



SPECIAL PUBLIC NOTICE

U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT

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INITIAL PROPOSAL TO ACCEPT AND EXPEND FUNDS FROM THE LOS ANGELES DEPARTMENT OF WATER AND POWER

Public Notice/Application No.: SPL-2019-00412-GLH

Project: Los Angeles Department of Water and Power - WRDA Funding Agreement

Comment Period: April 13, 2020 through May 13, 2020

Contact: Aaron O. Allen, Ph.D.; 805-585-2148; Aaron.O.Allen@usace.army.mil

This Special Public Notice announces the preliminary intent of the U.S. Army Corps of Engineers, Los Angeles District (Corps) to accept and expend funds from the Los Angeles Department of Water and Power (LADWP) to expedite processing of their Department of the Army (DA) permit applications, subject to a series of limitations. This Special Public Notice also solicits comments from the public on the subject of acceptance and expenditure of funds contributed by LADWP to expedite the evaluation of DA permit applications.

Section 214 of the Water Resources Development Act of 2000 (WRDA 2000, Public Law No. 106-541), as amended, authorizes the Secretary of the Army, after public notice, to accept and expend funds contributed by a non-Federal public entity, public-utility company, natural gas company, or railroad carrier to expedite the evaluation of a permit of that entity related to a project or activity for a public purpose under the jurisdiction of the Department of the Army. The authority to accept and expend funds under Section 214 has been delegated from the Secretary of the Army to District and Division Commanders, including the Commander of the Los Angeles District, U.S. Army Corps of Engineers.

Definition of Non-Federal Public Entities: Non-Federal public entities include state and local governmental agencies or government public authorities, as well as federally-recognized Indian Tribes. Examples of non-Federal public entities include, but are not limited to, local transportation agencies, port authorities, and flood and storm water management agencies. One or more non-Federal public entities may enter into a Section 214 funding agreement with the Corps.

How the Corps Would Expend Funds: The Corps Regulatory Program is funded as a Congressionally-appropriated line item in the annual Federal budget. Additional funds received from LADWP would be used to augment the budget of the Corps in accordance with the provisions of Section 214 of the Water Resources Development Act of 2000 (WRDA 2000, Public Law No. 106-541). The Corps would establish a separate account to track the receipt and expenditure of the funds.

Activities for Which Funds Would be Expended: Funds would be expended primarily on the labor and overhead of Regulatory Division staff processing permit applications. Such permit processing activities could include but would not be limited to the following: 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 review, preparation of environmental assessments, preparation of permit decision documents and permit compliance. Funds may also be expended by other Corps divisions (e.g., Environmental Resources Branch, Engineering Division), or to hire contractors to perform select duties such as site visits, technical writing, copying, technical contracting for review of specific items such as biological assessments for endangered species, preparing regional general permits, Essential Fish Habitat determinations and other technical documents, including draft environmental documents, at the direction of the Regulatory Division.

Funds would not be expended for review of project managers' work by supervisors, other elements of the Los Angeles District, or other persons in the decision making chain of command. Funds would not be expended by Regulatory Division staff to complete enforcement actions, nor would the funds be used for public hearings (e.g., venue fees) and distribution of public notices (e.g., postage).

If a participating entity's funds are expended and are not renewed, LADWP's remaining permit applications would be processed like those of any other non-participant, in a manner decided by the assigned Regulatory Division project manager and his or her supervisor.

Procedures to Ensure Impartial Decision Making: To ensure the funds would not impact impartial decision making, the following procedures would be applied:

- (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. For example, if the decision maker is the Chief of the Regulatory Division, then the decision would be made by the District Commander.
- (b) All final permit decisions for applications where these funds are expended would be made available on the Corps Headquarters' web page.
- (c) The Corps would not eliminate any procedures or decisions that would otherwise be required for the type of project and permit application under consideration.
- (d) The Corps would comply with all applicable laws and regulations.
- (e) Funds would only be expended to provide priority review of LADWP's permit applications.

Impacts to the Regulatory Program: We do not expect priority review of LADWP permit applications to negatively impact the Regulatory Program or to increase the time to evaluate other projects' permit applications since additional staff may 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 administrative record, and they will be considered in determining whether it would be in the public interest to proceed with this action. If the Los Angeles District Commander determines, after considering public comments, that the acceptance and expenditure of the funds is in compliance with Section 214 of the Water Resources Development Act of 2000 (WRDA 2000, Public Law No. 106-541), the Corps will implement WRDA through a signed memorandum of agreement and accept funds from LADWP. A second public notice will be issued regarding the final decision on this matter.

Submission of Comments: Interested parties may submit comments concerning this proposal in writing. **Comments should refer to Corps File No. SPL-2019-00412, and should be submitted by the due date of May 13, 2020.**

During the Coronavirus Health Emergency, Regulatory Program staff are teleworking. Please do not mail hard copy documents, including comments to any Regulatory staff.

Instead, your comments should be submitted electronically to: Aaron.O.Allen@usace.army.mil. Should you have any questions or concerns about the Corps' proposed action or our comment period, you may contact Aaron Allen directly at (805) 585-2148.

Additional Information: In general, the workload of the Los Angeles District Regulatory Division has increased significantly due to changes in the Regulatory Program, judicial decisions, and listing of various species and their designated critical habitat under the Endangered Species Act (ESA) over the last five years. The large number of projects, combined with increased concern over water quality parameters, endangered species, wetlands, and response to emergencies have also increased the workload of the Los Angeles District Regulatory Division. The resulting backlog of applications has increased, as well as the average permit application processing time.

Section 214 of WRDA 2000 as amended, is designed to enable the Los Angeles District Regulatory Division to expedite the processing of public projects. Participating entities can expect some of their permit applications to receive expedited processing, and to the degree we consider it appropriate, they can set priorities. LADWP's augmentation of the Regulatory Division budget could allow us to hire additional staff, increasing the size of the pool from which we would assign staff to expedite these permit applications. The result for participants should be streamlined permit application processing, new tools to resolve ESA and other issues, and a more predictable timeline for obtaining a permit.

We do not expect expediting the permit application review of LADWP projects to negatively impact the Los Angeles District's Regulatory Program, or to increase the time to process permit applications that are not subsidized by funds contributed under Section 214 of the Water Resources Development Act of 2000 funding agreement. Reference documents and programmatic tools developed by the funding would also be available to the general public, as applicable. We expect the benefits of implementing this program to translate into an enhanced evaluation capability for all Regulatory Program participants.

This public notice has a 30-day comment period. Following the review of comments received, the Los Angeles District Commander will determine if acceptance and expenditure of the funds is in compliance with Section 214 of the Water Resources Development Act of 2000 (WRDA 2000, Public Law No. 106-541). If the District Commander determines, after considering public comments, that the acceptance and expenditure of the funds is in compliance with Section 214 of the Water Resources Development Act of 2000 and is not otherwise contrary to the public interest, the Los Angeles District would proceed to accept and expend such funds from LADWP. Funds would be accepted only if the public interest is better served through cost-effectiveness, enhanced evaluation capability, streamlined permit application processing, or other appropriate justification. A final public notice will be issued regarding the District Commander's decision. Beyond that, no new public notice will be issued if LADWP increases the amount of funds previously furnished or extends the duration of the agreement, provided that the purpose remains the same.

Comments on implementing Section 214 of the Water Resources Development Act of 2000 will be accepted and made part of the administrative record, and they will be considered in determining whether it would be in the public interest to proceed with this administrative action. Comments should reach this office not later than the expiration date of this Special Public Notice (see address on page 1).

For additional information please call Aaron O. Allen, Ph.D., of my staff at 805-585-214 or via e-mail at Aaron.O.Allen@usace.army.mil. This public notice is issued by the Chief, Regulatory Division.



Regulatory Program Goals:

- To provide strong protection of the nation's aquatic environment, including wetlands.
- To ensure the Corps provides the regulated public with fair and reasonable decisions.
- To enhance the efficiency of the Corps' administration of its regulatory program.

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