

Permit Number & Headline Title:

SPK-2022-00258, Public Notice of a proposal to accept funds from the Union Pacific Railroad.

Comments Due: 24 May 2022

Summary:

This Public Notice announces the preliminary intent of the U.S. Army Corps of Engineers, Sacramento District, San Francisco District, Los Angeles District, and Albuquerque District (Corps) to accept funds contributed by the Union Pacific Railroad in order to expedite processing of their permit applications and 408 Permission requests.

Public Notice:

Comment Period: 9 May 2022 to 24 May 2022

SUBJECT:

This Public Notice announces the preliminary intent of the U.S. Army Corps of Engineers, Sacramento District, San Francisco District, Los Angeles District, and Albuquerque District (Corps) to accept funds contributed by the Union Pacific Railroad in order to expedite processing of their permit applications and 408 Permission requests subject to a series of limitations below.

Section 214 of the Water Resources Development Act of 2000 (WRDA 2000, Public Law No. 106-541 111-120) as amended, provides:

- (a) The Secretary of the Army, after public notice, may accept and expend funds contributed by non-Federal public entities, railroad, and utility companies to expedite the evaluation of permits under the jurisdiction of the Department of the Army.
- (b) 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.

The Secretary of the Army has delegated this responsibility to the Chief of Engineers and his authorized representatives, including the Commanders of the Sacramento, San Francisco, Los Angeles and Albuquerque Districts, U.S. Army Corps of Engineers.

How the Corps would expend the funds: The Corps Regulatory program is funded as a congressionally appropriated line item in the annual Federal budget. Additional funds received by the Union Pacific Railroad would be used to augment the budget of the Corps in accordance with the provisions of Section 214 of WRDA 2000, as amended. The Corps Regulatory and Section 408 programs would establish separate accounts to track the receipt and expenditure of the funds.

Activities for which funds will be expended: Funds would be expended primarily on the labor and overhead of regulatory and Section 408 personnel processing permit applications and Section 408 Permission requests by the Union Pacific Railroad. Such permit processing activities could include, but not be limited to, the following: development of regional general permits and letters of permission associated with actions covered by a habitat conservation plan, application completeness review, jurisdictional determinations, site visits, preparation of public notices, preparation of correspondence, meetings, consultation with other agencies, public interest review, distribution of public notices, analysis of alternatives, compensatory mitigation proposal reviews, preparation of environmental assessments, and preparation of permit decision documents.

Section 408 program processing activities would include, but would not be limited to, the following: application completeness review, jurisdictional review, site visits, preparation of public notices, preparation of correspondence, meetings, coordination and consultation with other agencies, public interest review, distribution of public notices, engineering reviews, analysis of environmental assessments, preparation of decision documents and application compliance. Funds may also be expended to pay for support services or to hire independent contractors.

Procedures to be used to ensure impartial decision-making: To ensure the funds will not impact impartial decision-making, the following procedures would apply:

- (a) All final permit decisions for cases where these funds are used must be reviewed at least one level above the decision maker unless the decision maker is the District Commander.
- (b) All final permit decisions for applications where these funds are expended will be made available on the Corps Headquarters web page.
- (c) The Corps will not eliminate any procedures or decisions that would otherwise be required for that type of project and permit application under consideration.
- (d) The Corps will comply with all applicable laws and regulations.
- (e) Funds will only be expended to provide priority review of the participating non-Federal entity's permit applications.

Impacts to the Regulatory and Section 408 Programs: We do not expect priority review of the Union Pacific Railroad projects to negatively impact either the Regulatory program or Section 408 program or to increase the time for permit evaluations or permission requests of other projects since additional staff will be hired to augment this priority review.

Consideration of Comments: The Corps is soliciting comments from the public, Federal, State and local agencies and officials, and other interested parties. Comments will be made part of the record, and they will be considered in determining whether it would be in the public interest to proceed with this action. If the Sacramento District Commander determines, after considering public comments, that the acceptance and expenditure of the funds is in compliance with Section 214 of WRDA 2000 as amended, the Corps will

implement the act through a signed memorandum of agreement and accept funds from the Union Pacific Railroad. A second public notice will be issued regarding the final decision on this matter.

SUBMITTING COMMENTS: Written comments, referencing Public Notice SPK-2022-00258 must be submitted to the office listed below on or before 24 May 2022

Michael Nepstad, Project Manager
US Army Corps of Engineers, Sacramento District

Email: *Michael.G.Nepstad@usace.army.mil*

The Corps is particularly interested in receiving comments related to the proposal's probable impacts on the affected aquatic environment and the secondary and cumulative effects. Anyone may request, in writing, that a public hearing be held to consider this application. Requests shall specifically state, with particularity, the reason(s) for holding a public hearing. If the Corps determines that the information received in response to this notice is inadequate for thorough evaluation, a public hearing may be warranted. If a public hearing is warranted, interested parties will be notified of the time, date, and location. Please note that all comment letters received are subject to release to the public through the Freedom of Information Act. If you have questions or need additional information, please contact the applicant or the Corps' project manager Michael Nepstad, (916) 557-7262, *Michael.G.Nepstad@usace.army.mil*.