



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
SEATTLE DISTRICT, CORPS OF ENGINEERS
P.O. BOX 3755
SEATTLE, WASHINGTON 98124-3755

NOV - 9 2007

CENWS-OD-RG

MEMORANDUM

SUBJECT: Regulatory Program Funds Contributed by Non-Federal Public Entities

1. The purpose of this memorandum is to document the decision by the Seattle District, U.S. Army Corps of Engineers (Seattle District), to accept and expend funds contributed by Pierce County, a non-Federal public entity, to expedite the evaluation of permits under consideration of our Regulatory Branch.

The funding would be accepted and expended in accordance with Section 214 of the *Water Resources Development Act of 2000* (WRDA 2000, Public Law No. 106-541) as amended. Section 214 of WRDA 2000 reads as follows:

(a) IN GENERAL.-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."

(c) DURATION OF AUTHORITY.-The authority provided under this section shall be in effect from October 1, 2000, through December 31, 2008.

2. Headquarters, U.S. Army Corps of Engineers (Headquarters) provided guidance on acceptance and use of such funds in memoranda dated 17 July 2001 and 29 March 2004. That guidance included instructions to circulate an initial public notice that would explain the newly authorized funding mechanism and provide information on the following specific areas:

- a. names of the participating non-Federal public entities,
- b. the Corps authority to accept and expend such funds,
- c. the reason for such contributions,
- d. how acceptance of the funds is expected to expedite the permit review process,
- e. what kinds of activities the funds would be expended on,
- f. the procedures to be placed in effect to ensure the funds will not impact impartial decisionmaking.

3. The Seattle District published such a Public Notice on 14 September 2007. It contained an announcement of the Seattle District's preliminary intent to accept such funds from Pierce County. The public notice contained the actual text of Section 214 as amended, described conventional funding, and presented information on the following subjects:

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

Seattle District reviewed the comments received in response to the initial public notice to determine if the District's acceptance and expenditure of the funds is in accordance with the provisions of WRDA 2000. According to the guidance,

If the District Commander determines, after considering public comments, that the acceptance and expenditure of the funds is in compliance with the Act, the District Commander may accept and expend such funds. . . 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 new public notice will be issued regarding the District Commander's decision.

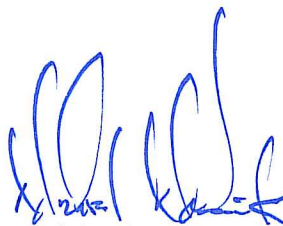
Headquarters guidance also called for strict accounting of expended funds, upward reporting procedures, and careful assessment of how the use of the funds will have expedited the permit review process or given rise to issues regarding impartial decisionmaking. To ensure that the acceptance and expenditure of these funds will not impact impartial decisionmaking, the Headquarters guidance called for the establishment, at a minimum, of the following procedures:

- 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.
- b. All final permit decisions for cases where these funds are used will be made available on the participating Corps District's Regulatory web page.
- c. The Corps cannot eliminate any procedures or decisions that would normally be required for the type of project under consideration.
- d. The Corps 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 decisionmaker'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.

4. Public Notice Comments. No comments were received in response to the public notice.

5. After analyzing the comments received from the public, it is my decision that adoption of the procedures described elsewhere in this memorandum and in the public notice, and the subsequent acceptance and expenditure of funds from Pierce County is in compliance with Section 214 as amended. The public interest will be better served through cost-effectiveness and enhanced evaluation capability. The funding program will lead to better, more cost-effective processing of permit applications submitted by public agencies by funding additional resources to do some of the expedited work, and using existing resources to continue dealing with the balance of the regulatory workload. Our capacity to evaluate all permit actions will be incrementally increased with the addition of resources. Acceptance and expenditure of these funds is in accordance with Section 214 of WRDA 2000 as amended.



Michael McCormick
Colonel, Corps of Engineers
District Engineer

4 Encls

1. CECW-OR Memo
17 July 2001
2. CECW-OR Memo,
29 March 2004
3. CENWS-OD-RG Memo
27 Nov 2001
4. Seattle District Special
Public Notice, 14 September 2007