

MEMORANDUM FOR RECORD

SUBJECT: Seattle District Decision to Accept and Expend Funds Contributed by the Chehalis River Flood Control Zone District

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 the Chehalis River Flood Control Zone District--non-Federal public entities--to expedite the evaluation of Department of the Army (DA) permits under consideration by the District's Regulatory Branch.
2. Funding would be accepted and expended in accordance with Section 214 of the Water Resources Development Act (WRDA) of 2000 as amended [WRDA 214 requirements, as amended by the Water Resources Reform and Development Act of 2014, are now codified under 33 U.S.C 2352].
3. Key provisions of Section 214 as amended:
 - a. The Secretary (of the Army), after public notice, may accept and expend funds contributed by a non-Federal public entity to expedite the evaluation of a permit of that entity related to a project or activity for a public purpose under the jurisdiction of the DA.
 - b. To the maximum extent practicable, the Secretary shall ensure that expediting the evaluation of a permit through the use of funds accepted and expended under this section does not adversely affect the timeline for evaluation (in the Corps district in which the project or activity is located) of permits under the jurisdiction of the Department of the Army of other entities that have not contributed funds under this section.
 - c. In carrying out this section, the Secretary shall ensure that the use of funds accepted under subsection (a) will not impact impartial decision-making with respect to permits, either substantively or procedurally.
 - d. In carrying out this section, the Secretary shall ensure that the evaluation of permits carried out using funds accepted under this section shall:
 - (1) be reviewed by:
 - (a) the District Commander, or the Commander's designee, of the Corps District in which the project or activity is located; or

CENWS-ODR

SUBJECT: Seattle District Decision to Accept and Expend Funds Contributed by the Chehalis River Flood Control Zone District

(b) the Commander of the Corps Division in which the District is located if the evaluation of the permit is initially conducted by the District Commander; and

(2) Utilize the same procedures for decisions that would otherwise be required for the evaluation of permits for similar projects or activities not carried out using funds authorized under this section. None of the funds accepted under this section shall be used to carry out a review of the evaluation of permits required under paragraph 3.d above.

4. The Seattle District published an initial public notice (enclosed) on 3 October 2017 which contained announcements of the Seattle District's preliminary intent to accept and expend funds from the Chehalis River Flood Control Zone District to expedite processing of DA permit applications from these non-Federal public entities. The special public notice provided information on the following:

- a. Name of the non-Federal public entity proposing to provide the funds.
- 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 DA permit review process.
- e. The type of activities for which the funds would be expended.
- f. The procedures to be placed in effect to ensure the funds will not impact impartial decision-making.

5. The following comments/concerns were received:

a. Confederated Tribes of the Chehalis Reservation, Date of Response: 3 November 2017; Comment: "The Confederated Tribes of the Chehalis Reservation (Chehalis Tribe) is opposed to this expedited process and requests government to government consultation to further discuss this issue. As a member of the Chehalis Basin Board and other stakeholder groups in the basin, the Tribe supports flood damage reduction and reducing the risks to the people of the watershed. The Chehalis Tribe itself has completed flood reduction projects in the basin. The current discussions in the watershed are focused on a balance of flood risk reduction and ecological health. The Tribe wants to ensure there are no potential impacts to the Tribe's fishing rights, culturally important sites, or the very lives of the Tribal community."

CENWS-ODR

SUBJECT: Seattle District Decision to Accept and Expend Funds Contributed by the Chehalis River Flood Control Zone District

Corps' Evaluation: On 16 January 2018, Ms. Jacalen Printz (Regulation Section Chief) and Ms. Lori Morris (District Tribal Liaison) from the Corps attended a staff level meeting with representatives from the Chehalis Tribe's Department of Natural Resources to discuss the proposed WRDA Section 214 agreement, hear concerns, and answer any remaining questions. The Corps particularly emphasized that the WRDA Section 214 agreement would allow the Corps to accept and expend funds for the expediting of the permit process but does not mean that the applicability of the regulation, the process, or review is any different for the proposed project processed under an agreement versus non-WRDA Section 214 projects. Additionally, the Corps outlined how with the agreement we would process/review permit applications proposed by the entity through workload management and augmenting our staff, not through any change in the review process for the projects.

On 8 February 2018, the District Engineer (DE) met with the Chehalis Tribal Chairman Harry Pickernell, Sr. to discuss the Tribe's concerns. After a lengthy discussion, the DE and Chairman parted with the understanding that the Chehalis Tribes' concerns had been addressed although they would prefer that a similar agreement could be made for the restoration strategy in the Chehalis Basin. After the meeting, the District Tribal Liaison contacted both the Chehalis Tribes Director of Natural Resources, Glen Connelly and the Tribal Chairman via email and telephone. Direct calls were made on 22 February 2018 and messages left for both parties. A follow up email was sent to both parties on 26 February 2018 and a call was made on 5 March 2018 to the Director of Natural Resources who stated that only the Chairman could answer whether the Tribe still objected. Mr. Connelly indicated that he would try again to discuss the topic with the Tribal Chairman and get a response to the Corps as soon as possible. Ms. Morris made a final attempt to discuss this with Chairman Pickernell, Sr. on 8 March 2018. Chairman Pickernell was out of the office but Ms. Morris left a message with his assistant. On 12 March 2018, Chairman Pickernell responded that the Tribe conditionally removed their opposition to the expedited WRDA 214 Agreement process and the Tribe provided several comments related to the potential future project and the review process.

Based on these coordination efforts and outreach to the Tribe at the staff and Tribal leadership level, the Corps believes the Tribe's concerns and questions have been addressed to the best of our ability. The Tribal comments on the potential future project and process (NEPA/SEPA review, use of a third party contractor, and flood control alternative reviews) will be fully considered and addressed as part of any future application review and cannot be added as conditions to the WRDA Section 214 agreement. The Corps considers our Tribal trust responsibilities very seriously and have evaluated the Tribe's concerns regarding this proposal for a WRDA Section 214 agreement. Nothing about the implementation of an agreement would change the Corps evaluation of a proposed project, including the impacts, implementation of laws,

CENWS-ODR

SUBJECT: Seattle District Decision to Accept and Expend Funds Contributed by the Chehalis River Flood Control Zone District

regulations, and policies, or future coordination with the Tribe on their concerns regarding the impacts to habitat and other Tribal treaty rights on a project proposed by the Chehalis River Basin Flood Control Zone District.

b. Washington State Department of Ecology (Ecology), Date of Comment: 21 November 2017; Comment: Ecology had several comments regarding the future projects that may be proposed under the WRDA Section 214 agreement should one be approved. Specifically, they emphasized the following:

(1) The NEPA/SEPA review of any potential project (dam proposal) must be synchronized with other key components under consideration for the Chehalis Basin Strategy, including development of the basin-wide Aquatic Species Restoration Plan, results of the advanced feasibility evaluation for the Restorative Flood Protection (RFP) approach to flood damage reduction, and evaluation of future land use in the Chehalis Basin.

(2) The Chehalis Basin Board does not support a decision on a permit for a dam until the Board and the public have been able to consider all actions being evaluated.

(3) The Chehalis Basin Board understands that the dedicated staff under the WRDA Section 214 program in this context gives priority to evaluation of any proposal through the NEPA process, but does not impact impartial decision making.

Corps' Evaluation: The comments in regards to any proposed project and future review of those project(s) are noted. The decision to establish a WRDA Section 214 agreement is not based on any one project but is determined in consideration of the requirements under the applicable statutory authority, if the District would be able to preserve impartial decision making and if the acceptance and expenditure of funds would not adversely affect review timeframes for the general public. The Corps recognizes Ecology's support of the proposed WRDA Section 214 agreement and will note the comments on the Chehalis Basin Strategy for any future projects proposed.

c. Mr. Andrew Berger, Date of Comment: 3 November 2017; Comment: Mr. Berger provided general concerns about the Corps making informed decision on any future Dam project proposal, the use of tax payer money spent on the project and agreement, the conflict of interest of the existing Board within Lewis County making decisions, and the need for a full EIS review.

Corps' Evaluation: On 29 January 2018, the Corps responded back with information on the WRDA Section 214 program, implementation of the program with the existing entities, and commitment that any proposal received by the Corps (under a WRDA Section 214 agreement or not) is given a full review in compliance with current

CENWS-ODR

SUBJECT: Seattle District Decision to Accept and Expend Funds Contributed by the Chehalis River Flood Control Zone District

regulations, policies and laws, including the opportunity for public involvement and comment, technical reviews and information gathering. The authority for the Corps to accept and expend funds for non-Federal public entities under the WRDA program has been given to the Secretary of the Army and the Seattle District is only proposing to utilize that authority to enter into an agreement with the Chehalis River Basin Flood Control Zone District. Any proposed project would go through the normal NEPA process for review, public comment and evaluation. Mr. Berger's concerns appear to be around the future project, which is not being evaluated at this time. How the State and County chooses to utilize their funding (through a WRDA Section 214 agreement or not) is not a decision the Corps has any oversight over, therefore will not be evaluated under this decision making process.

d. Mr. Michael Smell, Date of Response: 2 November 2017; Comment: Mr. Smell questioned the State and County's ability to use taxpayer money to fund the Corps and if it would be appropriate. Additionally, he questioned whether or not state or county projects should be put on a "fast track" with taxpayer money or if the proposals should just "take a number and wait their turn".

Corps' Evaluation: The comments are noted. The Corps does not have oversight on how the State and County use their allocated taxpayer money, but the Corps does have the authority to accept and expend funds under the WRDA Section 214 program from non-Federal public entities for the processing of permits. As part of the decision making on whether or not to enter into a WRDA Section 214 agreement the Corps must not have an adverse effect on the general public permitting timeframes, which the Corps is proposing to assure through the augmentation of staff and workload management.

e. Quinault Indian Nation, Date of Response: 26 October 2017; Comment: The Quinault Indian Nation provided comments that oppose expediting a permit application for a dam on the Chehalis River and requested government to government consultation to discuss their concerns.

Corps' Evaluation: On 29 November 2017, the DE and staff met with the Quinault Indian Nation (Nation) to listen and discuss their concerns and provide information on the proposed WRDA Section 214 agreement. The week of 11 December 2017, Ms. Lori Morris followed up with the Nation by calling Dave Bingaman, Director of Natural Resources and asking if they felt their concerns had been addressed. Mr. Bingaman indicated that he could not answer that question as the Vice-Chairman would be the arbiter of that decision. Mr. Bingaman stated he would see if he could get a response but when none was received, Ms. Morris called again on 31 January 2018 and received the same response from Mr. Bingaman. Ms. Morris then called and left messages for Tyson Johnston, Tribal Vice-Chairman on 7 February and 22 February

CENWS-ODR

SUBJECT: Seattle District Decision to Accept and Expend Funds Contributed by the Chehalis River Flood Control Zone District

2018 asking if the Nation was still objecting to the 214 Agreement or if the Corps had adequately addressed their questions and concerns. She followed up with an email on 26 February 2018 asking if the Nation had any more questions. In that email she indicated that the Corps intended to make a decision in the next few weeks regarding the 214 Agreement and hoped to hear from the Nation if they were still objecting to agreement or if, instead, their questions had been adequately addressed and their concerns were assuaged. Ms. Morris made another attempt to discuss the agreement with the Nation on 5 March 2018 by telephoning Vice-Chairman Johnston. She left a message and to date has not heard back. Ms. Morris made a final attempted to contact Vice-Chairman Johnston via phone on 8 March 2018. She left a message requesting that he contact her and let her know if their concerns have been addressed or if they still object to the agreement.

No additional questions or comments were received from the Tribe as a follow up to the government to government meeting. The Corps has made substantial efforts to reach out to the Tribe to obtain any further questions, comments or concerns with no response from the Tribe. The Corps considers our tribal trust responsibilities very seriously and have evaluated the Tribe's concerns regarding this proposal for a WRDA Section 214 agreement. Nothing about the implementation of an agreement would change the Corps evaluation of a proposed project, including the impacts, implementation of laws, regulations, and policies, or future coordination with the Tribe on their concerns regarding the impacts to habitat and other tribal treaty rights on a project proposed by the Chehalis River Basin Flood Control Zone District.

f. Ms. Jamie Glasgow (Wild Fish Conservancy), Date of Response: 13 October 2017; Comment: Ms. Glasgow had several questions regarding the procedures to provide public assurance that the funds accepted would not impact impartial decision making.

Corps' Evaluation: On 30 October 2017, the Corps responded providing clarification and answers to Ms. Glasgow's questions. No additional questions or concerns were received.

g. Mr. Dave Easton (ConstructConnect), Date of Response: 9 October 2017; Comment: Mr. Easton asked a couple questions regarding the Chehalis River Dam project including if a contractor, engineer, or architect had been selected, when the bid for general contractors would go out, and the anticipated construction start date.

Corps' Evaluation: On 30 October 2017, the Corps responded that the questions could not be answered by the Corps as there is no pending project proposal at this time, only the proposal for a WRDA Section 214 agreement. No further questions or comments were received.

CENWS-ODR

SUBJECT: Seattle District Decision to Accept and Expend Funds Contributed by the Chehalis River Flood Control Zone District

6. After considering public comments, I have determined that acceptance and expenditure of the contributed funds by the Seattle District Regulatory Branch is appropriate. The public interest will be better served through cost-effectiveness and enhanced evaluation capability. The funding program will lead to better, more cost-effective evaluation, and processing of the Chehalis River Flood Control Zone District's DA permit applications by funding additional resources to do some of the expedited work. Acceptance and expenditure of these funds is in accordance with the provisions of WRDA and will not impact impartial decision-making. In doing so, the Seattle District will establish, at a minimum, the following procedures:

a. All final decisions must be supported by sufficient information to assure the decision-maker that the acceptance and expenditure of contributed funds by the Seattle District has not affected the District's evaluation of the permit application either substantially or procedurally.

b. All final permit decisions for cases where these funds are used must be reviewed by at least one level above the normal decision-maker unless the decision-maker is the District Commander.

c. If contracts are used to develop decision documents, such decision documents must be drafts only and be reviewed and adopted by the Seattle District before the decision is made.

d. Funds will be expended only to expedite the final decision on the permit application and will not be expended for review of the decision-maker's decision.

e. All final permit decisions for cases where these funds are used will be made available to the public on the web.

f. The Seattle District will not eliminate any procedures or decisions that would normally be required for the type of permit application under consideration.

g. The Corps of Engineers must comply with all applicable laws and regulations.

7. Prior to the receipt of funds from the Chehalis River Flood Control Zone District, the Seattle District will enter into a Memorandum of Agreement (MOA) with the entity. The MOA will describe the scope of work to be completed, impartial decision-making requirements, funding responsibilities, and representative contacts.

8. Funds accepted from the Chehalis River Flood Control Zone District will be tracked.

CENWS-ODR

SUBJECT: Seattle District Decision to Accept and Expend Funds Contributed by the Chehalis River Flood Control Zone District

9. An informational public notice will be issued regarding this decision to sign this MOA and it will be posted on the Seattle District's webpage.

10. The point of contact for this memorandum is Ms. Jacalen Printz, Regulatory Branch at (206) 764-6901 or jacalen.m.printz@usace.army.mil.

Encl



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COL, EN
Commanding