

Section 106 Programmatic Agreements for the CWSRF and DWSRF Programs

Consultation Meeting
June 22, 2023



Participation Instructions

- ▶ Please hold questions or comments until we reach the public comment section.
- ▶ You may post comments in the chat during the presentation or raise your hand later.
- ▶ Everyone will have the chance to speak during public comment.

Agenda

- ▶ Introductions
- ▶ EPA and State Water Resources Control Board as partner agencies
- ▶ Goals of the proposed programmatic agreements
- ▶ Proposed terms of the programmatic agreements
- ▶ Questions and comments

United States Environmental Protection Agency

- ▶ EPA mission: "protect human health and the environment," including access to clean water
- ▶ Partners with states to provide grants and loans to local communities for water projects
 - ▶ State Revolving Fund

State Water Resources Control Board

- ▶ SWRCB mission: “to preserve, enhance, and restore the quality of California's water resources and drinking water for the protection of the environment, public health, and all beneficial uses, and to ensure proper water resource allocation and efficient use, for the benefit of present and future generations.”
- ▶ Authorized to implement the federal Clean Water Act and the Safe Drinking Water Act

SWRCB's Division of Financial Assistance

Administers state and federal funding for the construction and implementation of drinking water & wastewater projects

Federal funds from the EPA contribute to the State Revolving Funds (SRF)

The SRFs are used for drinking water (DWSRF) and wastewater (CWSRF) projects

A wide variety of applicants and project scopes are funded through the SRF Programs

Definitions

- ▶ **Section 106 of the National Historic Preservation Act:** federal agencies must assess their projects' effects on historic properties
- ▶ **Historic properties:** objects, sites, buildings, structures, and districts that are listed on or eligible for the National Register of Historic Places
- ▶ **Consulting party:** individual or organization with a demonstrated interest in a project or its effects
- ▶ **State Revolving Fund (SRF):** grants and loans for water infrastructure projects; Drinking Water SRF and Clean Water SRF
- ▶ **Phasing:** Project alternatives or restricted access necessitate delaying or phasing completion of identification, evaluation, or assessment of effects on historic properties

SWRCB's Current Section 106 Authorization from the EPA

SRF projects are subject to compliance with Section 106 of the National Historic Preservation Act

Nationwide Programmatic Agreement for the CWSRF Program

Delegation letter for the DWSRF Program

CWSRF and DWSRF Programmatic Agreement Development



"programmatic agreements for agency programs"



Alternative to the 36 CFR Part 800 process for complying with Section 106



Save project review time without compromising the protection of historic properties



Consultation between the EPA, the Advisory Council on Historic Preservation (ACHP), the State Historic Preservation Officer (SHPO), the SWRCB, and various other parties

Goals of the CWSRF and DWSRF PAs

- ▶ SWRCB will act as the lead agency
- ▶ Bring consistency between the CWSRF and DWSRF Programs
- ▶ Establish professional qualification standards
- ▶ Allow SWRCB to make certain findings without consultation with the SHPO
- ▶ Establish a “reasonable and good faith effort” protocol for Native American and other consulting party consultation

Proposed Stipulations of the PAs: Applicability and Roles

Will not apply on Tribal land

Overseen by the SWRCB's Senior Cultural Resources Officer

All actions will be performed or overseen by staff who meet the Secretary of the Interior's Professional Qualification Standards

Proposed Stipulations of the PAs: Historic Property Identification Procedures

- ▶ Historic Property Identification Report (HPIR) preparation
 - ▶ “Guidelines for Applicants and Their Consultants on Preparing Historic Property Identification Reports for the Clean and Drinking Water State Revolving Fund (SRF) Programs”
 - ▶ “Drinking Water and Wastewater Treatment Facilities in California: Historic Context and Research Design for Evaluation”
- ▶ Identification requires consultation with tribes and other consulting parties
- ▶ SWRCB will review the reports for adequacy

Proposed Stipulations of the PAs: Consultation with Tribes

Funding applicants or their consultants will conduct initial outreach using the SWRCB's template letter

SWRCB will consult with any tribes that request consultation or express concerns

EPA will retain its responsibility for government-to-government consultation

Proposed Stipulations of the PAs: Consultation with Other Parties

Historical society
outreach will be
conducted

Other consulting
parties will be
identified and
consulted as
needed

Proposed Stipulations of the PAs: Findings of No Historic Properties Affected

When there are no cultural resources in the area of potential effects, no consultation with the SHPO will occur

SWRCB will consult with the SHPO regarding determinations of eligibility for the National Register of Historic Places

Proposed Stipulations of the PAs: Findings of No Adverse Effect

▶ **With Standard Conditions**

- ▶ Document the finding to file without SHPO consultation
- ▶ Environmentally Sensitive Areas (Avoidance)
- ▶ Secretary of the Interior's Standards for the Treatment of Historic Properties

▶ **Without Standard Conditions**

- ▶ Consultation with the SHPO will occur

Proposed Stipulations of the PAs: Phasing on Individual Projects

- ▶ SWRCB will be responsible for consultation on programmatic agreements for specific projects
- ▶ Phased approach without a formal programmatic agreement for projects with minor access issues

Proposed Stipulations of the PAs: Emergency Projects



Projects that will be implemented within 30 days of the declared emergency



Consulting party comments will be requested within seven days, or the timeframe allowed



Report of the actions taken within six months

Proposed Stipulations of the PAs: Post-Review Discoveries

Funding recipients must notify the SWRCB within 24 hours of a post-review discovery

Consultation will occur with the SHPO, ACHP, and any applicable consulting parties within 48 hours

If human remains are identified, applicable state and federal laws shall be followed

May develop a standard post-review discovery protocol

Proposed Stipulations of the PAs: Administration

- ▶ The EPA, SHPO, and possibly the ACHP will be consulted regarding any objections or disputes
- ▶ Proposed term of ten years, with a comprehensive review after five years
- ▶ The SHPO and the EPA will perform an annual review

Tentative Timeline



How to Submit Comments and/or Become a Consulting Party

- ▶ Comments requested by July 6, 2023
- ▶ Email: DFA-106PA@waterboards.ca.gov
- ▶ Mail: Attn: Lisa Machado DFA, State Water Resources Control Board, P.O. Box 100, Sacramento, CA 95812-0100
- ▶ More information and meeting materials: <http://bit.ly/section-106>

Questions or Comments?

- ▶ Raised Hand
- ▶ First and last name
- ▶ Affiliation
- ▶ Concise question or comment (3 minutes max)
- ▶ Topics for consideration:
 - ▶ Consultation procedures with tribes and other parties
 - ▶ Alternate procedures to the standard Section 106 process

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