



US Army Corps
of Engineers.

Special Public Notice

Regulatory Branch
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Public Notice Date: September 19, 2003
Expiration Date: October 19, 2003

Name: WRDA 2000

The President of the United States signed the *Water Resources Development Act of 2000* (WRDA 2000, Public Law No. 106-541) into law on December 11, 2000.

Section 214 of WRDA 2000 reads as follows:

(a) IN GENERAL-In Fiscal Years 2001 through 2003, the Secretary (of the Army), after public notice, may accept and expend funds contributed by non-Federal public entities to expedite the evaluation of permits under the jurisdiction of the Department of the Army."

(b) EFFECT ON PERMITTING-In carrying out this section, the Secretary shall ensure that the use of funds accepted under subsection (a) will not impact impartial decisionmaking with respect to permits, either substantively or procedurally."

The Secretary of the Army has delegated this responsibility to the Chief of Engineers and his authorized representatives, including the Commander of the Portland District, U.S. Army Corps of Engineers (Portland District). This Public Notice announces the preliminary intent of the Portland District to accept and expend funds contributed by the Oregon Department of Transportation (ODOT) to assist in the successful implementation of the agency's bridge replacement program and to expedite processing of their Department of the Army (DA) permit applications, subject to a series of limitations. This Public Notice also solicits comments from the general public on the subject of acceptance and expenditure of funds contributed by this non-Federal public entity to expedite the evaluation of DA permit applications.

We also want to discuss the following subjects with this Public Notice:

- definition of a non-Federal public entity,
- how the Portland District would expend the funds,
- the kind of activities for which funds would be expended,
- the procedures we will use to ensure that the funds will not impact impartial decisionmaking,
- the benefits a non-Federal public entity would receive from their funds,
- impacts we foresee to our regulatory program and to DA permit evaluations that are not subsidized by funds contributed by a non-Federal public entity.

Non-Federal public entities are comprised of various forms of state and local governmental agencies and Indian tribal governments. They include, but are not limited to, local transportation agencies desiring to expedite highway projects, port authorities wanting permits expedited for marine terminals, flood and storm water management agencies, diking districts, or governmental economic development agencies seeking to expedite permit applications for certain kinds of work, including industrial or commercial development. Two or more non-Federal public entities could jointly fund a single account. To date, the Portland District has only had funding discussions with ODOT. We expect participating entities would be public agencies with a number of permit applications being simultaneously considered by the Portland District, and enough future projects in the planning stage to warrant this form of partnership.

The Corps of Engineers' regulatory program is funded as a congressionally appropriated line item in the annual Federal budget. Additional funds received from non-Federal public entities would be used to augment the Portland District regulatory budget in accordance with the provisions of WRDA 2000. The Portland District would establish separate accounts for each funding non-Federal public entity to track receipt and expenditure of the funds. Portland District regulatory employees would charge their time against the respective account of a non-Federal public entity when they did work to expedite resolution of one of that entity's permit requests. With an increased regulatory budget, the Portland District would hire additional employees, paying salaries in part from the non-Federal public entity funding to the degree the employees work on expediting those entities' permit applications.

Funds would mainly be expended on the salaries and overhead of Regulatory Project Managers performing expedited processing activities for participating public entities. Such activities would include, but not be limited to, the following: application review, drawings correction, jurisdictional determinations, site visits, public notice preparation, preparation of correspondence, conduct of the public interest review, preparation of draft permit decision documents, meetings with the applicant, and the development of new process initiatives. Funds would *not* be expended for review of project managers' work by supervisors, other elements of the Portland District, or other persons in the decisionmaking chain of command. No enforcement or compliance activities would be paid from the augmenting funds, nor would the funds be used for paying the costs of public hearings and distribution of public notices.

Funds may also be expended to hire contractors to perform select duties such as site visits, technical writing, copying, technical contracting for review of specific items such as biological assessments for endangered species, writing drafts of reference biological assessments to be used by funding entities and the general public alike, developing regional general permits, Essential Fish Habitat determinations, and other technical documents, including draft environmental documents.

If a participating entity's funds are expended and are not renewed, their remaining permit applications would be handled like those of any other non-participant, in a manner decided by the assigned regulatory project manager and his or her supervisor.

To ensure that the funds will not impact impartial decisionmaking, the following procedures, mandated from Headquarters, U.S. Army Corps of Engineers, would apply to all cases using additional funds provided by the participating non-Federal public entities:

- a. All final permit decisions for cases where these funds are used must be reviewed at least by one level above the decisionmaker, unless the decisionmaker is the District Commander. For example, if the decisionmaker were the Chief, Regulatory Branch, then the reviewer would be the Chief, Operations Division.
- b. All final permit decisions for cases where these funds are used will be made available on the Portland District Regulatory web page.
- c. The Portland District will not eliminate any procedures or decisions that would otherwise be required for that type of project and permit application under consideration.
- d. The Portland District must comply with all applicable laws and regulations.
- e. Funds will only be expended to expedite the final decision on the permit application. Funds will not be expended for the review of the decision maker's decision. If contracts are used to develop decision documents, such decision documents must be drafts only and be reviewed and adopted by the Corps regulatory program employees, before the decision is made.

The workload of the Portland District Regulatory Branch has increased significantly due to listing of various salmon and trout species under the Endangered Species Act (ESA) in the mid- to late-1990s. The resulting backlog of applications has increased as the number of decisions has decreased.

Section 214 of WRDA 2000 is designed to enable the Portland District regulatory program to expedite the processing of public projects. Participating agencies can expect some of their permit applications to receive expedited handling, and to the degree considered appropriate, they can set priorities. Their augmentation of our regulatory budget would allow us to hire additional people, increasing the size of the pool from which we would assign people to expedite these applications. The result for participants should be more efficient permit processing, new tools to resolve ESA issues, and a more predictable time-line for obtaining DA authorizations.

This method of expediting the permit review of certain public projects is not expected to negatively impact the Portland District's regulatory program, or to increase the waiting time for permit evaluations that are not subsidized by funds contributed by non-Federal sponsors. Rather, the Regulatory Branch project managers could process the remaining applications not assigned to the WRDA 2000 employees/contractors on a quicker basis. Reference documents and programmatic tools developed by public entity funding will also be available to the general public. We expect the benefits of implementing this program to translate into an enhanced evaluation capability for all participants.

This public notice has a 30-day comment period. Following the review of comments we receive in response to the public notice, the Portland District Commander will determine if acceptance and expenditure of the funds is in compliance with Section 214 of WRDA 2000. If the District Commander determines, after considering public comments, that the acceptance and expenditure of the funds is in compliance with the Act and is not otherwise contrary to the general public interest, the Portland District will proceed to accept and expend such funds from ODOT. Funds will be accepted only if the public interest is better served through cost-effectiveness, enhanced evaluation capability, streamlined permit processing, or other appropriate justification. A final public notice will be issued regarding the District Commander's decision. Beyond that, no new public notice will be issued if a participating non-Federal public entity increases the amount of funds previously furnished, provided the purpose remains the same.

The authority to accept and expend funds from non-Federal public entities expires on September 30, 2003. The Portland District is issuing this notice with the understanding that WRDA authority would need to be extended beyond the September 2003 expiration date before further action could be taken.

Comments on implementing Section 214 of WRDA 2000 will be accepted and made part of the record, and they will be considered in determining whether it would be in the best public interest to proceed with this administrative practice. Comments should reach this office, Attn: Regulatory Branch, not later than the expiration date of this public notice to ensure.

The Portland District point of contact for this public notice is Ms. Susan Sturges. Ms. Sturges can be reached in writing at the address on the front of this public notice or by telephone at (503) 808-4381.