Federal Cross-Cutting Authorities Review	14
	• Archaeological and Historic Preservation Act.....	15
	• Clean Air Act	15
	• Coastal Barriers Resources Act	17
	• Coastal Zone Management Act	17
	• Endangered Species Act, Section 7	18
	• Environmental Justice-Executive Order No. 12898	21

• Farmland Protection Policy Act	22
• Fish and Wildlife Coordination Act.....	23
• Floodplain Management - Executive Order No. 11988, as amended by Executive Order No. 12148 and Executive Order No. 13690	23
• Magnuson-Stevens Fishery Conservation and Management Act.....	24
• Migratory Bird Treaty Act of 1918.....	25
• National Historic Preservation Act, Section 106	25
• Protection of Wetlands – Executive Order No. 11990, as amended by Executive Order 12608.....	27
• Rivers and Harbors Act, Section 10.....	28
• Safe Drinking Water Act	28
• Wild and Scenic Rivers Act	29
C. Environmental Review Completion	29
D. Board Item Preparation for Non-routine or Controversial Projects	30
E. Notice of Categorical or Statutory Exemption or Notice of Determination	30
IV. Post Financing Agreement Execution	30
A. Project Re-Evaluation due to Project Scope Changes	30
B. Compliance Follow-up.....	30
C. Project Environmental Tracking	31

Attachments

[Attachment 1](#): Procedures for Implementing Environmental Federal Cross-Cutting Authorities in the Clean Water and Drinking Water State Revolving Fund Programs

Attachment 2: List of Categorical and Statutory CEQA Exempt Activities

Attachment 3: CWSRF Program Environmental Review Process

[Attachment 4](#): USEPA Letter to United States Fish and Wildlife Service – Designation of Non-Federal Representative Under Section 7 of the Federal Endangered Species Act

[Attachment 5](#): USEPA Letter to National Marine Fisheries Service – Designation of Non-Federal Representative Under Section 7 of the Federal Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act Central Valley

[Attachment 5a](#): USEPA Letter to National Marine Fisheries Service – Designation of Non-Federal Representative Under Section 7 of the Federal Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act Coastal

[Attachment 6](#): Programmatic Agreement on Historic Preservation for the State Revolving Fund

[Attachment 7](#): United States Environmental Protection Agency SERP Approval Letter

I. INTRODUCTION

This document presents the State Environmental Review Process (SERP) for the State Water Resources Control Board's (State Water Board) Clean Water State Revolving Fund (CWSRF) Program. This SERP addresses the federal environmental review requirements, and how the State builds upon the State environmental review requirements under the California Environmental Quality Act (CEQA). The CEQA was modeled after the National Environmental Policy Act (NEPA). Like the NEPA, the CEQA requires agencies to prepare environmental impact assessments of proposed projects with significant environmental effects and to circulate these documents to other agencies and the public for comment prior to making decisions. Where there are differences between the State's process under the CEQA and the applicable federal statutes and regulations, the federal statutes and regulations must be followed.

Congress established the federal CWSRF Program, authorizing the United States Environmental Protection Agency (USEPA) to provide grants to state CWSRF programs that make financial assistance through loans and other financing mechanisms for construction of wastewater treatment and water recycling facilities, implementation of nonpoint source and storm drainage pollution control management programs, and development and implementation of estuary conservation and management programs. The State Legislature authorized California's CWSRF Program in 1987, and assigned implementation to the State Water Board. The Division of Financial Assistance (Division) within the State Water Board manages the CWSRF Program on behalf of the State Water Board.

The USEPA requires the State to review the potential environmental impacts of all Clean Water Act (CWA) Section 212 (publicly owned treatment works) construction projects receiving assistance from the CWSRF Program, as well as for CWA Section 319 nonpoint source pollution control projects, and Section 320 estuary protection projects. States may elect to apply the USEPA's NEPA environmental review procedures under the USEPA regulation 40 C.F.R. Part 6 or develop their own "NEPA-like" SERP as long as certain elements are met. Any "NEPA-like" SERP must conform generally to NEPA.

The State Water Board elected to develop its own "NEPA-like" SERP, which utilizes the environmental documents developed under the CEQA as well as documents prepared for compliance with specified federal environmental laws and regulations (also referred to as federal cross-cutters) for its "NEPA-like" process (which is referred to as "CEQA-Plus"). The CEQA-Plus process complies with the required elements outlined in 40 C.F.R. section 35.3140(b) and refers to the documents prepared for the CEQA as well as the supplemental information provided for compliance with the applicable federal cross cutters authorities.

In California, all CWSRF projects receiving federal grant proceeds are considered equivalency projects and therefore must submit the CEQA-Plus environmental documentation (see [Attachment 1](#)) as part of the CWSRF application. The CEQA-Plus process requires full disclosure of all aspects of the entire project, including

environmental impacts, mitigation measures, and impacts to resources that are regulated by state and federal agencies. The CWSRF Environmental Review Unit (ERU) encourages early coordination with the applicant and consultation with state and federal agencies prior to and during the CEQA/CEQA-Plus process to reduce the likelihood of changes to the project.

The State Water Board conducts its own environmental review in accordance with this SERP for all projects financed through the CWSRF Program. The ERU reviews each project's CEQA and CEQA-Plus documents and is responsible for ensuring environmental compliance, coordinating consultation with the relevant state and federal agencies, and preparing draft environmental determinations for the State Water Board.

II. PRE-APPLICATION ACTIVITIES

A. Early Consultation between ERU Staff and Applicants

The applicant is encouraged to contact the ERU early in the project planning process for assistance with preparing the CEQA and CEQA-Plus documents and to discuss whether supporting environmental information exists or will be required.

In most instances, the applicant is the CEQA lead agency for CWSRF projects and the State Water Board is a responsible agency. However, there are times when the State Water Board or another entity besides the applicant will be the CEQA lead agency. Under the CEQA, the lead agency is the public agency that has the principal responsibility for carrying out or approving a project that is subject to the CEQA. Any other California public agency that is required to use the CEQA document for making a decision on the project is considered a responsible agency. Responsible agencies have 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.

Generally, the State Water Board is a responsible agency under the CEQA; however, the State Water Board conducts an independent evaluation of the environmental impacts of CWSRF projects and ensures compliance with the CEQA-Plus requirements.

ERU staff are available to answer questions about the CWSRF Program environmental review process. The applicant may contact the assigned Project Manager to be directed to the appropriate ERU staff for further clarification on CWSRF Program environmental requirements, or may contact the CWSRF general helpline at (916) 327-9978 or visit http://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/index.shtml for more information.

ERU staff may recommend early consultation with relevant state and federal agencies.¹

B. CEQA Compliance

The CEQA lead agency must determine the appropriate environmental document (e.g., Notice of Exemption, Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report) for its project and submit the additional supporting information listed in the Environmental Package (http://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/docs/forms/application_environmental_package.pdf) while preparing the CWSRF Financial Assistance Application.

CEQA documents analyze the direct and indirect impacts of the project, present and future conditions in the study area, land use and other social parameters including relevant recreational and open spaces, consistency with population projection (in the population and housing section of the document), and any cumulative impacts including anticipated community growth (residential, commercial, institutional, and industrial) within the project study area and other anticipated public works projects including coordination with such projects. The following environmental document(s) may apply to a project:

1. Notice of Exemption (NOE): When a project falls under a categorical or statutory exemption a brief notice is filed describing the project. A brief statement of reasons supporting the finding that there is no possibility that the activity in question could have a significant effect on the environment. Attachment 2 contains a list of statutory and categorically exempt activities.
 - Exceptions to the categorical exemptions: A CEQA categorical exemption cannot be used 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; cause significant effects on patterns and types of land use; and/or conflicts with or is not consistent with federal land management plans, or plans, laws, or regulations set by federal, state, or local governments, or federally-recognized Indian tribes,

¹ Please note that early consultation with the ERU staff does not constitute initiation of a formal environmental review for the project. The environmental review is initiated by the Project Manager once the applicant provides a complete Environmental Package. See Section III below for further details about the ERU review process.

for land use or environmental or resource protection. For example, if a project may have an indirect effect, such as noise or vibration impacts, on a special-status species, then the State Water Board cannot make the determination that the project is eligible for a statutory or categorical exemption.

2. Initial Study (IS): An IS is a preliminary analysis prepared for determining what environmental impacts a project may have and what type of CEQA document should be prepared. If the IS identifies that a significant impact may occur to the environment, and it cannot be mitigated to a less than significant level, an Environmental Impact Report (EIR) must be prepared. An IS must consider direct and reasonably foreseeable indirect impacts, cumulative impacts, and growth inducing impacts of the project. If the preparer of the document believes that there will be a significant impact as a result of the project before an IS is prepared, an IS is not needed and the preparer can prepare an EIR. In instances where the preparer has determined that a Negative Declaration (ND) or Mitigated Negative Declaration (MND) is the appropriate document, an IS provides the basis and information for such a decision.
3. Negative Declaration: When an IS has determined that a project will not have any significant impacts, a ND is prepared.
4. Mitigated Negative Declaration: When a project has potentially significant environmental impacts that can be mitigated to a less than significant level by incorporating changes to the project itself, a MND and a Mitigation Monitoring and Reporting Program (MMRP) are prepared.
5. Environmental Impact Report: If a project has potentially significant environmental impacts that cannot be mitigated to a less than significant level by incorporating changes to the project, an EIR is prepared. An EIR includes detailed analysis of any potentially significant impacts, and contains conclusions regarding whether these potentially significant impacts can be mitigated to a less than significant level. If impacts are found to be significant and unavoidable, the CEQA lead agency must prepare a statement of overriding considerations (SOC) that explains in detail why the benefits of the project outweigh the significant and unavoidable environmental impact, and why the CEQA lead agency is willing to accept such impacts.
6. Mitigation Monitoring and Reporting Program: If the project contains mitigation measure(s) to lessen the impacts of the project to less than significant levels, a MMRP is required. A MMRP details when the mitigation measure is to be implemented and for how long, and who is responsible for ensuring compliance with the measure.
7. Addendum, Supplemental, or Subsequent CEQA documents: If it is determined that the project description of an already approved the CEQA document has changed between the project design period and project planning period, an Addendum, Supplemental, or Subsequent CEQA document may be prepared depending on how substantive the changes are

(CEQA Guidelines sections 15162, 63, 64 and Pub. Res. Code section 21166).

8. Joint CEQA/NEPA documents: A joint CEQA/NEPA document is not required for the CWSRF Program under the “NEPA-like” process. However, in the event that a combined CEQA/NEPA document is prepared for the project by a CEQA lead agency (as defined in sections 15050 and 15367 of the CEQA Guidelines) and a federal agency has been designated as the federal lead for the project (NEPA lead agency as defined in federal regulations 40 C.F.R. sections 1501.5, 1508.16, and 1508.17), joint CEQA/NEPA documents and/or any separate stand-alone NEPA document should be provided to the State Water Board for its review and consideration.

The project description provided in the environmental documents must be consistent with the project description in the technical documents provided to the Project Manager.

ERU staff can review draft CEQA documents and provide informal comments before the start of any public review period if requested by the applicant.

ERU staff will make every effort to comment on draft CEQA documents for potential CWSRF projects during the State Clearinghouse public review period. The applicant should contact ERU staff to ensure receipt and review of draft CEQA documents during the public review period.

The applicant must ensure that the CEQA document is specific to the project for which financing is requested. Program or Master Plan EIRs may not satisfy State Water Board requirements if these documents are not project-specific. The applicant should submit project-specific CEQA document, such as tiered CEQA documents (i.e., Addendum, Subsequent, or Supplemental).

If a project-specific CEQA document references pertinent environmental and mitigation information contained in a Program or Master Plan EIR, then the applicant must submit both documents.

If the applicant is a non-profit organization, the applicant must provide a resolution from its board of directors that commits the non-profit to implement the applicable project mitigation measures. The State Water Board generally will act as the CEQA lead agency for non-profit organizations if there is no other CEQA lead agency. However, if another is the CEQA lead agency, the State Water Board will consider the CEQA lead agency’s environmental documents when deciding whether to approve the financing of the project. The State Water Board will file an NOE or a Notice of Determination (NOD) upon approval of the project.

All public agencies applying for CWSRF financing must file either an NOE or an NOD with the County Clerk(s) and the State Clearinghouse. Date-stamped

copies of those notices must be submitted with the project's Environmental Package.

The applicant must submit any maps, pictures, or additional site and project descriptions along with a date stamped NOE.

The State Water Board may request additional information from the applicant after an Environmental Package has been submitted and staff has conducted a review of all the environmental documents.

Upgrades to existing facilities and pipelines may be exempt from the CEQA². Attachment 2 contains a list of statutorily and categorically exempt activities. Compliance with the federal cross-cutters is required for projects using categorical or statutory exemptions.

Detailed information, including the CEQA Statutes and CEQA Guidelines, can be obtained at: <http://resources.ca.gov/ceqa>.

C. Public Participation

Under 40 C.F.R. section 35.3140(b)(4)(i), public notice is required when a categorical exclusion is issued or rescinded, a finding of no significant impacts is issued, but before it becomes effective, a decision issued five (5) years earlier is reaffirmed or revised, and prior to initiating an environmental impact statement. Pursuant to 40 C.F.R. section 35.3140(b)(4)(ii), except with respect to a public notice of a categorical exclusion or reaffirmation of a previous decision, a formal public comment period must be provided during which no action on a project will be allowed. Additionally, in accordance with 40 C.F.R. section 35.3140(b)(4)(iii), all projects, except for those with little to no environmental impact, must be considered at a public hearing or meeting. The State Water Board will apply these requirements to the equivalent CEQA-Plus environmental documents.

Except with respect to a public notice of exemption or reaffirmation of a previous decision, the applicant shall provide a formal public comment period during which time no action on a project will be allowed (generally, this is part of the CEQA process). The applicant shall hold a public hearing or meeting for any project except for those having little or no environmental impact. If the CEQA lead agency has not met the public noticing requirements, the State Water Board will ensure compliance with 40 C.F.R. section 35.3140(b)(4) requirements. The applicant must provide the public, responsible agencies, and trustee state agencies³ under the CEQA an opportunity to review and comment on the CEQA

² See 14 Cal. Code Regs., section 15301 for more information on existing structure upgrade exemptions.

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. 14 CCR section 15386

documents for the proposed CWSRF projects and notify ERU staff of any meetings regarding the CEQA review of CWSRF project.

The CEQA provides opportunities for the public to comment and challenge the lead agency's environmental documents prior to adoption and approval of a proposed project. The CEQA's objectives are to: (1) disclose to the decision makers and the public the significant environmental effects of proposed activities, (2) require agencies to reduce/avoid environmental impacts by implementing feasible mitigation measures, (3) publicly disclose the reasons for an agency's approval of a project, and, (4) involve the public during the planning and environmental document preparation process.

In accordance with the CEQA, public notice must be published in a general circulation newspaper, posted on or off site, or directly mailed to owners and occupants of contiguous property (Pub. Res. Code sections 21092 [b], 21092.3; Guidelines sections 15072, 15073, 15087[a]). Additional notice may be sent by email. The notice of availability must be posted in the County Clerk's office for thirty days. If a state agency is involved with a project or is acting as a responsible agency, documents must also be circulated through the State Clearinghouse for agency and public review.

Project-specific CEQA documents must be circulated through the State Clearinghouse since funding is being sought from a state agency (the State Water Board) and be consistent with the CEQA Guidelines' public review timeline. The State Clearinghouse will assign a State Clearinghouse number and circulate the CEQA documents to selected state agencies identified by the lead agency for review and comment. The applicant should notify all local and federal agencies and interested parties that have interests in the project of the availability of the CEQA document. The applicant must address or resolve any issues that arise from the commenters. The applicant must forward copies of comments received during the public review period and the responses to those comments for the State Water Board's review and consideration.

Once the CEQA document is adopted or certified and the project is approved, the applicant must file an NOD with the State Clearinghouse and the applicable County Clerk(s). If a project is exempt from the CEQA requirements, the applicant must file an NOE with the State Clearinghouse and the applicable County Clerk(s). The State Water Board will notify the public of its financing decision by filing the appropriate notice (NOD or NOE) with the State Clearinghouse once the financing for the project is approved.

The public can challenge the public agency's adoption of environmental documents and its environmental review determinations if the documents or determinations are not carried out in accordance with the CEQA Statutes and CEQA Guidelines.

Any tiered CEQA documents (i.e., Addendum, Supplemental, and Subsequent) must be circulated to the public and distributed through the State Clearinghouse for public review. The applicant (and/or the CEQA lead agency, if applicable) must adopt or certify the tiered CEQA document, approve the project in a public hearing or meeting, and file an NOD with the State Clearinghouse and the applicable County Clerk(s).

D. CEQA Approval Process

After the closing of the public review period, the CEQA lead agency begins the process of approving the project under the CEQA. All comments received during the public review period must be considered and changes should be made to the environmental document where appropriate. Following this, the CEQA lead agency prepares written findings of fact, known as CEQA Findings or CEQA Determinations, for each significant environmental impact identified in the document, including those that can be mitigated to a less than significant level. If it is found that an environmental impact cannot be reduced to a less than significant level, a SOC must be prepared and adopted. The SOC must explain in detail why the benefits of the project outweigh the unavoidable adverse environmental impacts. The CEQA lead agency then adopts or certifies the project and files an NOD at the County Clerk's office and at the State Clearinghouse. The responsible agency for the project must also make findings on those areas under their jurisdiction, and file an NOD with the State Clearinghouse.

E. Five Year Re-evaluation Requirements for Environmental Documents

Environmental documents must have been adopted or certified by the applicant (and/or the CEQA lead agency, if applicable) less than five years before the expected date of the CWSRF financing. If the environmental document is more than five (5) years old, the applicant must re-evaluate the project's environmental conditions in an updated environmental document (e.g., Initial Study, Addendum, Supplemental, or Subsequent CEQA documents) and complete the applicable public participation requirements per Section II.C.

The applicant must adopt the final updated environmental document, and file an NOD with the State Clearinghouse and the applicable County Clerk(s) explaining the results of the re-evaluation. 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.

III. APPLICATION ACTIVITIES

A. Environmental Review Process

1. Complete Application: ERU will begin a formal environmental review of the CWSRF project when the ERU receives complete and adequate environmental documents from the Project Manager. See Attachment 3 for a flowchart detailing the CWSRF Program's Environmental Review Process. The applicant must submit a complete package which includes all applicable environmental documents listed in the Environmental Package (http://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/srf_forms.shtml) along with other supporting documents that substantiate compliance with the "CEQA-Plus" requirements. The following documents are needed for an Environmental Package to be deemed complete:
 - Environmental Package;
 - NOE filed with the County Clerk and the State Clearinghouse, if applicable
 - Draft and Final CEQA documents (IS, ND, MND, or EIR);
 - Other supporting CEQA documents, if applicable, (e.g., Programmatic EIR)
 - NOD;
 - Comments and responses related to the CEQA documents, if applicable;
 - MMRP, if applicable;
 - Air Quality Data Analysis Report;
 - National Historic Preservation Act (NHPA) Section 106 Report;
 - United States Fish and Wildlife Service (USFWS) or National Marine Fisheries Service (NMFS) species list and biological assessment, evaluation, or report;
 - Flood Plain Map;
 - Wetland delineation report, if applicable;
 - Other federal cross-cutter supporting documentation as applicable; and
 - Alternatives analysis.
2. Initial Review: An ERU lead reviewer will be assigned to each CWSRF project. The ERU lead reviewer and additional ERU staff as appropriate will conduct an initial review to verify the items that have been received and identify missing information. Once all required environmental documents have been received, the ERU lead reviewer will conduct a thorough review of all items received to determine whether 1) sufficient information has been provided to enable the State Water Board to make environmental determinations, 2) consultation is required with the relevant state and federal agencies, and/or 3) additional information is needed. If additional information is needed, then the ERU lead reviewer will request more information, reports, or studies.
3. Federal Consultation: The State Water Board will comply with all applicable federal authorities, and will require the applicant to comply with all applicable federal authorities (referred to as the federal cross-cutting authorities)

pursuant to the USEPA regulation 40 C.F.R. section 35.3145. If federal consultation or review is not needed for the project, or has previously been completed, then the ERU lead reviewer will review the project information and provide environmental documentation needed for the Project Manager's use in processing the application.

If more than one federal agency is involved in a project, the USEPA, with assistance from the State Water Board, will coordinate with the other federal agency(s) to identify a federal lead.

If consultation with relevant federal agencies has already been completed for the whole of the project, then the ERU lead reviewer will consider submitted information, request additional information (if necessary), and document the consultation.

If the environmental review involves consultation with state or federal agencies, the ERU lead reviewer will coordinate with the applicant to determine what additional information is needed, if any, prior to initiation of consultation.

- Consultation under the Endangered Species Act (ESA)
50 C.F.R. section 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 federal ESA with the USFWS ([Attachment 4](#)) and the NMFS ([Attachment 5](#)).

The State Water Board may make a "no effect" determination and conduct the appropriate public notice procedures.

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 NMFS as applicable. Concurrence must be in writing. Any project modifications and/or conservation measures identified by the USFWS and/or NMFS as part of the "not likely to adversely affect" concurrence should typically be incorporated into and made enforceable in any approval of CWSRF financing.

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 Biological Opinion from USFWS and/or NMFS under the ESA. As a result of its Biological Opinion, 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 CWSRF financing.

- Consultation under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act)
50 C.F.R. section 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 ([Attachment 5](#)) 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 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. section 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 typically be incorporated into and made enforceable in any approval of CWSRF financing.

- Consultation under the National Historic Preservation Act (NHPA) and Archaeological and Historic Preservation Act (AHPA)
Pursuant to the terms of the Programmatic Agreement on Historic Preservation for the CWSRF ([Attachment 6](#)), the USEPA requires that the State Water Board carry out the requirements of federal regulation 36 C.F.R. section 800.4 through 800.6, and other applicable sections of 36 C.F.R. Part 800. The State Water Board will seek concurrence from the State Historic Preservation Officer (SHPO) for compliance with Section 106 of the NHPA and for cultural resources protected under the NHPA as applicable. The USEPA will participate in the Section 106 process under the NHPA to the extent mutually agreed upon by the USEPA and the State Water Board, but at a minimum the USEPA must be notified by the State Water Board if, after routine consultation or coordination with the SHPO, disputes remain.

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 SHPO and/or Tribal Historic Preservation Officer should typically be incorporated into and made enforceable in any approval of CWSRF financing.

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.

B. Documentation of Environmental Compliance

ERU lead reviewer documents the State Water Board's environmental compliance in an Environmental Summary Clearance (ESC), which is an internal document that discusses the project description and environmental analyses and determinations. Generally, the ESC includes the following topics:

1. CEQA Review:

- NOE, ND, MND and EIR;
- Impacts and Mitigation Measures;
- Cumulative Environmental Impacts;
- Significant Unavoidable Environmental Impacts;
- Growth Inducing Impacts; and
- Environmental Effects Found Not to be Significant.

2. Alternatives Analysis Review: CWSRF projects must undergo an alternatives analysis except for projects that are statutorily or categorically exempt. The State Water Board must ensure that the applicant has evaluation criteria and processes which allow for:

- A range of reasonable alternatives that meet the applicant's project needs and objectives, including a "no project/no action" alternative.
- Comparative analysis among the alternatives that includes discussions of beneficial and adverse environmental impacts on the existing environment, future environment, and individual sensitive environmental issues identified through project management or through public participation.
- Analysis of direct, indirect, and cumulative impacts on sensitive environmental resources, if applicable.
- Potential reasonable foreseeable future environmental impacts, if applicable.
- Appropriate mitigation measures not already included in the proposed action or alternatives, if appropriate, to mitigate adverse impacts.
- Thorough discussions of reasoning for selection of the chosen alternative for the project.

The applicant can include the alternatives analysis in either the project CEQA documents or the Technical Report submitted as part of the technical package.

3. Federal Cross-Cutting Authorities Review: Numerous federal laws and Executive Orders may apply to projects funded under the CWSRF which are referred to as the Federal cross-cutting authorities. The State Water Board uses the applicant's CEQA document in conjunction with the federal cross-cutting documentation (e.g., air quality analysis report, biological assessment, Section 106 cultural resources report, wetland delineation, etc.) to ensure compliance with the federal cross-cutters. The Environmental Package for the Financial Assistance Application includes these requirements and can be found at:

http://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/docs/forms/application_environmental_package.pdf.

- Archaeological and Historic Preservation Act
The AHPA provides for the preservation of significant scientific, prehistoric, historic and archaeological materials and data that might be lost or destroyed as a result of flooding, the construction of access roads, relocation of railroads and highways, or any other federally funded activity that is associated with the construction of a dam or reservoir (54 U.S.C. sections 312501-312508). Under this law, historical and archaeological resources do not have to be eligible, or considered eligible, in the National Register of Historic Properties for an impact to occur. If a project will have an adverse effect on historical or archaeological resources or data, the USEPA will notify the Secretary of the Interior in writing. The Secretary then has 60 days after the notification to initiate a survey or recovery effort. The Secretary will notify the USEPA of the progress of any surveys or data recovery being conducted for the project. The USEPA will transmit this information to the State Water Board.

Should consultation under the AHPA be required, the State Water Board will provide information about the project to the USEPA and will work with the USEPA to initiate the consultation process.

- Clean Air Act
The Clean Air Act (CAA) directs the USEPA to set ambient air quality standards, which are airborne pollutant levels that are sufficient to protect public health and welfare. Each state develops its own State Implementation Plan (SIP) describing how it will maintain, enforce, and attain the National Ambient Air Quality Standards (NAAQS). Section 176(c) of the CAA (42 U.S.C. section 7506(c)) requires that federal projects conform to the purpose of the SIP, meaning that federal activities will not cause new violations of NAAQS, increase the frequency or

severity of NAAQS violations, or delay timely attainment of the NAAQS or any interim milestone. Section 176(c) therefore prohibits federal assistance for an activity within a nonattainment or maintenance area that fails to conform to an applicable SIP.

The USEPA's regulations at 40 C.F.R. section 93.158 *et seq.* - *Determining Conformity of General Federal Actions to State or Federal Implementation Plans* govern its implementation of Section 176(c) of the CAA. A General Conformity analysis applies to projects in a nonattainment area or an attainment area subject to a maintenance plan ("maintenance area") and is required for each federal criteria pollutant for which an area has been designated nonattainment or maintenance.

If the project consists of an activity listed as exempt, no General Conformity analysis is needed because the project is presumed to conform to the CAA requirements (40 C.F.R. section 93.153 [c][2]). Generally, the types of projects that receive CWSRF financing do not appear on the rule's exempt activity list. The applicant must explain how the exemption applies to the project if one is claimed. Rehabilitation projects are not considered routine maintenance and repair projects are not exempt from a General Conformity determination.

If the project is not exempt from a General Conformity determination, the applicant shall follow the steps below:

- i. The applicant must determine if the project is in a nonattainment or maintenance area for federal criteria pollutants. Information on where nonattainment and maintenance areas are located can be found on the USEPA's Green Book website (<http://www3.epa.gov/airquality/greenbook>). If the project is located in an air basin that is in an attainment area not under a maintenance plan, or in an unclassified area, for all federal criteria pollutants, then the project is not subject to a General Conformity determination and no further analysis is necessary.
- ii. If the project is in a nonattainment or maintenance area, the applicant must calculate the direct and indirect project construction and operational emissions, in tons per year, for each federal criteria pollutant that is in nonattainment or maintenance. The USEPA has established NAAQS for six criteria pollutants including ground-level ozone, carbon monoxide, sulfur dioxide, nitrogen dioxide, particulate matter and lead. Note that for ozone, the applicant will need to calculate the precursors to ozone.
- iii. If a project's total estimated emissions (construction and operation) for each nonattainment or maintenance criteria pollutant are below the federal *de minimis* thresholds ("nonattainment rates") as set

forth in the applicable regulation (40 C.F.R. section 93.153), then no General Conformity determination is necessary, and the State Water Board can conclude that the project conforms to the SIP. *De minimis* levels for each criteria pollutant are defined by their designations (i.e. serious, severe or extreme). Further information on *de minimis* levels can be found at: <https://www.epa.gov/general-conformity/de-minimis-emission-levels>.

- iv. If a project's total estimated emissions (construction and operation) for a nonattainment or maintenance criteria pollutant are above the applicable *de minimis* threshold and the project is not otherwise exempt from a conformity determination, then a General Conformity determination **is** required.
 - a. The applicant shall provide to the USEPA the information set forth in 40 C.F.R. section 93.158 requirements for making a General Conformity determination.
 - b. If estimated emissions are above the federal *de minimis* threshold ("nonattainment rates") or are greater than ten percent of the air basin's emissions inventory, but the project is sized to meet only the needs of current population projections that are used in the approved SIP, then the applicant must quantitatively indicate how the proposed capacity increase was calculated using population projections. With this information, the USEPA will be able to make a positive General Conformity determination for project emissions for these criteria pollutants under this specific criterion provided in the rule (See 40 C.F.R. section 93.1544). The project must be found to conform to the approved SIP to receive CWSRF financing.

The applicant should check with its local air quality management district and review the California Air Resources Board's air emissions map at <http://www.arb.ca.gov/ei/maps/statemap/abmap.htm> for information on the approved SIP.

The USEPA maintains a General Conformity website at <https://www.epa.gov/general-conformity>, and <https://www.epa.gov/general-conformity/what-general-conformity>.

For further information on evaluating General Conformity requirements, the applicant is encouraged to contact ERU staff through their State Water Board Project Manager.

The ERU recommends the applicant to include an air quality analysis in the CEQA document and circulate it through the State Clearinghouse for public review. This will eliminate the need for another public review process

- Coastal Barriers Resources Act

The Coastal Barriers Resources Act is intended to discourage development in the Coastal Barrier Resources System and adjacent wetlands, marshes, estuaries, inlets, and near-shore waters. Since there is no designated Coastal Barrier Resources System in California, no impacts from California CWSRF projects are expected. Should the applicant believe there may be impacts to the Coastal Barrier Resources System due to special circumstances, they should use the following information as a guide.

During the planning process, the applicant should consult with the appropriate Coastal Zone management agency (e.g., City or County with an approved Local Coastal Program, the California Coastal Commission, or the San Francisco Bay Conservation and Development Commission) to determine if the project will have an effect on the Coastal Barrier Resources System. If the project will have an effect on the Coastal Barrier Resources System, the State Water Board must consult with the appropriate Coastal Zone management agency and the USFWS. Any recommendations from the Coastal Zone management agency and the USFWS will be incorporated into the project design prior to funding approval.

To help ensure that the applicant complies with the Coastal Barriers Resource Act, it should visit <http://www.fws.gov/CBRA/> for more information on the legal requirements and to confirm that no modifications to Coastal Barrier Resources System units have occurred.

- Coastal Zone Management Act

The Coastal Zone Management Act requires all federal agencies to ensure that activities in coastal areas are consistent with approved state Coastal Zone management plans. Before any federally supported project is implemented in a Coastal Zone, a determination that the project is consistent with the Coastal Zone management plan must be made. The applicant should consult directly with the state Coastal Zone management agency (City or County with an approved Local Coastal Program, the California Coastal Commission, or the San Francisco Bay Conservation and Development Commission) to determine if the project is consistent with the Coastal Zone management plan. Consistency may be achieved by appropriate siting of the project and any components, or by incorporating mitigation measures from the state Coastal Zone management agency into the project design. The applicant must provide documentation to the State Water Board that the project is not in a Coastal Zone or is consistent with the state Coastal Zone management plan.

To help ensure that the applicant complies with the Coastal Zone Management Act, it should visit the following websites to obtain more detailed information regarding legal requirements: <https://coast.noaa.gov/czm/media/StateCZBoundaries.pdf> for affected areas, and <http://www.coastal.ca.gov/ccatc.html> and/or <http://www.bcdc.ca.gov/>.

- Endangered Species Act, Section 7
The State Water Board must ensure that CWSRF projects are not likely to jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify their critical habitat. The USEPA has designated the State Water Board as its non-federal representative for conducting informal consultations with the USFWS and the NMFS (see Attachments 4 and 5, respectively). The State Water Board will coordinate with the USEPA to conduct informal and formal consultation with the USFWS and the NMFS if necessary. Any issues raised by those agencies must be resolved prior to funding approval by the State Water Board. The ERU reviews all environmental documentation to fully understand a project's compliance with Section 7 of the ESA.

The applicant must obtain, in written form, current species lists from the USFWS, NMFS, and California Department of Fish and Wildlife of any listed or proposed species and any designated or proposed critical habitat that may be present in the project action area. If any listed or proposed species or designated or proposed critical habitat may be present in the project area, the applicant should contact the appropriate USFWS and/or NMFS regional office to help determine whether the project may affect any of the species or habitat. The applicant will provide to the State Water Board any listed or proposed species and describe the potential effects of the project on such species.

A "may affect" finding is the appropriate conclusion when a proposed action may result in any effects on listed species or designated critical habitat. "Effects of the action refers to the direct and indirect effects of an action on the species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action, that will be added to the environmental baseline." See 50 C.F.R. section 402.02. "May affect" is a relatively low threshold that includes any possible effect, whether beneficial, benign, adverse, or of an undetermined character.

The following is a non-exhaustive list of factors to consider when analyzing potential direct and indirect effects of the proposed action:

- i. Exposure
 - a. Proximity of the project action to the listed species
 - b. Distribution of species and habitat use
 - c. Timing, duration, magnitude, and nature of effects

- ii. Biology
 - a. Breeding, feeding, and sheltering
 - b. Sensitivity and resilience to change
 - c. Recovery rate

The concept of “take” is also important in an ESA consultation. “Take” is defined by the ESA to mean “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” (16 U.S.C. section 1532(19).)

The terms “harass” and “harm” are further defined as follows:

- i. “Harass” means an “intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering.” (50 C.F.R. section 17.3.)
- ii. “Harm” means “an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns including breeding, feeding, or sheltering.” (50 C.F.R. section 17.3.)

Identifying habitat modifications that harm individuals of a species involves understanding a species’ life history.

Once the applicant has provided the relevant information to the State Water Board, the State Water Board, USEPA and USFWS and/or NMFS, in their respective roles, must make one of the following ESA determinations described below for each federally listed or proposed species or designated or proposed critical habitat:

- i. “No Effect” determination occurs when there are no direct or indirect effects on any listed species or its designated critical habitat (not even a beneficial effect), pursuant to the standard set forth in 50 C.F.R. section 402.02. Examples of “no effect” determinations include when there is no overlap between the range of the listed and proposed species and the project area, the species’ habitat does not occur in or adjacent to the project area, designated critical habitat does not occur in the project vicinity, or there is no chance the project will have an effect on the listed species or designated critical habitat.

The State Water Board makes “no effect” determinations based upon the information submitted by the applicant and informal discussions with the USFWS and/or NMFS, and must provide

written notification and a brief statement of the basis of “no effect” determinations to the USEPA.

- ii. “May Affect, Not Likely to Adversely Affect” (NLAA) determination occurs when impacts to a listed species or its designated critical habitat due to project actions are likely to be discountable, wholly beneficial, or insignificant, and never rise to the level of “take” (see 16 U.S.C. section 1532(19)). Beneficial effects are contemporaneous positive effects without any adverse effects to the species or habitat. Insignificant effects relate to the size of the impact and should never reach the scale where take occurs. Discountable effects are those extremely unlikely to occur.

The State Water Board will communicate with the USFWS and/or NMFS to ensure all biological documents to be used for informal consultation are complete and justify the recommended determination. A biological assessment is typically required for major construction activities. See 50 C.F.R. section 402.12(f). The applicant is encouraged to contact the State Water Board to discuss questions and to request an example biological assessment template.

Based upon its review of the biological documentation and upon its own decision regarding the appropriateness of an NLAA determination, the State Water Board will summarize the biological documentation in a written NLAA recommendation submitted to the USEPA.

The USEPA makes all official NLAA determinations. To the extent that the USEPA agrees with the State Water Board’s NLAA recommendation, the USEPA will send a letter to the USFWS and/or NMFS making an official NLAA determination and seeking concurrence from the USFWS and/or NMFS on the NLAA determination.

Concurrence from the USFWS and/or NMFS must be in writing. The USFWS and/or NMFS may require project modifications and/or conservation measures to avoid adverse impacts. Any project modifications and/or conservation measures should typically be incorporated into and made enforceable in any approval of CWSRF financing.

- iii. “May Affect, Likely to Adversely Affect” determination occurs when a listed species or its designated critical habitat may be adversely affected as a result of the proposed action or its interrelated or interdependent actions, and the effect is not discountable or

insignificant. In the event the overall effect of the proposed action is beneficial to the listed species, but also is likely to cause some adverse effects, then the proposed action “is likely to adversely affect” the listed species. Formal consultation with the USFWS and/or NMFS is required for all “may affect, likely to adversely affect” determinations.

In preparation for formal consultations, the State Water Board staff will request the applicant prepare a biological assessment. The State Water Board staff will communicate with the USFWS and/or NMFS to ensure the biological assessment is complete and justifies the proposed determination. A biological assessment may include, but is not limited to, the following elements:

- a. The results of an on-site inspection and focused protocol surveys of the project area to determine if species are present or occur seasonally.
- b. The views of recognized experts on the species at issue.
- c. A review of the literature and other information.
- d. An analysis of the effects of the action on the species and habitat, including consideration of cumulative effects, and the results of any related studies.
- e. An analysis of alternate actions considered.

Based upon its review of the biological documentation and upon its own decision regarding the appropriateness of a “may affect, likely to adversely affect” determination, the State Water Board will summarize the biological documentation in a written “may affect, likely to adversely affect” recommendation submitted to the USEPA.

The USEPA makes all “may affect, likely to adversely affect” determinations. Upon making such a determination, the USEPA will send a letter to the USFWS and/or NMFS initiating formal consultation.

Formal consultation is concluded when the USFWS and/or NMFS issues a Biological Opinion. Formal consultation relies on more detailed descriptions, relevant studies, surveys, biological assessments, as set forth at 50 C.F.R. section 402.14(c), and involves up to 90 days of consultation, followed by 45 days for the USFWS and/or NMFS to produce the Biological Opinion. In the Biological Opinion, the USFWS and/or NMFS often recommend project modifications and/or reasonable and prudent conservation measures to avoid jeopardy. Any project modifications and/or

conservation measures should typically be incorporated into and made enforceable in any approval of CWSRF financing.

“May Affect, Likely to Adversely Affect” determination on species proposed for listing or on habitat proposed as critical habitat requires a conference with the USFWS and/or NMFS. Upon a determination by the USEPA that a proposed project may have an adverse effect on species proposed for listing or on habitat proposed as critical habitat, the USEPA will initiate a conference with the USFWS and/or NMFS pursuant to Section 7(a)(4) of the ESA to determine the appropriate course of action.

If the project involves resources that are protected by a Habitat Conservation Plan (HCP), the applicant must provide ERU staff with supporting evidence regarding whether the proposed project impacts will be consistent with the HCP requirements (16 U.S.C. section 1539(a)(2)(A)).

Note that compliance with both the federal ESA and the California ESA is required of projects having the potential to impact special-status species. Although overlap exists between the federal ESA and the California ESA, there may be additional or more restrictive state requirements. The applicant is encouraged to visit <http://www.fws.gov/endangered/laws-policies/index.html> and <http://www.nmfs.noaa.gov/pr/laws/esa> for further information on the federal ESA. For further information on the California ESA, the applicant is encouraged to visit: <https://www.wildlife.ca.gov/Conservation/CESA>.

- Environmental Justice – Executive Order No. 12898
The applicant must identify and address any disproportionately high and adverse human health or environmental effects of the project activities on minority, low-income, indigenous populations, or tribes. The USEPA has defined environmental justice as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The applicant is encouraged to review the USEPA’s Final Guidance for Incorporating Environmental Justice Concerns in EPA’s NEPA Compliance Analyses (<https://www.epa.gov/sites/production/files/2015-04/documents/ej-guidance-nepa-compliance-analyses.pdf>) as an aid in meeting the objectives of the Executive Order.

“Fair Treatment” means that no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative consequences of industrial, governmental, and commercial operations or programs and policies.

“Meaningful Involvement” means that:

- i. Potentially affected community members have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health;
- ii. The public’s contribution can influence the agency’s decision;
- iii. The concerns of all participants involved will be considered in the decision-making process; and
- iv. The decision-makers seek out and facilitate the involvement of those potentially affected.

The term “environmental justice concern” is used to indicate the actual or potential lack of fair treatment or meaningful involvement of minority, low-income, or indigenous populations, or tribes in the development, implementation, and enforcement of environmental laws, regulations, and policies.

A project may involve an “environmental justice concern” if the project could:

- i. Create new disproportionate impacts on minority, low-income, or indigenous populations;
- ii. Exacerbate existing disproportionate impacts on minority, low-income, or indigenous populations; or
- iii. Present opportunities to address existing disproportionate impacts on minority, low-income, or indigenous populations that are addressable through the project.

- **Farmland Protection Policy Act**

The Farmland Protection Policy Act requires identification of potential adverse effects on farmland and its conversion to nonagricultural uses, mitigation of these effects, and assurance that projects are carried out in a manner compatible with the farmland preservation policies of state and local governments and of private organizations.

Early in the project planning process, the applicant should seek assistance from the state conservationist or local representative regarding the alternative project locations. The state conservationist can provide advice on: (a) what further actions must be taken by the applicant to further evaluate important farmlands, (b) the significance of all identified important farmlands, (c) the sizing of the project as it relates to secondary growth, (d) the continued viability of farming and farm support services in the project area, and (e) alternatives or mitigation measures for reducing potential adverse effects on important farmlands.

The Natural Resources Conservation Service provides information on the Farmland Protection Policy Act at:

<http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/landuse/fppa/>.

The applicant is encouraged to visit the following website regarding the Williamson Act Program: <http://www.consrv.ca.gov/dlrp/lca>.

- Fish and Wildlife Coordination Act
Pursuant to 16 U.S.C. section 662(a) of the Fish and Wildlife Coordination Act (FWCA), whenever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage, by any department or agency of the United States, or by any public or private agency under federal permit or license, such department or agency first shall consult with the USFWS, and with the head of the agency exercising administration over the wildlife resources of the particular State wherein the impoundment, diversion, or other control facility is to be constructed, with a view to the conservation of wildlife resources by preventing loss of and damage to such resources as well as providing for the development and improvement thereof in connection with such water-resource development.

The provisions of Section 662(a) do not apply to those projects for the impoundment of water where the maximum surface area of such impoundments is less than ten acres, nor to activities for or in connection with programs primarily for land management and use carried out by federal agencies with respect to federal lands under their jurisdiction.

As this law was established before the ESA and the CWA, the affected water bodies do not have to be “waters of the United States.” or considered critical habitat for a federally listed species to trigger actions required under the FWCA. Reports and recommendations from the wildlife and/or fisheries agencies can be submitted to the action agency. Reports and recommendations received must accompany project reports for authorization or approval and are not legally binding but should be strongly considered.

Should consultation under the FWCA be required, the State Water Board will provide information about the project to the USEPA and will work with the USEPA to initiate the consultation process.

- Floodplain Management – Executive Order No. 11988, as amended by Executive Order No. 12148, and Executive Order No. 13690
The applicant must take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, and to restore and preserve the

natural and beneficial values served by floodplains. The applicant must determine if the project will occur in or affect a floodplain. Floodplain locations can be determined by examining maps available from the United States Department of Housing and Urban Development, the United States Department of Homeland Security, Federal Emergency Management Agency (FEMA), and the United States Department of Agriculture. The applicant must select, if feasible, viable project alternative locations that will not adversely affect floodplains.

To determine if a project is located in a floodplain, the applicant should use the best-available information and the FEMA's effective Flood Insurance Rate Map. If the project will occur in a floodplain because no practicable alternative location is available, then measures must be taken to minimize the risk of flood damage to or within the floodplain, such as flood proofing the facility to be constructed, elevating structures above base flood levels, or providing compensatory flood storage. A public review is required for each plan or proposal for an action taking place in a floodplain.

If the project will be located in or will affect a floodplain, the applicant must prepare a floodplain/wetlands assessment. If there are no practicable alternatives to the proposed location, the applicant must document the mitigation measures or design modifications that will be incorporated into the project to reduce any flooding threats. The applicant must inform the community located in the project area why the project is to be located in a floodplain.

The ERU recommends the applicant to include a floodplain analysis in the CEQA document and circulate it through the State Clearinghouse for public review. This will eliminate the need for another public review process.

All documentation describing mitigation and design measures must be submitted to the State Water Board. If the applicant has not consulted with the local flood protection agency and/or the FEMA, the State Water Board will notify the FEMA to seek comments. The FEMA may have additional measures to enhance flood protection.

For further information, the applicant is encouraged to go to:
<https://www.fema.gov/floodplain-management>

- Magnuson-Stevens Fishery Conservation and Management Act
The Magnuson-Stevens Act is designed to enable the management and conservation of national fishery resources. EFH consultations under the Magnuson-Stevens Act are required only for actions that may adversely affect an EFH. With assistance from the State Water Board, the applicant

must ascertain whether the proposed project may adversely affect an EFH. The NMFS maintains maps and/or other information on the locations of EFH, and provides information on ways to promote conservation of the EFH to facilitate this assessment. The applicant must complete an EFH assessment if the project may adversely affect EFH.

50 C.F.R. section 600.920(c) provides that a federal agency can designate a non-federal representative to conduct consultations on 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 ([Attachment 5](#)) 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 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. section 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 typically be incorporated into and made enforceable in any approval of CWSRF financing.

For more information on EFH, see:

http://www.nmfs.noaa.gov/sfa/reg_svcs/Council%20stuff/council%20orientation/2007/2007TrainingCD/TabT-EFH/EFH_CH_Handout_Final_3107.pdf
and <http://www.habitat.noaa.gov/protection/efh/efhmapper/index.html>

- **Migratory Bird Treaty Act of 1918**
The Migratory Bird Treaty Act (MBTA) provides legal protection for almost all breeding bird species occurring in the United States. The MBTA restricts the killing, taking, collecting, selling, or purchasing of native bird species or their parts, nests, or eggs. The treaty allows hunting of certain game bird species, for specific periods, as determined by federal and state governments. The MBTA must be addressed in the CEQA document, and the lead agency must show how the project will comply with the MBTA.

If the project's CEQA document includes mitigation measure(s), the State Water Board will notify the USFWS MBTA Office to seek comments.

For further information on the MBTA, the applicant is encouraged to go to: <https://www.fws.gov/birds/policies-and-regulations/laws-legislations/migratory-bird-treaty-act.php>.

- National Historic Preservation Act, Section 106
Section 106 of the NHPA (Section 106) requires an analysis of the effects of proposed projects on “historic properties.” The Section 106 process seeks to accommodate historic preservation concerns with the needs of federal undertakings through consultation among the agency official or officials and other parties with an interest in the effects of the undertaking on “historic properties.” Consultation should commence during the early stages of project planning. “Historic properties” are properties that are included in or eligible for listing in the National Register of Historic Places. “Historic properties” include buildings, structures, objects, and archaeological sites 50 years or older.

Pursuant to the terms of the Programmatic Agreement on Historic Preservation for the State Revolving Fund ([Attachment 6](#)), the USEPA requires that the State Water Board carry out the requirements of federal regulations 36 C.F.R. sections 800.4 through 800.6, and other applicable sections of 36 C.F.R. Part 800. The USEPA will participate in the Section 106 process under NHPA to the extent mutually agreed upon by the USEPA and the State Water Board, but at a minimum the USEPA must be notified by the State Water Board if after routine consultation or coordination with the SHPO disputes remain. The Programmatic Agreement does not include consultation with Indian Tribes. The USEPA is responsible for its government-to-government relationships with Indian Tribes.

The State Water Board will consult with the SHPO and coordinate with the USEPA where appropriate. The USEPA remains legally responsible for all determinations under the NHPA.

The State Water Board has staff that meets the Secretary of the Interior’s Professional Qualifications Standards (www.cr.nps.gov/local-law/arch_stnds_9.htm). The applicant is required to retain a consultant that meets the Secretary of the Interior’s Professional Qualifications Standards to prepare a cultural resources report.

The State Water Board staff reviews Section 106 cultural resources reports/documents submitted by the applicant for adequacy and compliance with Section 106. Projects that the State Water Board staff determines to have “No historic properties affected”/ “No effect to historic properties”/ “No adverse effect to historic properties”/ “Adverse effect to historic properties” are submitted to SHPO for concurrence. Consultation with the SHPO will be used to develop and evaluate alternatives or modifications to the proposed project that could avoid, minimize or mitigate adverse effects on “historic properties.” Any project modifications and/or mitigation measures identified by the SHPO and/or Tribal Historic

Preservation Officer should typically be incorporated into and made enforceable in any approval of CWSRF financing.

In addition, the CEQA requires state, local, and other agencies subject to the jurisdiction of California to evaluate the environmental effects of the agency actions, including impacts to cultural and historic resources. The CEQA states that “a project that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment.” (Public Resources Code section 21084.1).

With the passage of Assembly Bill 52, the CEQA requires that lead agencies consult with Native American tribes or individuals with expressed interest in the project area. The lead agency must provide notice to tribes that are traditionally and culturally affiliated with the geographic area of a proposed project if the tribe has requested notice of projects proposed within that area.

The Governor’s CEQA Technical Advice Series (<https://www.opr.ca.gov/docs/circulation.pdf>) states that the lead agency must obtain a current records search from the appropriate regional California Historic Resources Information System (CHRIS) center (http://ohp.parks.ca.gov/pages/1068/files/ic_roster.pdf). Confidential data stored at the Information Centers in the California Historical Resources Information System is protected by the Information Practices Act and requires an Information Access and Use Agreement. An Authorized User, typically a qualified archaeologist, should be identified to act on behalf of the applicant to acquire access to confidential records at the Information Center. An Authorized User shall have a Statement of Qualifications and curriculum vitae on file with the Information Center (see <http://ohp.parks.ca.gov/>). For further guidance see the Information Access and Use Agreement at: http://ohp.parks.ca.gov/?page_id=28067.

The Native American Heritage Commission (NAHC) can provide a list of Native American tribes and individuals who may have an interest regarding the project to the applicant. All individuals identified by the NAHC shall be contacted by the qualified consultant, and comments and concerns included in the Cultural Resources Report. The applicant is encouraged to visit <http://www.nahc.ca.gov/> for further information.

The NAHC can be contacted at:

915 Capitol Mall, Room 364

Sacramento, CA 95814
Tele: (916) 653-0251

The records search should be current and extend to half a mile beyond the project Area of Potential Effects (APE) to provide information on what types of sites may exist in the vicinity. The applicant must identify the APE to identify historic properties that may exist for the proposed project, including construction and staging areas, and the length, width, and depth of any excavation on a map and in the text of the cultural resources report. The APE is three-dimensional and includes all areas that may be affected by the project. The APE includes the entire surface area of the project and extends below ground to the total depth of any project excavations.

Depending on the results of the records search and Native American consultation, additional surveys and studies may be required.

The following information and links should be reviewed for further information on preparation for Section 106 consultation documents with the SHPO:

- i. California Office of Historic Preservation – Section 106 Consultation Submittal Checklist:
http://www.ohp.parks.ca.gov/pages/1054/files/106checklist_shortform_2013_10_10.pdf
- ii. California Office of Historic Preservation – Detailed Recommendations for Section 106 Consultation Submittals:
http://www.ohp.parks.ca.gov/pages/1054/files/106checklist_details_2013_10_10.pdf

The applicant is encouraged to contact the ERU's Cultural Resources Officer/Coordinator for additional guidance
http://www.waterboards.ca.gov/water_issues/programs/grants_loans/environmental_requirements.shtml

- Protection of Wetlands – Executive Order No. 11990, as amended by Executive Order No. 12608
Projects, regardless of funding, must receive approval for any temporary or permanent disturbance to federal and state waters, wetlands, and vernal pools. The CWA Section 404 permitting process is administered by the United States Army Corps of Engineers (USACE). This process can be lengthy and may ultimately require project alterations to avoid wetlands, vernal pools, and waters of the United States. The applicant must consult with the USACE early in the planning process if the project site contains wetlands, and other federal waters. The USACE Wetland Delineation Manual is available at:
<http://www.cpe.rutgers.edu/Wetlands/1987-Army-Corps-Wetlands-Delineation-Manual.pdf>.

If the evaluation determines that there are no practicable alternatives that would avoid impacts to wetlands and waters of the United States, then the applicant shall design or modify the project to minimize adverse impacts to those resources and provide an opportunity for public review and comment on the project. Under the USACE “no net loss” policy, where natural wetlands will be destroyed by project construction, the applicant must devise plans to construct substitute or mitigation wetlands. Further, the applicant should seek assistance from the USFWS when developing measures to mitigate adverse impacts on wetlands to ensure that these measures adequately protect the diversity and habitat of species living in the affected wetland.

The California Regional Water Quality Control Boards are also involved in providing approvals through the CWA Section 401 Water Quality Certification and Waste Discharge Requirements (http://www.waterboards.ca.gov/water_issues/programs/cwa401/index.shtml). The applicant must obtain both the CWA Section 404 Permit and the CWA Section 401 Water Quality Certification or provide documentation of submitted and required information to the above-mentioned agencies prior to CWSRF financing approval.

- Rivers and Harbors Act, Section 10
If a project requires the construction of any structure in or over a navigable water of the United States, action under Section 10 of the Rivers and Harbors Act, Section 10, 33 U.S.C. section 403, is triggered, regardless of whether the applicant is pursuing federal funding or not. Additionally, structures or work outside the defined area for a navigable water of the United States could also trigger the need for a Section 10 permit if the structure or work will affect the course, location, or condition of the water body. A Section 10 permit is issued by the Secretary of the Army through the USACE. The applicant will initiate the process of obtaining a Section 10 permit itself and will supply a copy to the State Water Board. This process is similar to obtaining a CWA Section 404 permit discussed above.
- Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*
Under this Safe Drinking Water Act (SDWA), Congress emphasized preventing contamination of aquifers that are the sole source of drinking water for a community under the SDWA. Section 1424 of the SDWA, 42 U.S.C. section 300h-3, directs the USEPA, upon determining that a sole source aquifer may be at risk of contamination, to publish notice of that determination in the Federal Register. In accordance with Section 1424(e) of the SDWA, 42 U.S.C. section 300h-3(e), after the notice is published:

... no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator [of the USEPA] determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to a plan or design the project to assure that it will not so contaminate the aquifer.

Before the State Water Board can approve CWSRF financing for a project, the applicant must contact state officials to determine whether a sole source aquifer is in the vicinity of the proposed project. If a sole source aquifer is in the project planning area, then the applicant, in consultation with state ground water officials, must conduct investigations to determine if the aquifer could be contaminated by the project.

If the project could potentially affect ground water supplies, the applicant, in consultation with ground water officials, must elect an alternative site or devise adequate mitigating measures. In the latter case, the State Water Board will coordinate with the USEPA regional office of the applicant's plans. If the USEPA regional office requires additional mitigating measures, the State Water Board, with the assistance of the USEPA regional office, will work with the applicant to integrate those measures into the project's design.

For the USEPA and state contacts, please go to:

<https://www3.epa.gov/region9/water/groundwater/contacts.html>.

For sole source aquifer locations, go to:

<http://epa.gov/region09/water/groundwater/ssa.html>.

- **Wild and Scenic Rivers Act**

Congress passed the Wild and Scenic Rivers Act to preserve the special scenic, cultural, historic, recreational, geologic, and fish and wildlife values of the nation's free flowing rivers and related adjacent land. The Wild and Scenic Rivers Act establishes requirements for projects that may affect a wild and scenic river, river segments, or the adjacent land.

During project planning, the applicant should consult with the appropriate federal agencies and the ERU staff to determine whether the project may affect a designated river. The appropriate agency to consult with is the one with jurisdiction over the rivers in the project area and includes the National Park Service, United States Forest Service, or Bureau of Land Management.

The federal cross-cutter requirements of the Wild and Scenic Rivers Act are satisfied if there are no designated rivers in the project area, or if the project will not have a direct and adverse effect on a designated river.

With help from the appropriate agencies and the ERU staff, the applicant must evaluate any alternatives under consideration that may affect a wild and scenic river. If those evaluations demonstrate that an alternative will have an adverse effect on a wild and scenic river, then that alternative must be eliminated from consideration and other alternatives or planning adjustments must be pursued.

A listing of designated “wild and scenic rivers” in California can be obtained at: <http://www.rivers.gov/california.php>.

Watershed information can be obtained through the “California Watershed Portal” at: <http://www.conservation.ca.gov/dlrp/watershedportal/Pages/Index.aspx>.

C. Environmental Review Completion

Once the ERU receives a complete and adequate environmental package, the ERU lead reviewer prepares an ESC and draft CEQA determination documenting compliance with the CEQA and the CEQA-Plus requirements, including the federal cross-cutting authorities, for each project. The ERU lead reviewer provides copies of those documents to the State Water Board Project Manager.

D. Board Item Preparation for Non-routine or Controversial Projects

The State Water Board considers non-routine or controversial project funding approvals at its public meetings. Possible issues that may render a project non-routine or controversial include, but are not limited to, (1) exceeding federal air quality *de minimis* thresholds, (2) litigation, (3) public objections or concerns for significant unavoidable environmental impacts related to a Statement of Overriding Considerations, or (4) significant issues that involve one or more of the federal cross-cutting authorities.

The State Water Board consideration adds time to the project review schedule, as a separate administrative process is required to add an Item to the State Water Board’s agenda.

E. Notice of Categorical or Statutory Exemption or Notice of Determination

Following financing approval, the ERU lead reviewer files an NOE or an NOD for a project with the State Clearinghouse, thereby informing the public of the State Water Board’s financing decision and the location of the environmental documents.

IV. POST FINANCING AGREEMENT EXECUTION

A. Project Re-Evaluation due to Project Scope Changes

If there are changes to the project scope, the ERU will need to review these changes and determine if any additional environmental documentation or federal consultation is necessary. The applicant must provide the new information to the State Water Board Project Manager as soon as possible for coordination with the ERU.

B. Compliance Follow-up

Special environmental conditions may be placed on a project, and will be included in the applicant's financial agreement. Special environmental conditions may include the mitigation measures from the applicant's MMRP, avoidance and minimization measures from a state or federal agency, or additional condition(s) required by ERU. To ensure compliance with the special environmental conditions, the ERU takes the following actions:

1. Prepares a list of special environmental conditions for the financing agreement.
2. Whenever possible, accompanies technical staff on site visits to verify compliance and attends the applicant's preconstruction meetings to discuss the environmental measure(s) with the applicant and the construction contractors.
3. Reviews quarterly reporting on the implementation of the environmental measures, and in particular during construction and after construction, as applicable.
4. Coordinates with other relevant state and federal agencies (i.e., California Office of Historic Preservation, USFWS, USACE, etc.) if necessary.

If the applicant is determined to not be in compliance with environmental measures, the State Water Board will coordinate with the USEPA and other relevant federal agencies to take appropriate legal measures to correct any non-compliance as quickly as possible.

C. Project Environmental Compliance Tracking

The ERU 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 CWSRF Program's compliance with the CEQA-Plus requirements.

ATTACHMENT 1

PROCEDURES FOR IMPLEMENTING ENVIRONMENTAL FEDERAL CROSS-CUTTING AUTHORITIES

[ATTACHMENT 1](#): Procedures for Implementing Environmental Federal Cross-Cutting Authorities in the Clean Water and Drinking Water State Revolving Fund Programs

ATTACHMENT 2

LIST OF CATEGORICAL AND STATUTORY CEQA EXEMPT ACTIVITIES

Table 1: Categorical Exempt Activities Eligible for Funding⁴

Class	Exempt Activity	Guidelines Section
1	Operation, repair, maintenance, or minor alteration of existing structures or facilities not expanding existing uses	14 Cal. Code Regs., § 15301
2	Replacement or reconstruction of existing structures or facilities on the same site having substantially the same purpose and capacity	14 Cal. Code Regs., § 15302
3	New construction of limited small new facilities; installation of small, new equipment and facilities in small structures; and conversion of the use of small existing structures	14 Cal. Code Regs., § 15302
4	Minor alterations in the condition of the land, such as grading, gardening, and landscaping, that do not involve removal of trees	14 Cal. Code Regs., § 15304
6	Basic data collection, research, experimental management, and resource evaluation activities that do not result in major disturbances to an environmental resource	14 Cal. Code Regs., § 15306
11	Construction or placement of minor structures adjacent to existing facilities	14 Cal. Code Regs., § 15311
13	Acquisition of Lands	14 Cal. Code Regs., § 15313
22	Educational or training programs involving no physical changes	14 Cal. Code Regs., § 15322
29	Cogeneration projects at existing facilities	14 Cal. Code Regs., § 15329

Table 2: Statutory Exempt Activities Eligible for Funding⁵

<u>Type of Action</u>	<u>Exempt Activities</u>	<u>Public Resources Code (PRC) and Water Code Statutory Provision</u>
Agency Actions	Feasibility or planning studies for possible future actions that the agency has not approved, adopted, or funded.	PRC § 211202, 21150

⁴ A categorical exemption is an exemption from CEQA for a class of activities that generally will not have a significant effect on the environment. These exemptions are not absolute, and if the project is in a sensitive area, full CEQA/CEQA-like review will be required. Compliance with the federal cross cutters is still required.

⁵ Statutory exempt projects have blanket exemption from all of CEQA's procedures and policies. Compliance with the federal cross cutters is still required.

Energy Projects	Solar energy systems on roofs and parking lots	PRC § 2108.35
Water-Related Projects	Re-piping, redesign, or use of reclaimed water for certain irrigation, cooling, or air conditioning purposes	Water Code §§ 13552.4(c)(1), 13552.8(c)(1)

ATTACHMENT 3

CWSRF PROGRAM ENVIRONMENTAL REVIEW PROCESS

Step 1:

- Environmental Review Unit (ERU) receives a complete Environmental Package from the State Water Board Project Manager
- Environmental Package is assigned to an ERU lead reviewer

Step 2:

ERU lead reviewer:

- Screens the Environmental Package
- Makes a completeness and adequacy determination of the items received
- Determines whether or not consultation with relevant state and federal agencies is needed

Step 3:

IF ENVIRONMENTAL PACKAGE is COMPLETE AND ADEQUATE

ERU lead reviewer:

- Initiates and completes consultation(s) with the relevant state and federal agencies, if applicable
- Prepares an Environmental Summary Clearance (ESC) and draft CEQA determination

IF ENVIRONMENTAL PACKAGE is INCOMPLETE or INADEQUATE

- Requests additional information or studies from the applicant
- Applicant provides the requested additional information or studies
- Initiates and completes consultation(s) with the relevant state and federal agencies, if applicable
- Prepares an ESC and draft CEQA determination

Step 4:

ENVIRONMENTAL REVIEW COMPLETE

ERU lead reviewer:

- Sends the ESC to the applicant and Project Manager to review and verify
- Provides final signed copies of the ESC and draft copy of CEQA determination to the Project Manager

Step 5:

PROJECT APPROVAL⁶

Project is approved by either:

1. Division Deputy Director if routine and non-controversial

⁶ The State Water Board has delegated to the Deputy Director or to the Division financing approval of projects that are consistent with the CWSRF policy and are routine and non-controversial. Projects that are non-routine and controversial (e.g., exceeding federal air quality de minimis thresholds, litigation, or public objections or concerns for significant unavoidable environmental impacts) are considered by the State Water Board at public meetings.

OR

2. State Water Board if non-routine and/or controversial

Step 6:

ENVIRONMENTAL REVIEW PROCESS COMPLETE

ERU files a Notice of Determination or Notice of Exemption with the State Clearinghouse

ATTACHMENT 4

USEPA LETTER TO UNITED STATES FISH AND WILDLIFE SERVICE – DESIGNATION OF NON-FEDERAL REPRESENTATIVE UNDER SECTION 7 OF THE FEDERAL ENDANGERED SPECIES ACT.

[ATTACHMENT 4](#): Letter from EPA Pacific Southwest (Region 9) to U.S. Fish & Wildlife Service Pacific Southwest Region Headquarters designating the California State Water Resources Control Board (SWRCB) as its non-federal representative for Endangered Species Act and Magnuson-Stevens Act.

ATTACHMENT 5

USEPA LETTER TO NATIONAL MARINE FISHERIES SERVICE

California Central Valley Area Office

[ATTACHMENT 5](#): Letter from EPA Pacific Southwest (Region 9) to National Marine Fisheries Service California Central Valley Area Office designating the California State Water Resources Control Board (SWRCB) as its non-federal representative for Endangered Species Act and Magnuson-Stevens Act.

ATTACHMENT 5A

USEPA LETTER TO NATIONAL MARINE FISHERIES SERVICE

California Coastal Area Office

[ATTACHMENT 5a](#): Letter from EPA Pacific Southwest (Region 9) to National Marine Fisheries Service California Coastal Area Office designating the California State Water Resources Control Board (SWRCB) as its non-federal representative for Endangered Species Act and Magnuson-Stevens Act.

ATTACHMENT 6

**PROGRAMMATIC AGREEMENT ON HISTORIC PRESERVATION FOR THE STATE
REVOLVING FUND**

ATTACHMENT 6: Programmatic Agreement

ATTACHMENT 7

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY SERP APPROVAL LETTER

[ATTACHMENT 7](#): Letter from EPA Region Pacific Southwest (Region 9) approving modifications to the California State Water Resources Control Board's State Environmental Review Process (SERP) for the California Clean Water State Revolving Fund program.