

US Army Corps of Engineers Section 408 Overview

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Presentation Overview

- 408 Program Status
- Updated Policy for Approval Delegation
- FY18 408 Funding Status
- 408 Funding Agreements



408 Program Status



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SPK 408 Program Status

HQ/SPD Decision

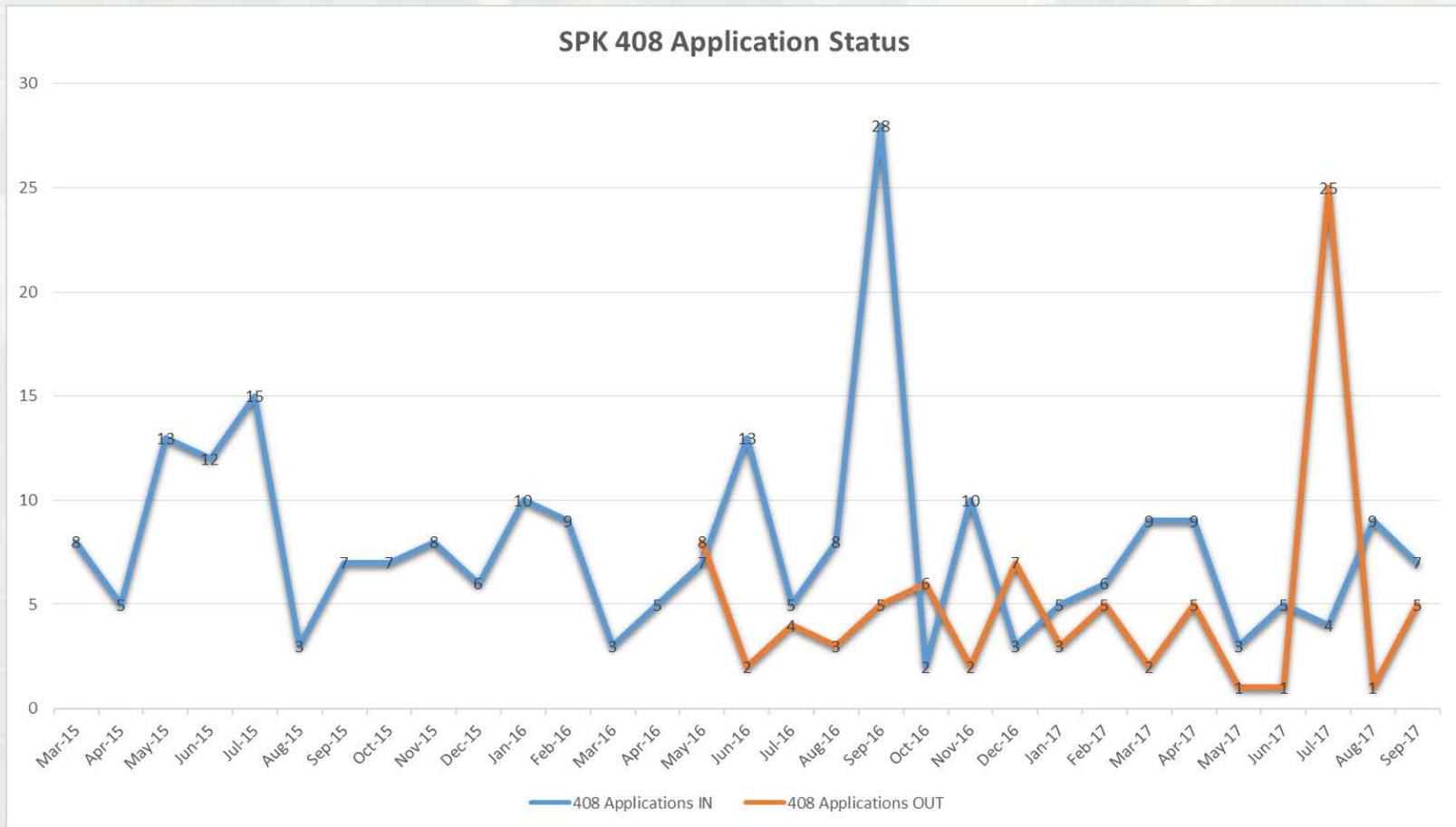
- In Review: 4 projects
- Construction: 5 projects
- Closeout: 6 projects

SPK Decision

- In Review: 139 projects



SPK 408 Program Status cont.



- Sacramento District currently accepts roughly 10 locally approved Section 408 applications a month.



RECOMMENDATIONS and APPROVALS



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10 NOV 2016 – Interim Guidance on Section 408 Decision Level

- Replaced the decision level guidance from EC 1165-2-216
- Removed USACE led EIS document as a decision criteria.
- Changed request for 221 credit and a Type II IEPR requirement from HQUSACE decision to Division decision.
- All other 408 decisions not included in the new HQUSACE/Division criteria are delegated to the District Commander. The District Commander may not further delegate these decisions.



25 AUG 17– Delegation Authority for District Commanders for Section 408

- A District Commander may further delegate to the Supervisory Division Chief level. No further re-delegation by a designee is authorized.
- This guidance only address only those Section 408 decisions delegated to District Commanders.



408 FY18 Funding Status



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408 Funding Streams

- EC 1165-2-216, Section 8, provides the Corps under what circumstances it can expend money on a Section 408 review.
- USACE can also receive money through various forms of funding agreements



Current 408 Funding Streams

ICW Funds

- Appropriated Funds from Congress, budget amount is set
- Monitoring of approved 408 request
- Enforcement of approved 408 requests

408 Funds

- Funding is provided through the RMC and distributed monthly to the Districts.
- FY18 projected funding for the nation is \$8 million (FY17 ~ \$3 million)
- Review of specific 408 request from receipt to communication of final decision.



Funding Agreements



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Section 1156(a)(2) of WRDA 2016

- Authorized USACE to accept and expend funds received from non-federal public or private entities to evaluate requests under Section 408.
- An agreement can be for a single Section 408 request or for multiple requests by a single requester.
- Funding provided is voluntary and all requestors will receive a fair and timely review, regardless of whether they have contributed funds for the evaluation.
- Limitations
 - Cannot be used by final decision makers for review, recommendations, or decisions.
 - Cannot be used for compliance and enforcement activities.
 - Cannot be used to cover related Section 10/404/103 permit decisions.
 - Cannot be used for activities related to non-federal hydropower development.
 - Cannot be used to prepared documents or products for the Section 408 requestor



Section 214 of WRDA 2000

- Authorized USACE to accept and expend funds received from non-federal public to evaluate requests under Section 408 and/or Section 404/10.
- Allows for expedited review.
- 214 Agreement must explicitly state that funding provide can be used to expedite Section 408 application reviews.
- In cases where 214 funding is accepted, if the proposed alteration represents a change in precedent or policy that is significant, HQUSACE must be informed.
- Limitations
 - Cannot be used by final decision makers for review, recommendations, or decisions.
 - Cannot be used for enforcement activities.
 - Cannot be used to cover related Section 10/404/103 permit decisions.



Frequently Asked Questions

- **Are there any advantages between signing a Section 1156 agreement and a 214 agreement?**
 - Each have their advantages and disadvantages. 214 agreements typically take longer to sign, but allow expedited review of your request.
- **How long does the Corps typically take to process checks?**
 - It typically takes a month from receipt of the funds before the District can spend it.
- **Can 408 and 404/10 share the same money?**
 - No, the 408 cannot supplement Regulatory and vice versa.
- **How much quicker will a 408 application be processed with a 214 agreement?**
 - Expediting the review process could include generally shorter reviews times as compared to typical review times, however reviews for consultation with other Federal and State agencies are outside the Corps' control.
- **Is there anything I can do to reduce the decision level of my 408 application?**
 - No, the decision level of your 408 request is determined by the guidelines listed in EC 1165-2-216

