



DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO  
CORPS OF ENGINEERS  
1325 J STREET  
SACRAMENTO, CALIFORNIA 95814-2922

REPLY TO  
ATTENTION OF  
CESPK-DE (1145)

27 Sep 2004

MEMORANDUM FOR RECORD

SUBJECT: Decision to Accept Funds from Non-Federal Public Entities under WRDA Section 214

1. The purpose of this memorandum is to document the decision by the Sacramento District, U.S. Army Corps of Engineers (Sacramento District), to accept and expend funds contributed by non-Federal public entities, specifically the Sacramento County Agencies (comprised of the County of Sacramento, Sacramento County Water Agency, Freeport Water Authority, and Sacramento Regional County Sanitation District), the City of Redding, the City of Lathrop, and the City of Elk Grove, 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). 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 decision making with respect to permits, either substantively or procedurally.”

Section 114 of the Energy and Water Development Appropriations Act 2004 (EWDA 2004; Public Law 108-137) extended this authority and states:

“Section 114. Section 214(a) of Public Law 106-541 is amended by striking "2003" and inserting "2005".

2. Headquarters, U.S. Army Corps of Engineers (HQUSACE), provided guidance on acceptance and use of such funds in a memorandum dated 29 Mar 04. That guidance included instructions to circulate an initial public notice that would explain the newly authorized funding mechanism and provide information regarding the names of the participating non-Federal public entities, Corps authority to accept and expend such funds, reason(s) for such contributions, acceptance of the funds is expected to expedite the permit review process, kinds of activities the funds would be expended on, and procedures to be placed in effect to ensure the funds will not impact impartial decision-making.

3. The Sacramento District published public notices announcing the Sacramento District's preliminary intent to accept such funds from the Sacramento County Agencies, City of Redding, City of Lathrop, and City of Elk Grove on 6 Aug 04 and 23 Aug 04. The public notices contained the actual text of Section 214, described conventional funding, and defined non-Federal public entities. In addition, the notices presented information on how the Sacramento District would expend the funds, the kinds of activities for which funds would be expended, the procedures to be used to ensure that the funds will not impact impartial decision-making, the benefits non-Federal public

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agencies would receive from their funds, and the foreseen impact to the regulatory program and to DA permit evaluations that are not subsidized by funds contributed by non-Federal public entities. The notices indicated the Sacramento District would review comments received in response to the initial public notice, and determine if the District's acceptance and expenditure of the funds is in accordance with the provisions of WRDA 2000.

4. Public notice comments from the general public. No comments were received from the general public.

5. According to the HQUSACE 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 may be accepted only if the public interest is better served through cost-effectiveness, enhanced evaluation capability, streamlined permit processing, or other appropriate justification. HQUSACE guidance requires a new public notice be issued regarding the District Commander's decision, as well as strict accounting of expended funds, upward reporting procedures, and a careful assessment of how the use of the funds will have expedited the permit review process or given rise to issues regarding impartial decision-making. To ensure that the acceptance and expenditure of these funds will not impact impartial decision-making, HQUSACE guidance calls 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 by at least one level above the decision-maker, unless the decision-maker 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.
- f. 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.

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6. It is my decision that adoption of the above procedures and subsequent acceptance and expenditure of funds from the Sacramento County Agencies, City of Redding, City of Lathrop, and City of Elk Grove will not impact impartial decision-making with respect to permits, either substantively or procedurally. The funding will better serve the public interest through more cost effective processing of permit applications, enhanced evaluation capability, and a streamlined permit processing system. Our capacity to evaluate all permit actions will be incrementally increased with the presence of additional regulatory personnel.

7. Acceptance and expenditure of these funds will be in accordance with Section 214 of WRDA 2000.

/s/

3 Encls

1. Memo, HQUSACE, 29 Mar 04
2. Public notice, 6 Aug 04
3. Public notice, 23 Aug 04

RONALD N. LIGHT  
Colonel, Corps of Engineers  
District Engineer