



Section 106 of the National Historic Preservation Act Programmatic Agreements Fact Sheet

Development of Programmatic Agreements for the Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) Programs

The United States Environmental Protection Agency (EPA) and the California State Water Resources Control Board (SWRCB), in consultation with the California State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP), are proposing to develop two new statewide programmatic agreements, one for the CWSRF Program and one for the DWSRF Program. Each new programmatic agreement will guide compliance with Section 106 of the National Historic Preservation Act under 36 Code of Federal Regulations (CFR) Part 800 (Section 106) and will be largely identical. This is an opportunity for Native American tribes and other members of the public to collaborate on the consultation process that the SWRCB will implement under the programmatic agreements.

What is a programmatic agreement?

- It is an alternative to the 36 CFR Part 800 process for complying with Section 106 that will save project review time without compromising the protection of historic properties.
- It is a collaborative method of determining the appropriate Section 106 compliance process for State Revolving Fund projects.

Who participates in the development of a programmatic agreement?

- The federal agency (EPA), the ACHP, the SHPO and/or Tribal Historic Preservation Officers, the SWRCB, and other consulting parties, which can include Native American tribes, State Revolving Fund applicants, and interested members of the public.

What are the goals and some potential benefits of the programmatic agreements?

- Designate the SWRCB as the lead agency for complying with Section 106 to ensure consistency between the CWSRF and DWSRF Programs.
- Establish professional qualification standards for both SWRCB cultural resource staff who oversee compliance with Section 106 under the programmatic agreements and for consultant personnel who prepare historic property identification reports for State Revolving Fund projects.
- Allow SWRCB's professionally qualified staff to make findings of "no historic properties affected" when no cultural resources are located within the area of potential effects and to make findings of "no adverse effect" for projects that will completely avoid effects to historic properties located in the area of potential effects, without further consultation with the SHPO.

- Improve Native American and historical society consultations by outlining the proper protocol and establishing a threshold for a “reasonable and good faith effort.”

Consultation with Native American Tribes under the programmatic agreements

- The EPA has already authorized the SWRCB to consult with Native American Tribes pursuant to Section 106. The programmatic agreements will elaborate upon the consultation protocol that the SWRCB will implement as part of this delegation.
- The EPA will remain responsible for government-to-government consultation with federally recognized Indian tribes in compliance with 36 CFR Part 800, if such consultation is requested.

Current Compliance with the National Historic Preservation Act

Because State Revolving Fund projects receive federal funding from the EPA, they are subject to compliance with Section 106. The EPA has delegated responsibility to the SWRCB for carrying out the requirements of Section 106 under separate authorities for the CWSRF and DWSRF Programs. For the CWSRF Program, the EPA authorized states to carry out the requirements of Section 106 under a [Nationwide Programmatic Agreement](#) executed by the EPA, the ACHP, and the National Council of State Historic Preservation Officers. Pursuant to 36 CFR Section 800.2(c)(4), the EPA delegated Section 106 responsibility for the DWSRF Program to the SWRCB in a [letter](#) to the SHPO dated September 3, 2015.

Background on the SWRCB’s Funding Programs

Created by the California State Legislature in 1967, the [SWRCB](#) protects water quality by setting statewide policy and coordinating with and supporting the efforts of the nine Regional Water Quality Control Boards. Together with the Regional Boards, the SWRCB is authorized to implement the federal [Clean Water Act](#) and the [Safe Drinking Water Act](#) in California. The SWRCB is also solely responsible for allocating surface water rights. The mission of the SWRCB is “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.”

The Division of Financial Assistance administers the implementation of the SWRCB’s financial assistance programs. These include loan and grant programs from both state and federal funding sources for the planning and construction of various types of water quality improvement projects. Federal funds from the EPA contribute to the SRF and are available for a variety of drinking water (DWSRF) and wastewater (CWSRF) infrastructure projects. The State Revolving Fund programs function as water infrastructure banks capitalized by various funding sources, including funding from the EPA, in order to provide sustainable sources of funds for water quality protection and improvement projects. The Intended Use Plans for the current fiscal year, which provide further background regarding the State Revolving Fund programs and their associated funding authorities, can be found at these links for the [DWSRF](#) and [CWSRF](#) Programs.

Applicants for this funding can include cities, counties, water and sanitation districts, school districts, Native American tribes, municipal utilities, and privately-owned water systems. These projects often include wastewater or drinking water treatment plant upgrades, distribution and collection system replacements (e.g., pipes, pump stations, lift stations), water system consolidations and interties (new connection pipelines), installation of new recycled water systems, and construction of new wells and water storage tanks. The projects can include ground disturbing activities such as grading and trenching, as well as demolition or modification to buildings or structures.