



## DEPARTMENT OF THE ARMY

U.S. Army Corps of Engineers  
WASHINGTON, D.C. 20314-1000

REPLY TO  
ATTENTION OF:

CECW-CO (1145)

29 MAR 2004

### MEMORANDUM FOR COMMANDERS, MAJOR SUBORDINATE COMMANDS AND DISTRICT COMMANDS

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

1. The Water Resources Development Act of 2000 (Public Law 106-541) provided at Section 214(a); "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." Further, Section 214(b) provided; "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."
2. Language in Section 114 of the Energy and Water Appropriations Bill, H2754 (Public Law 108-137), signed into law on December 1, 2003, states: "Section 114. Section 214(a) of Public Law 106-541 is amended by striking "2003" and inserting "2005".
3. The Secretary of the Army has delegated this responsibility to the Chief of Engineers and his authorized representatives. District and Division Commanders are hereby authorized to accept and expend funds contributed by non-Federal entities subject to the following limitations.
4. Initial Public Notice for Intent to Accept Funds. Prior to accepting and expending funds contributed by non-Federal public entities, the U.S. Army Corps of Engineers must issue a public notice that would indicate: the non-Federal public entity providing such funds, the Corps authority to accept and expend such funds, the reason for such contributions, how acceptance of the funds is expected to expedite the permit review process, what activities the funds will be expended on, and what procedures will be in place to ensure that the funds will not impact impartial decisionmaking. Examples of acceptable activities that the funds may be expended on include, but are not limited to: technical writing, site visits, copying, coordination activities, additional personnel, technical contracting, etc. Since the process of accepting funds may have the effect of giving priority to the evaluation of projects proposed by public entities, the Public Notice should include information on the impacts to the District's regulatory program and permit evaluations that are not subsidized by funds contributed by non-Federal sponsors. A new

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public notice is not required if the non-Federal entity is increasing the amount of funds previously furnished, provided that the purpose remains the same. This possibility should be clearly stated in the initial public notice.

5. Basis for Acceptance of Funds. Following the review of the comments received in response to the public notice, the District Commander will determine if acceptance and expenditure is in compliance with the Act. If the District Commander determines, after considering public comments, that the acceptance and expenditure of the funds is in compliance, the funds may be accepted and expended. 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 public notice will be issued regarding the District Commander's decision.

6. Accountability. The funds must be accounted for to ensure they are expended for the intended purpose. District Commanders will establish separate accounts to track the acceptance and expenditure of the funds. Within 30 days of the conclusion of each Fiscal Year, Division Commanders will provide to CECW-CO, for review, letter reports documenting the acceptance and expenditure of funds, copies of any public notices, an assessment of how the use of the funds expedited the permit review process, and any issues regarding impartial decisionmaking. CECW-CO will compile the reports received and provide an information copy to the OASA (CW) within 60 days of the conclusion of each Fiscal Year.

7. Non-Federal Public Entity. Non-Federal public entities are limited to governmental agencies, including tribal governments of Indian Tribes as defined in Section 4 of the Indian Self-Determination and education Assistance Act (25 U.S.C. 450(b)). They would normally be applicant agencies such as; State, local, or Tribal transportation departments, port authorities, flood and storm water management agencies, economic development agencies, and housing agencies that have the desire to expedite the permitting process programmatically, or for a specific project.

8. Impartial Decisionmaking. Division and District Commanders must insure that the acceptance and expenditure of these funds will not impact impartial decisionmaking with respect to permit review, either substantially or procedurally. At a minimum, District Commanders will comply with the following standards.

a. All final permit decisions for cases where these funds are used must be reviewed by at least one level above the decisionmaker, unless the decisionmaker is the District Commander. For example, if the decisionmaker is the Chief, Regulatory Branch, then the reviewer is the Chief, Operations Division.

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b. All final permit decisions for cases where these funds are used will be made available on the District's web page.


c. Any procedures or decisions that would otherwise be required for that type of project or permit under consideration cannot be eliminated.

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. 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 before the decision is made.

9. The authority to accept and expend funds from non-Federal public entities expires on September 30, 2005, unless otherwise extended by Congress. If extended, the authority to accept and expend funds is extended to the date of expiration of Congressional authority.

FOR THE COMMANDER:

  
for CARL A. STROCK  
Major General, USA  
Director of Civil Works