



**US Army Corps
of Engineers®**

SPECIAL PUBLIC NOTICE

**DECISION TO ACCEPT FUNDS FROM THE
SAN DIEGO COUNTY WATER AUTHORITY**

LOS ANGELES DISTRICT

Public Notice Date: August 21, 2006

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The purpose of this Special Public Notice is to announce that the Los Angeles District, U.S. Army Corps of Engineers (Corps) has decided to accept and expend funds contributed by San Diego County Water Authority (Authority). The funds would be used to expand Corps resources available to evaluate and process the Authority's Department of the Army (DA) permit applications. Though the Authority would receive more expeditious reviews of their permit applications, the Corps would ensure that regulatory permit decision-making remains impartial and that all applicable procedural and substantive requirements of the DA permit application review process remain unchanged. The decision to accept funds is in response to the Corps determination that the Authority has submitted multiple permit applications, at least one of which is large and complex and may require an Environmental Impact Statement (EIS). There is a need to devote significant staff time to these complex applications in order to ensure the Authority and the public are best served throughout the permit evaluation process. The decision to accept funds does not constitute any endorsement or implied consent to the Authority; rather, it will enable Corps Regulatory Staff to devote the attention required to these applications, in both a more timely and more thorough manner, benefiting both the Authority and the public.

Colonel Alex C. Dornstauder, Commander of the Corps Los Angeles District has determined that acceptance and expenditure of such funds would be in accordance with Section 214 of the *Water Resources Development Act of 2000* (WRDA 2000, Public Law 106-541 as amended by Public Law 108-137). The Memorandum documenting this decision is attached.

On May 1, 2006, the Los Angeles District circulated the initial Special Public Notice announcing our preliminary intent to accept and expend such funds, and stated that we had initiated funding discussions with the Authority. The May 2006 Special Public Notice also discussed the kind of activities for which funds would be expended, and the safeguarding procedures which would be used to ensure that the funds will not impact impartial decision making.

Those procedures include the following:

- All final permit and final EIS decisions for cases where these funds are used must be reviewed at least one level above the normal decision-maker, unless the decision-maker is the District Commander. For example, if the decision-maker were the Section Chief, then the decision-maker for that permit action would be raised to the Regulatory Branch Chief.

All final permit decisions for cases where these funds are used will be made available on the Los Angeles District Regulatory web page.

- The Los Angeles District will not eliminate any procedures or evaluations that would otherwise be required for that type of project and permit application under consideration.
- The Los Angeles District must comply with all applicable laws and regulations.
- Contributed Authority funds will not be expended for supervisory or management review of staff-generated permit decision recommendations. Also, funds would not be used for processing administrative appeals of any decisions on Authority permit applications. If Authority funds are used to hire contractors in support of the Corps permit/EIS evaluation process, such contractor products will be drafts only and be reviewed by Corps regulatory program employees, before they are utilized in support of any Corps permit decision.

Copies of the relevant documents related to this decision to accept Authority funds, as well as any permit decisions in the future, which were evaluated by Authority-funded Corps staff, can be viewed at the Corps regulatory web page at <http://www.spl.usace.army.mil/regulatory>.



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
P.O. BOX 53277
LOS ANGELES, CALIFORNIA 90053

CESPL-CO-R

18 August 2006

MEMORANDUM FOR RECORD

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

1 References:

- a. Public Law 106-541
- b. Memorandum, CECW, 17 July 2001, subject: Regulatory Program Funds Contributed by Non-Federal Entities.
- c. Memorandum, CECW, 29 March 2004, subject: Regulatory Program Funds Contributed by Non-Federal Entities.

2. The purpose of this memorandum is to document my decision for the record, as District Commander, Los Angeles District, to accept and expend funds contributed by a non-Federal public entity, specifically the San Diego County Water Authority ("Authority"), to expedite the evaluation of permit applications 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 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."

3. **Intent to Accept Funds Under WRDA 214** - I have carefully considered the San Diego County Water Authority's request, any comments made by the general public in response to our public notices, and the recommendation of the Regulatory Branch. Based on my review, this memo certifies my decision as Commander, Los Angeles District, that the San Diego County Water Authority's request for the District to accept and expend funds under WRDA 214 is in full compliance with Public Law 106-541 and USACE policy.

4. The sunset clause for Section 214 of WRDA 2000 was extended to 31 December 2006 by Public Law 109-209, signed into law on 24 March 2006.

5. HQUSACE 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; and
- f. The procedures to be placed in effect to ensure the funds will not impact impartial decision-making.

6. The Los Angeles District published such a Public Notice on 10 May 2006. It contained an announcement of the Los Angeles District's preliminary intent to accept such funds from the San Diego County Water Authority. The public notice contained the actual text of Section 214, described conventional funding, defined non-Federal public entities, and presented information on the following subjects:

How the Los Angeles 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 decision-making;

- d. The benefits non-Federal public agencies would receive from their funds; and
 - e. Impacts we foresee to our regulatory program and to Department of the Army (DA) permit evaluations that are not subsidized by funds contributed by non-Federal public entities.
7. I have reviewed comments received in response to the initial public notice, and have made a determination regarding the District's acceptance and expenditure of the funds is in accordance with the provisions of WRDA 2000.
- a. According to HQUSACE, "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."
 - b. HQUSACE 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 decision making. To ensure that the acceptance and expenditure of these funds will not impact impartial decision making, the HQUSACE guidance called for the establishment, at a minimum, of the following procedures:
 - (1) 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. Thus, a GS-12 WRDA position would have permit decisions signed by a GS-13.
 - (2) All final permit decisions for cases where these funds are used will be made available on the participating Corps District's Regulatory web page.
 - (3) The Corps cannot eliminate any procedures or decisions that would normally be required for the type of project under consideration.
 - (4) The Corps must comply with all applicable laws and regulations.
 - (5) Funds will only be expended to expedite the final decision on the permit application. 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.
8. No comments were received on the public notice.

CESPL-CO-R

SUBJECT: Regulatory Program Funds Contributed by Non-Federal Entities

9. 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 the San Diego County Water Authority would not adversely impact impartial decision-making with respect to regulatory permit applications, either substantively or procedurally. The funding program 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 permit applications from applicants not party to this funding agreement will not be adversely affected.

10. Acceptance and expenditure of these funds are in accordance with Section 214 of WRDA 2000, as amended by Public Law 109-209.

11. POC is the Regulatory Project Manager, Robert R. Smith Jr., P.E., at telephone nos. (858) 674-6784.

A handwritten signature in black ink, consisting of several large, overlapping loops and a long horizontal stroke at the bottom.

ALEX C. DORNSTAÜDER
COL, EN
Commanding