



US Army Corps
of Engineers
Seattle District

Special Public Notice

Regulatory Branch
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ATTN: Jacalen Printz

Public Notice Date: May 1, 2019
Expiration Date: May 31, 2019

SUBJECT: Proposed WRDA
Agreement with BNSF Railway
Company

This Special Public Notice announces the preliminary intent of the U.S. Army Corps of Engineers, Seattle District (Seattle District) to accept and expend funds contributed by BNSF Railway Company (BNSF), to expedite processing of their Department of the Army (DA) permit applications, subject to a series of limitations. This Special Public Notice solicits comments from the general public on the subject of acceptance and expenditure of funds contributed by BNSF to expedite the evaluation of DA permit applications pursuant to 33 U.S.C. Section 2352, also referred to as Section 214, as amended.

The following subjects will be discussed in this Special Public Notice:

- How the Seattle District would expend the funds.
- The kind of activities for which funds would be expended.
- The procedures the Seattle District will use to ensure that the funds will not impact impartial decision making.
- The benefits non-Federal public entities would receive from their funds.
- Impacts the Seattle District foresees to its Regulatory program, to DA permit evaluations and the 408 Program reviews that are not subsidized by funds contributed by non-Federal public entities.

The U.S. Army Corps of Engineers (Corps) 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 in accordance with the provisions of 33 U.S.C. 2352. The Seattle District would establish separate accounts for each non-Federal public entity providing funds and would track receipt and expenditure of such funds. Seattle District Regulatory employees dedicated to processing BNSF permit actions would charge their time when working on BNSF permit actions against the respective account of BNSF.

Funds would primarily be expended on the salaries and overhead of Regulatory project managers and technical specialists performing dedicated permit processing activities for BNSF. Such activities would include, but not be limited to, the following: permit application intake review, pre application coordination, drawings review and correction, jurisdictional determinations, site visits, technical support, training, public notice preparation, preparation of correspondence, conduct of the public interest review, preparation of draft permit decision documents, and meetings with the applicant. Funds will also be

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expended for administration tasks associated with tracking the pending and completed work and funding received from BNSF and expended on BNSF permit actions. Funds may be expended by other Seattle District or Corps offices that provide technical assistance in support of permit evaluations for BNSF. Funds could be expended for development or review of programmatic tools beneficial to the non-Federal public entity and the general public, including but not limited to, compensatory mitigation banks or in-lieu fee programs, programmatic Endangered Species Act biological assessments, or regional general permits. Funds would not be expended for review of Corps project managers' work by supervisors or any other final decision makers. No enforcement activities would be paid for from the contributed funds.

Funds may also be expended to hire contractors to perform select technical or administrative duties in support of the Corps' processing of BNSF permit actions. Examples of possible contracted services include, but are not limited to, field data collection, technical report writing, copying and other clerical tasks. If contracts are used to develop decision documents, such decision documents must be drafts only, for review and adoption, as appropriate, by Corps of Engineers Regulatory program employees, before the decision is made.

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

To ensure that the funds will not impact impartial decision making, the following procedures, mandated by Corps Headquarters, 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 normal decisionmaker, unless the decisionmaker is the District Commander. For example, if the decisionmaker is 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 Seattle District web page.
- c. The Seattle 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 Seattle 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 decisionmaker's decision.

Funds provided consistent with 33 U.S.C 2352 may also be used to dedicate staff to processing requests by a non-Federal public entity for DA authorization to alter or use structures built by the Corps. Section 14 of the 1899 Rivers and Harbors Act, as amended, (33 U.S.C. 408), also referred to as Section 408, requires DA authorization for proposed modifications of any public work built by the U.S., including but not limited to, navigation channels, sea walls, bulkheads, jetties, dikes, levees, wharves, and piers. A separate account would be established in the Corps of Engineers Financial Management System to track

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receipt and expenditure of the funds used for Corps Section 408 reviews. When working on a non-Federal public entity's 408 request, Seattle District employees would charge their time against this account. Funds would primarily be expended on the salaries and overhead of Corps project managers, planners, and engineers performing expedited processing activities for the non-Federal entity's Section 408 review. Such activities would include, but not be limited to, technical analyses and writing, real estate evaluation, risk analysis, copying or other clerical support tasks, acquisition of GIS data, site visits, training, travel, coordination activities, additional technical and administrative support personnel, technical contracting, and environmental documentation preparation and review. Funds would also be expended for administrative tasks associated with maintaining and tracking the work completed under the authority of 33 U.S.C 2352. Funds would not be expended for review of work by supervisors or any other final decision makers. No enforcement or compliance activities would be paid for from the augmenting funds, nor would the funds be used for paying the costs of public hearings and distribution of public notices. The same measures to ensure impartial decisionmaking would be used for Section 408 reviews as for the Seattle District's Regulatory program, as described above.

The provisions of 33 U.S.C 2352 are designed to enable the Corps to provide timely review of public projects. Participating non-Federal public entities can expect some of their permit applications to receive expedited handling, and to the degree the Seattle District considers it appropriate, the entities can set the Corps project managers' priorities for review of their permit actions. The result for participants should be efficient permit processing for public projects, increased predictability in permit processing time, and as appropriate, new programmatic tools.

The Seattle District does not expect this method of expediting the permit review of certain public projects to negatively impact the Seattle District's Regulatory program, or to increase the waiting time for permit evaluations that are not subsidized by funds contributed by non-Federal sponsors. Funds provided under the authority of 33 U.S.C 2352 allow the Corps to add staff resources dedicated to the non-Federal public entities' permit reviews. 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 special public notice has a 30-day comment period. Following the review of comments received in response to the special public notice, the Seattle District Commander will determine if acceptance and expenditure of the funds is in compliance with 33 U.S.C 2352. If the District Commander determines, after considering public comments, that the acceptance and expenditure of the funds is in compliance with the 33 U.S.C 2352 and is not otherwise contrary to the general public interest, the Seattle District will proceed to accept and expend such funds from BNSF. Funds will be accepted only if the public interest is better served through cost-effectiveness, streamlined permit processing, or other appropriate justification. A final special public notice will be issued regarding the District Commander's decision. Beyond that, no new public notice will be issued if BNSF increases the amount of funds previously furnished or a new agreement is signed, provided the purpose for which the funds are used remains the same.

Comments on implementing provisions of 33 U.S.C 2352 through an agreement to accept funds from BNSF 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: Jacalen Printz, Regulatory Branch, at the above mailing address or by email at jacalen.m.printz@usace.army.mil, no later than the expiration date of this public notice, to ensure review.

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The Seattle District point of contact for this special public notice and the use of the 33 U.S.C 2352 authority in implementing the Corps Regulatory program is Jacalen Printz, who can be reached at (206) 764-6901 or by email at jacalen.m.printz@usace.army.mil

The Seattle District point of contact for use of the authority provided by 33 U.S.C 2352 in the Section 408 review process is Ms. Dana Dysart, who can be reached at (206) 316-3970, or by e-mail at dana.m.dysart@usace.army.mil