

INTERGOVERNMENTAL COOPERATION ACT AGREEMENT

BETWEEN THE

UNITED STATES DEPARTMENT OF THE ARMY

CORPS OF ENGINEERS (USACE),

THE FEDERAL HIGHWAY ADMINISTRATION (FHWA),

AND THE

IDAHO TRANSPORTATION DEPARTMENT (ITD)

RELATIVE TO

PRIORITY HIGHWAY CONSTRUCTION

PROJECT REVIEW

July 2020

This Intergovernmental Cooperation Act Agreement (Agreement) is between the Idaho Transportation Department (ITD), the Federal Highway Administration (FHWA), and the Walla Walla District, United States Army Corps of Engineers (USACE), hereinafter referred to as the Parties. This Agreement sets forth the responsibilities of the Parties relative to priority review of highway construction projects with the goal of achieving timely design and implementation of adequate, safe and economical highway improvements while also assuring such design and implementation is sensitive to the protection of natural resources for which the USACE is responsible under Federal statute and regulation.

Authority and Funding. This Agreement is authorized pursuant to the Intergovernmental Cooperation Act (31 U.S.C. 6505) and funding has been appropriated for this purpose under 23 U.S.C. 139(j), Efficient environmental reviews for project decision making.

WHEREAS, ITD has a number of highway construction projects that the USACE has legal responsibility to review pursuant to Section 10 of the Rivers and Harbors Act of 1899; and Section 404 of the Clean Water Act; and

WHEREAS, many of these projects fall within waters of the United States; and

WHEREAS, the USACE has indicated that due to staff resource constraints, it is currently unable to provide the ITD with priority review and permitting decisions within the timeframe necessary to meet construction schedules established by ITD for the number of highway construction projects pursuant to its responsibilities; and

WHEREAS, by cooperative agreement, the Parties have supplemented USACE staffing levels above those highway program levels that existed prior to passage of the Transportation Equity Act for the 21st Century (1998)(P.L. 105-178) and have determined that continuing to do so will be mutually beneficial; and

WHEREAS, the Parties have determined that any separate supplemental funding above normal levels would provide priority review of Federal-aid highway construction projects contemplated or under design by ITD; and

WHEREAS, ITD is willing to provide the USACE supplemental funding to provide these staffing and functions; and

WHEREAS, the Federal Highway Administration (FHWA) has indicated and agrees that Idaho's apportioned Federal-aid highway funds may be used to support this Agreement and would be an eligible source of funding at applicable Federal-aid match rates consistent with 23 U.S.C. 132; and

WHEREAS, ITD and USACE have certified that ITD has work associated with the processing of Department of the Army permits to fully employ up to two people per year of regulatory support services.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the signatory parties to this Agreement concur with the following responsibilities and terms.

I. AGENCY RESPONSIBILITIES

A. ITD Shall:

1. Program a Federal-aid project to track costs and provide advance state payment to the USACE for the costs contemplated by this Agreement as listed below.
 - Salary and benefits for up to two full-time employees (meeting the professional standard described in Attachment A) adjusted annually to cover appropriate step increases and cost of living allowance (COLA) costs awarded Federal government employees at a rate equivalent to a Federal white-collar Pay Schedule General Schedule 12 (GS-12).
 - Actual burdened overhead rate carried by the USACE, including:
 - Effective Rate
 - Departmental Rate, and
 - General Administrative Rate
 - Training, travel and per-diem at Federal government rates, as needed to support the priority review contemplated by this Agreement.
 - Vehicles (direct charged).
2. Upon receipt of a signed Agreement/modification or task order, transmit an advance payment equal to either the annual total of funds needed to support the service contemplated by this Agreement or additional funds needed to fund any modifications.
3. Review for approval, quarterly USACE submittals of actual account of expenditures for salaries, benefits, travel and indirect costs as drawn against advance state payment in support of work contemplated in paragraph 1.B.1 below.

4. If in agreement with the USACE quarterly account of expenditure, as submitted, transmit an approval to the USACE within ten (10) working days. If ITD disagrees with the USACE submittal, a meeting to clarify the account of expenditures will be requested within ten (10) working days. In the event of a disagreement over the account of expenditures, ITD pledges to negotiate in good faith towards a reconciliation of the disputed amount.
5. Reconcile and adjust Federal-aid project funding and/or advance state payment to the USACE at the time of Agreement extension, modification, or termination and, upon completion of this cooperative agreement, make any adjustments needed in Federal share payable as consistent with 23 U.S.C. 132.

B. USACE Shall:

1. Supplement its existing staff, which currently processes ITD and other permits on a routine basis, with qualified staff as detailed in Attachment A, and use the funds provided under this Agreement to pay the costs of salary, associated benefits and actual burdened overhead rate; and to reimburse reasonable travel expenses in accordance with the Federal Travel Regulations, 41 C.F.R. Chapter 301, which is incorporated into this Agreement by reference.
2. Hire career professional staff individual(s) to undertake work contemplated by this Agreement, and, as necessary, pay authorized permanent change of station entitlements costs associated with filling the position.
3. Ensure that 100% of the supplemental staff contemplated by this Agreement is detailed to work on the priority projects identified by the ITD in accordance with the coordination procedures defined in paragraph II (below) unless detailing to other projects has occurred as authorized in paragraph II.E (below).
4. Ensure that the supplemental staff identified in Attachment A keeps a daily time record identifying the number of hours spent working on tasks related to highway projects and any other work tasks such as those listed under paragraph II (below) relative to coordination. These records shall account for 100% of the time worked by supplemental staff, including any time spent on non-ITD work. In addition, USACE shall keep accurate and separate accounting records of all receipts and disbursements of all funds received pursuant to this Agreement and produce such records

for examination as required by the ITD or the FHWA and shall permit extracts and copies to be made by these other signatory agencies or their duly authorized representatives. USACE shall keep records substantiating hours and costs billed pursuant to this Agreement for a period of at least three (3) years after the final billing is submitted. These records shall be subject to audit in accordance with the Single Audit Act.

5. Upon receipt of advance State payment, supplement existing staff as expeditiously as possible to support work contemplated by this Agreement.
6. Subject to the availability of funds, return unused funds to the ITD at the termination of this Agreement.
7. In the event of disagreement over statements of expenditure, negotiate in good faith towards reconciliation of the disputed amount and continue the priority review of highway construction projects throughout negotiations as long as current advance state payment is sufficient to cover costs. The USACE will credit ITD for any amount determined to be an over-statement of USACE expenses.

C. FHWA Shall:

1. Evaluate and as appropriate, approve programming a Federal-aid project to accomplish the work contemplated by this Agreement at the applicable Federal-aid reimbursement rate in accordance with 23 U.S.C. 139(j).
2. Under the authority of 23 U.S.C. 132, reimburse ITD the total amount of Federal share payable for any project programmed (including advance payments) to support this Agreement upon obtaining notification of its execution.

II. Coordination:

- A. As needed, ITD will establish and submit prioritization guidance and /or a prioritized listing of projects to the USACE which will guide the USACE supplemental staff efforts in the project review process.
- B. As needed, ITD staff will hold conference calls and/or meetings with the USACE staff to establish priorities and evaluate work performed under this Agreement. Senior management is encouraged to attend the as needed conference calls and/or meetings, however senior management is not required to attend.

- C. Both ITD and the USACE agree that ready and reasonable access will be provided to working level staff of the other agency in an effort to minimize the need for formal meetings.

- D. While the focus will be to review permit decisions for priority ITD projects, USACE supplemental staff may also be involved in other tasks which support agency coordination and which serve to expedite the implementation of the ITD's highway construction program and compliance with the statutes and regulations for which the USACE bears responsibility. Examples of other tasks which may be assigned at the request of ITD and with concurrence of the USACE include, but are not limited to:
 - i. Attend pre-application meetings,
 - ii. Participate in interagency scoping meetings,
 - iii. Comment on project alternatives, mitigation plans, review and comment of Biological Assessments,
 - iv. Review and develop mitigation tools and/or implementation procedures to increase the efficiency of transportation project permit processing. Examples of mitigation efforts and tools include the Idaho Interagency Mitigation Working Group efforts, stream and wetland functional assessments, watershed approach development, and site selection criteria.
 - v. Develop and conduct regulatory training for ITD personnel. Examples of training topics include aquatic resource delineations, jurisdiction determinations, and the permitting process.
 - vi. Develop and implement regional general permits to create permitting efficiencies for ITD.

- E. To the extent ITD workload allows and USACE funding is available, the employee may be directed by the USACE to work on assignments other than ITD projects and charge that work to the appropriate USACE account. This option would be utilized only if beneficial to both agencies and after consultation between agencies.

- F. USACE will provide ITD with advanced notice of extended leave requests (*i.e.*, 5 or more consecutive days of leave) of the USACE liaison staff

member(s) (supplemental staff). This will help facilitate work load prioritization.

- G. Both the USACE and ITD have reviewed the projected 5-year workload for the Idaho Department of Transportation and found that expected services would require the commitment of one to two individuals per year of effort dedicated exclusively to review of Section 10 and Section 404 permits.

III. PERFORMANCE OBJECTIVES

- A. The USACE agrees to meet the goals established by the following Performance Indicators:
 - 1. The USACE will provide a preliminary response to ITD on all applications within 10 days of submission including a status update on the expected level of complexity and the estimated future action that will be needed on the permit. The USACE will also include their forecasted delivery date for the action.
 - 2. Unless initially flagged as a more complex project, the USACE will complete processing of ninety percent (90%) of the nationwide (General) permit applications within 45 days of receipt of a completed application from ITD.
 - 3. The USACE will meet all timelines established by regulation for individual permits unless otherwise previously indicated or noted as an exception. Seventy percent (70%) of Standard Permit applications will be processed in 120 days or less. The USACE will inform ITD if project evaluation may exceed standard processing times due to issues such as required Endangered Species Act coordination, controversial public interest factors, litigation, or others.
 - 4. The USACE will strive to perform compliance inspections on general permit as well as individual permit projects, and their compensatory mitigation. Nationwide goals are for the USACE to perform compliance inspections on at least ten percent (10%) of all individual permits in construction; and at least ten percent (10%) of all general permit projects in construction. USACE shall provide ITD with a copy of the compliance inspection forms.
 - 5. USACE will provide weekly updates to ITD by providing lists of work items performed/completed. The weekly updates will

include the date the work item was received, the USACE forecasted delivery date, and the date work was accomplished/finished. Any comments on additional information/items needed to accomplish work item will also be included in the USACE weekly updates.

- B. In general, the USACE's regulatory program prioritizes its workload in the following manner:
- a. First priority: Permit Applications. Both General Permit applications and Standard Permit applications are the USACE's first priority. Generally, permit applications are processed in a first-come, first-serve basis. If an application is associated with a project already in construction, or in preparation of a project's bid package, the application will be placed in front of other permit applications, with ITD's approval.
 - b. Second priority: Jurisdictional Determinations and No-Permit Required letters. Generally, these will be processed in the priority set by ITD.
 - c. Third priority: Pre-application meetings. These meetings can occur in the field and/or in offices. The pre-application meetings are scheduled on a first-come, first serve basis. Pre-application meetings also include discussions/scoping for potential compensatory mitigation requirements. Pre-application meetings are encouraged to help expedite the processing of upcoming permit applications.
 - d. Fourth priority: Compliance. The projects slated for compliance inspection are those that are in construction. Generally, compliance inspections are prioritized by the authorized project's environmental setting, the permit's special conditions, and the complexity of construction in/near waters of the United States. Compliance also includes the review of required compensatory mitigation monitoring reports/clearances.
 - e. Other tasks as assigned. For example: Projects where the USACE is a Cooperating Agency on an Environmental Impact Statement (EIS). Other Special Projects (interagency agreements, etc.). These work items can take longer amounts of time. USACE agrees to coordinate with ITD often on work-load as affected by prioritized EIS(s) and other Special Projects.
 - f. If the USACE and ITD allow a work-item to be placed behind other projects repeatedly, and if 6 months elapse, USACE agrees to

place the delayed work-item to the top of the priority list, with ITD approval.

C. ITD agrees to meet the goals established by the following performance indicators:

1. Prepare and submit all work items to USACE and provide prioritization as needed.
2. Prepare and submit to the USACE a completed permit application together with drawings as currently required by USACE regulations set forth at 33 CFR Part 325, incorporated herein by reference. Provide all information necessary for evaluation of permit applications.
3. Give full consideration to modifying the submitted permit application in accordance with the comments provided by the USACE in the course of permit review or to consider terminating and withdrawing the permit application in response to USACE comments.
4. Review quarterly reports/budget submitted by USACE. Schedule as needed conference call and/or meetings to discuss work performed under this Agreement. Senior management is encouraged to attend the as needed conference calls and /or meetings.

IV. GENERAL TERMS

- A. Length of Agreement. Once this Agreement is signed by all parties, it is effective on September 30, 2020 and expires on September 30, 2025, unless extended or terminated as provided in IV.B. and C. below.
- B. Modification and/or Extension. This Agreement may be modified, amended or extended in five-year increments beyond 2025 by the mutual Agreement of the signatory parties.
- C. Termination. This Agreement may be terminated by either the ITD or the USACE upon sixty (60) days written notice to the other party's point of contact.
- D. Point of Contact/Project Managers.

1. The Point of Contact in each signatory agency is as listed below:

a. ITD:

Name: Ms. Wendy Terlizzi
Environmental Manager
Address: Idaho Transportation Department
P.O. Box 7129
Boise, Idaho 83707
Telephone: 208-334-8629
Fax: 209-334-8025
Email: wendy.terlizzi@itd.idaho.gov

b. USACE:

Name: Ms. Kelly J. Urbanek
Chief, Regulatory Division
Address: U.S. Army Corps of Engineers
720 E. Park Boulevard, Suite 245
Boise, Idaho 83712
Telephone: 208-433-4468
Email: Kelly.J.Urbanek@usace.army.mil

c. FHWA:

Name: Mr. Brent Inghram
Environmental Program Manager
Address: Federal Highway Administration
3050 Lakeharbor Lane, Suite 126
Boise, Idaho 83703-6243
Telephone: 208-334-9180 extension 114
Email: brent.inghram@dot.gov

E. Required Clauses.

1. During the performance of this Agreement, the parties agree to abide by the terms of Executive Order 11246 on non-discrimination and will not discriminate against any person because of race, color, religion, sex or national origin. The participants will take affirmative action to ensure that applicants are employed without regard to their race, color, religion, sex or national origin.
2. No member of or delegate to Congress, or appointed transportation official or commissioners, shall be admitted to any share of part of the funds of this Agreement or any benefit that may arise therefrom; but this provision shall not be construed to

extend to this Agreement if made with a corporation for its general benefit.

3. All contracts to be developed and awarded pursuant to this Agreement, including all designs, plans, specifications, estimates, construction, utility relocation work, right-of-way acquisition procedures, acceptance of work and procedures in general shall at all times conform to the applicable Federal and state laws, rules, regulations, orders and approvals, including procedures and requirements relating to labor standards, equal employment opportunity non-discrimination, compliance with the Americans with Disabilities Act, anti-solicitation, information, auditing and reporting requirements.

F. Continuation of Existing Responsibilities.

1. The parties to this Agreement are acting in an independent capacity in the performance of their respective legally authorized functions under this Agreement, and regardless of the funding source for any supplemental staff hired by the USACE to support priority review of ITD highway construction projects, such staff shall not be construed as an officer, agency or employee of either the ITD or FHWA.
2. In no way do the USACE, ITD or FHWA intend to abrogate through this Agreement any obligations or duties to comply with the regulations promulgated under the 1973 (Federal) Endangered Species Act as amended, the 1958 (Federal) Fish and Wildlife Coordination Act as amended, the National Environmental Policy Act of 1969, the Clean Water Act of 1972 (as amended) or any other Federal statute or implementing regulations.

G. Other Agreements.

1. This Agreement does not preclude the signatory agencies from entering other inter-agency agreements relative to their respective roles and responsibilities; however, any other agreements should be consistent with this Agreement.

Date: _____

BY: _____

Brian W. Ness
Director
Idaho Transportation Department

Date: _____

BY: _____

Peter J. Hartman
Division Administrator
Federal Highway Administration

Date: _____

BY: _____

Christian N. Dietz
Lieutenant Colonel, Corps of
Engineers
District Engineer

ATTACHMENT A

One (1) to two (2) specialist(s) with experience and/or education in Engineering, Biology, Natural Resources, or other related Environmental Science. Working knowledge of Section 404 of the Federal Clean Water Act, Section 10 of the Rivers and Harbors Act of 1899, National Environmental Policy Act, the Endangered Species Act, the National Historic Preservation Act, and the Joint Federal Manual for the Identification and Delineation of Wetlands is essential. In addition, an ability to travel, occasionally overnight is mandatory. Federal White Color Pay Schedule at the full performance level of General Schedule 12. See attached Standard Job Description.

ARMY POSITION DESCRIPTION

PD#: HG331628

Sequence#: VARIES

Replaces PD#:

INTERDISCIPLINARY

GS-**-12**

Opt: GENERAL BIOLOGICAL SCIENCE -

0401

Opt: GENERAL PHYSICAL SCIENTIST -

1301

Opt: GEOGRAPHER - 0150

Opt: ENVIRONMENTAL RESOURCE

SPECIALIST - 0401

Organization Title:

POSITION LOCATION:

Servicing CPAC: COE, WALLA WALLA, WA

Agency: VARIES

Installation: VARIES

Army Command: VARIES

Region: WEST

Command Code: VARIES

POSITION CLASSIFICATION STANDARDS USED IN CLASSIFYING/GRADING POSITION:

Citation 1: OPM JFS PROF. PHYSICAL SCIENCE WORK, GS 1300, DEC 97

Citation 2: OPM PCS GEOGRAPHY SERIES, GS-0150, AUG 63

Citation 3: OPM JFS PROF WK, NATURAL RESOUR MGT & BIO SCIENCES, SEPT 05

Supervisory Certification: *I certify that this is an accurate statement of the major duties and responsibilities of this position and its organizational relationships, and that the position is necessary to carry out Government functions for which I am responsible. This certification is made with the knowledge that this information is to be used for statutory purposes relating to appointment and payment of public funds, and that false or misleading statements may constitute violations of such statutes or their implementing regulations.*

Supervisor Name: KELLY URBANEK

Reviewed Date: 01/29/2018

Classification Review: *This position has been classified/graded as required by Title 5, U.S. Code in conformance with standard published by the U.S. Office of Personnel Management or if no published standards apply directly, consistently with the most applicable published standards.*

Reviewed By: STEPHENIE RENSHAW

Reviewed Date: 11/30/2009

POSITION INFORMATION:

Cyber Workforce:

- **Primary Work Role:** VARIES
- **Additional Work Role 1:** VARIES
- **Additional Work Role 2:** VARIES

FLSA: EXEMPT

FLSA Worksheet: EXEMPT

FLSA Appeal: NO

Bus Code: VARIES

DCIPS PD: NO

- **Mission Category:** VARIES
- **Work Category:** VARIES
- **Work Level:** VARIES

Acquisition Position: NO

- **CAP:**
- **Career Category:**
- **Career Level:**

Functional Code:

Interdisciplinary: YES

Supervisor Status: VARIES

PD Status: VERIFIED

POSITION DUTIES:

Interdisciplinary position, classifiable in any one of the following classes: General Biological Science, GS-0401-12; Physical Scientist, GS-1301-12; Geographer, GS-0150-12.

MAJOR DUTIES

This position serves as the Regulatory Project Manager and utilizes a professional knowledge of natural, physical, and social sciences theories, practices, and

CONDITION OF EMPLOYMENT:

Drug Test Required: VARIES

Financial Management Certification:

Position Designation: VARIES

Position Sensitivity: VARIES

Security Access: VARIES

Emergency Essential:

Requires Access to Firearms: VARIES

Personnel Reliability Position: VARIES

Information Assurance: VARIES

Influenza Vaccination:

Financial Disclosure: VARIES

Financial Disclosure: YES
**

Enterprise Position: VARIES

POSITION ASSIGNMENT:

Competitive Area: VARIES

Competitive Level: VARIES

Career Program: VARIES

Career Ladder PD: YES

Target Grade/FPL: 12

Career Pos 1: [HG332092](#) GS-****-11

Career Pos 2:

Career Pos 3:

Career Pos 4:

Career Pos 5:

Career Pos 6:

methodologies, as they relate to the natural and human environment, to serve as a project manager with technical expertise to: (1) Evaluate all levels and types of Department of the Army (DA) permit application, compliance, and/or enforcement cases (including those complex and/or controversial in nature) for activities in waters of the United States and/or navigable waters of the United States within the regulatory authority of the Clean Water Act, and the Rivers and Harbors Act of 1899; (2) Develop and manage general permits (GPs); (3) Develop procedures to implement directives from higher authority; and (4) Serve as the District representative on groups and task forces with missions of interest to the District and/or the regulatory program, and to complete assignments related to special regulatory initiatives directed toward effective, efficient, and consistent application of the regulatory program. The project manager facilitates the accomplishment of items (1) through (4) above, by coordinating the activities of subject matter specialists within or outside the District and evaluating the validity of others expressed views to produce a timely and quality product and by forging new and better techniques to meet the overall objectives of the regulatory program and related laws. The regulatory program is directed at ensuring that the physical, biological and chemical integrity of the nation's water resources are restored and/or maintained and that regulated activities in these waters are not contrary to the public interest, considering environmental, social, and economic concerns. At times, the project manager may be required to advise lower grade employees on the procedural aspects of the regulatory program, resolve differences (administrative and scientific) among views and positions of other Federal and state agencies and private interests for finalizing certain regulatory actions, manage contracts for work which is in excess of that which could be completed with in-house labor or represent the Corps as an expert witness in court cases on permit decisions and/or enforcement actions in which he/she was involved.

1. PERMIT PROCESSES. Facilitates the management of the permit workload including pre-application consultation, evaluation of applications, and monitoring of permit compliance. Personally conducts or manages the evaluation of complex, controversial, and environmentally sensitive applications and permits for activities or work in waters of the United States. Proposed and permitted projects, to be evaluated, frequently have high consequence with respect to environmental, political, financial and/or policy aspects. Typical projects include, but are not limited to, hydroelectric, nuclear or fossil fueled power plants, surface and suction dredge mining, dredged material disposal sites, highways, bridge approach and causeway fills, large marinas, and commercial, industrial, and/or residential development projects involving structures, dredging and/or filling in navigable waters of the United States and/or the discharge of dredged or fill materials into waters of the United States. Evaluations of this complexity may require most or all of the following: 35%

(a) providing advice, which essentially commits the district to a particular course of action, to potential applicants concerning regulatory requirements, including jurisdiction, processing and evaluation, and the likelihood of project approval;

(b) regularly participating in interagency meetings such as with a State, County, City Highway Agencies, Flood Control and Irrigation Districts or other applicants with long-

range planning needs;

(c) preparation of detailed site evaluations to establish base environmental conditions including delineation of wetlands, characterization of the natural and human phenomena at the project site and a determination of the relative quality of waters of the United States;

(d) extensive coordination of proposed projects with the applicant, their agent, consultants, and/or attorneys, the general public, elected officials such as Federal and State Congressional representatives, and other governmental agencies, which may include making preparations for public hearings;

(e) analysis of the full range of public interest review (PIR) factors outlined in 33 CFR 320.4 and any other factors which are revealed and bear on the decision to issue or deny permits and recommendations as to whether public hearings should be conducted for the purpose of acquiring information to be considered in evaluating proposed actions;

(f) coordinating with the appropriate agencies under the Endangered Species Act and the National Historic Preservation Act which is essential to insure the proposal will not result in an unnecessary impact to a protected resource;

(g) preparation or management of accurate and detailed documentation, e.g., environmental assessments (EAs) or Environmental Impact Statements (EISs), PIR and Section 404(b)(1) Guidelines analysis;

(h) identification of a full range of alternatives which satisfy project goals and may have a lesser adverse impact on PIR factors in accordance with the requirements of the National Environmental Policy Act (NEPA), the Section 404(b)(1) Guidelines, and other related laws and regulations;

(i) review of site-specific mitigation proposals using experience and judgment to determine the technical feasibility of projects; this includes the establishment and day to day administration of mitigation banks.

(j) recommendation of issuance or denial of permits, or conditions for issuance, and documentation of the detailed weighing and balancing thought processes in a Statement of Findings (SOF) leading to the recommended decision;

(k) monitoring implementation of permit special conditions, such as special reports or physical, biological or chemical monitoring programs, providing consultation and approvals as appropriate, evaluating proposed or required changes, and modifying permits when necessary to reflect revised conditions/requirements;

(l) monitoring and evaluating, or directing the monitoring and evaluation of, authorized activities and associated impacts, reviewing analysis and recommending whether on-going, or similar proposed, activities should continue or be modified, suspended, or

terminated.

2. ENFORCEMENT PROCESSES. Facilitates the management of the enforcement workload by personally conducting or managing the investigation of unauthorized work and developing and determining the resolution of enforcement actions. Typical projects lack direct and documented avenues for resolution, requiring creative application of scientific principles and interpretation of regulatory procedures. Investigations of this complexity may involve: 35%

(a) design of site specific restoration/mitigation projects using technical experience and judgment; the determination of technical feasibility of projects; the direction and overseeing of on-site construction;

(b) analysis of complex impacts on fish and wildlife, natural resource conservation, pollution control, flood control, aesthetics, ecology, and the general public interest associated with the structures, materials, and work activities;

(c) preparation of accurate and detailed environmental assessments, factual photographic litigation materials, coordination with EPA and recommendations for legal action by the U. S. Attorney/U. S. Department of Justice;

(d) preparation of jurisdictional determinations in complex situations where these limits are unclear and/or controversial.

3. PROGRAMMATIC INITIATIVES AND REQUIREMENTS. Assists in the management of the District regulatory program through the development, administration, and implementation of programmatic initiatives and requirements such as local permit and/or enforcement operating procedures, new GPs or revisions to existing GPs, joint application procedures, public information programs, training programs and litigation reports and requirements. Such initiatives and requirements may involve: 30%

(a) managing the District's GPs which includes the development of new GPs, and regional conditions for nationwide permits (NWP); the re-evaluation of existing GPs, and regional conditions for NWPs, and monitoring the GPs for success as an administrative method as well as an environmentally sensitive method of authorizing numerous routine, non-controversial projects. These evaluations, re-evaluations, and monitoring programs require ingenuity and initiative to formulate methods to measure the individual and cumulative impacts (cumulative impact analysis is an undeveloped technology) of numerous small projects on the interactive processes of ecosystems; to weigh and balance the predicted benefits of categories of activities against foreseeable adverse impacts to ecosystems or PIR factors; and to make recommendations on the issuance or re-issuance of GPs, or the incorporation of regional conditions on NWPs.

(b) managing special programmatic initiatives which may result from interagency coordination efforts, special task groups, directives from higher authority, the District Engineer and the Division Chief. This can involve assignments to prepare briefings,

interpret Regulatory Guidance Letters (RGLs), draft policy memos for District-wide use, design methods of gathering certain information, manage portions of the districts automated data management system [e.g.; Ombil Regulatory Module (ORM)], and develop procedures to implement programmatic initiatives and/or incorporate policies into the management of the District's regulatory program.

(c) participating on, or serving as leader for, interagency task forces formed as programmatic initiatives, providing timely input, fully coordinating issues with others, as appropriate.

(d) serves as project manager for coordinating work beyond the capability/availability of current regulatory labor force. This involves preparing scopes of work and government estimates; which may include convening pre-selection and selection boards; and monitoring the contractor's progress, to assure contract schedules are met and that the work procured satisfies the terms of the contract. This item is normally associated with actions when Regulatory is the Federal lead on Environmental Impact Statements and when monies are transferred to another District entity and/or a specific ERDC research activity.

(e) represents the District and/or Regulatory Division on interagency and other task forces (such as the Public Outreach, and Mapping Conventions and Wetland Delineations for Agricultural Lands Task Forces), to evaluate and develop solutions to complex problems concerning non-Corps interests which are related to the Corps regulatory program by thoroughly assessing factors related to the problem and developing viable alternative solutions in a joint manner with the concerned interests; presenting status reports and making recommendations for further guidance; recommending a solution and implementing appropriate action when necessary.

(f) assists office of Counsel in preparation of litigation reports. Coordinates legal issues with appropriate local, state and Federal agencies, and assists Corps office of Counsel and the Assistant U.S. District Attorney when requested. Serves, as required, as the technical representative and/or witness during court cases on, or contesting, Department of the Army permit, compliance, or enforcement action(s). Testimony must be of a highly professional and scientifically acceptable character in order to support the government's position on the case as, depending on social, environmental or economic impacts, plaintiffs are frequently represented by regionally or nationally recognized attorneys with expertise in environmental law.

(g) advise lower grade employees on procedural aspects of the regulatory program, including but not limited to the preparation of public notices, letters, EAs, and correspondence, and reviews and coordinates work prepared in either draft or final form by lower grade employees, for technical accuracy and adherence to policy. Advises lower grade employees on field investigations and other fact-finding activities. Provides advice and oversees lower grade employees on technical aspects of investigating unauthorized work, aerial imagery interpretation, legal procedures, and documentation.

Performs other duties as assigned.

FACTORS

FACTOR 1. KNOWLEDGE REQUIRED BY THE POSITION, (GS-11/12) FL 1-7, 1250 pts;

Knowledge of a broad range of environmental principles, regulations, policies, procedures, laws, and techniques sufficient to insure that regulatory work is in compliance with applicable legal standards and other requirements and that such work is implemented in an environmentally sustainable manner. Regulatory work requires skills sufficient to identify, interpret, and evaluate complex regulatory factors and related natural, cultural and social conditions and to prepare or evaluate the adequacy of environmental documentation or similar analyses, such as those conducted under the National Environmental Policy Act, Section 404(b)(1) Guidelines, Endangered Species Act, and National Historic Preservation Act.

Professional knowledge of the basic principles of geography, biology and/or physical science and skill sufficient to identify, interpret, and determine the significance of the interrelationships existing among various natural and human phenomena and the processes of change which result from the impact of planned construction activities. Familiarity with related biological, physical, cultural and social sciences (such as ecology, botany, limnology, soil science, hydrology, chemistry, archaeology, and economics) and knowledge of applicable elements of engineering. The ability to adapt practices from such sciences and engineering where relevant guidance is lacking in the environmental specialty area. Knowledge of project management techniques and skill sufficient to ensure an integrative approach toward interpreting and determining significance of relationships, evaluate and recommend alternatives, conduct studies, determine potential impacts, anticipate and resolve problems as well as to result in work products which are well reasoned, factually accurate, thorough in analysis and valid with respect to interpretations.

Knowledge of vegetation, soils, and hydrology sufficient to verify the accuracy of wetland delineations.

Knowledge of and skill in written and oral communication and mediation techniques sufficient to effectively describe, explain, influence and negotiate concerning environmental issues, problems, and solutions to diverse audiences, including, but not limited to, co-workers, the general public, special and private interest groups, applicants and violators, local, state, and Federal government representatives, political appointees and the media.

Knowledge and skill to serve as the District's technical representative or government's expert witness during court cases contesting the issuance or denial of a Department of the Army permit-

FACTOR 2. SUPERVISORY CONTROLS, (GS-12) FL 2-4, 450 pts; (GS-11) Level 2-3, 275 Points

The Deputy Division Chief makes assignments in terms of broad objectives, together with areas of special interest and urgent concern. The incumbent carries out work independently, exercising initiative and providing leadership in planning, coordinating and accomplishing complex work assignments or studies. The incumbent interprets policy and regulations in consonance with established objectives, maintains sensitivity to current trends, national study results, and proposed substantive program changes in the course of exercising technical responsibilities, resolves most conflicts that arise and coordinates work with others as required. Problems of unusual significance, however, are normally referred for the supervisor's views for development of a joint course of action. Work is normally accepted as technically accurate and generally constitutes the basis for final approval or endorsement by the supervisor. Work is reviewed and evaluated in terms of achievement of program objectives, effect of advice, and conformance to policy.

FACTOR 3. GUIDELINES, (GS-12) FL 3-4, 450 pts; (GS-11) Level 3-3, 275 pts.

The primary, published guidelines for administration of the Corps Regulatory Program are provided in regulations (33 CFR 320 - 330 and 40 CFR 230), with statutory authorities also being referenced for guidance. Interpretative guidance is available in regulatory guidance letters, manuals, memoranda of agreements, precedent cases, court decisions and other miscellaneous correspondence and documents, such as agency policy statements, teleconferences and standard technical publications. Guidelines for the administration of all Federal programs are also applicable and are found in a variety of statutes, regulations, executive orders and other miscellaneous documents.

Established precedents and guidelines provide a general framework for the program but require professional judgment with respect to routine cases and typically do not provide adequate guidance for dealing with complex and unusual problems. Guidance found in interpretive guidelines and precedent cases are normally case specific. The incumbent is required to exercise flexibility in interpretation and judgment in order to obtain effective results and the reasonable application of regulatory authorities. Judgment and ingenuity is also required to develop solutions or recommendations involving varying problems connected with complex, controversial, and/or environmentally sensitive proposals and in evaluating the relative merits, impacts, costs, and practicability of alternative project sites and designs and/or mitigation measures or plans. The incumbent uses considerable initiative, and experienced judgment gained through work related problem solving operations, in researching and developing approaches to specific proposals, programmatic requirements or problems.

FACTOR 4. COMPLEXITY, (GS-11/12) FL 4-4, 225 pts

Assignments include a variety of tasks related to the administration of the Corps Regulatory Program. The incumbent performs substantive review and analysis of

proposed or current projects, policies, or measures affecting an extensive geographic area which includes dense populations, valuable natural resources, and highly profitable land uses, all of which may be affected by regulated activities. Assignments include the evaluation of applications for permits or permit modifications, resolution of enforcement cases (permit non-compliance and unauthorized activities) and development of projects, procedures guidance or other work products in response to programmatic initiatives and requirements. Field work, often in remote or limited access locations, and travel for meetings in other offices is typically required.

Regulated activities involve fill and/or construction activities in waters of the United States, including wetlands. Individual proposals are submitted by a diverse group of applicants, permittees and violators and range from simple pier construction or a small fill as a single and complete project to large, complex commercial and residential developments or public works projects which include regulated activities as component parts.

The incumbent serves in a leadership/management role for the evaluation of such proposals which is accomplished through a team effort including input from other specialists within the Branch, scientists and engineers from other Federal, State and/or local agencies and the applicants, permittees or violators and/or their legal counsel and consultants. The evaluation requires consideration of the probable impacts of the proposal, including cumulative impacts, and its intended use on the public interest. The basic facts, circumstances, and information vary substantially from project to project. The evaluation involves a balancing process, which identifies and considers factors, which are relevant to a particular situation. Such factors may include conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and the needs and welfare of the people. Project alternatives and approaches or methods for the mitigation of unavoidable adverse impacts are also formulated and considered in the evaluation process. The incumbent must make judgments concerning the adequacy, accuracy, and consistency of technical data and other input. The incumbent is responsible for advising the applicant, permittee or violator concerning alternative courses of action and making decisions or recommendations with respect to the District's final action on a proposal.

Programmatic work may involve the development of joint application procedures, standard operating procedures, review and input on national policy distributed by Corps Headquarters and miscellaneous task forces to address issues related to the administration of the Corps Regulatory Program. This work involves extensive coordination and integration of different, and sometimes conflicting, requirements and priorities. The development of general permits, also requires evaluations as described for permit application/modification and enforcement cases. Highly developed leadership, negotiation, conflict resolution, and project/program management skills are required.

The work is analytical, interpretive, judgmental, evaluative and creative.

Guidelines for this work are incomplete and do not readily yield identical results. Differences in judgments, recommendations, interpretations or decisions can have consequences or impact on the work of co-workers and the public. The incumbent is expected to resolve problems, sometimes under contentious circumstances, and maintain compatibility of interpretation, judgment, logic and policy application. The work is also made more complex by constantly changing deadlines which result from frequent, abrupt, and unexpected changes in work assignments, goals and deadlines which require the incumbent to constantly adjust operations under the pressure of continuously changing and unpredictable conditions. For example, a routine application or enforcement case may come to the attention of Congressmen, Corps Headquarters or the office of the Assistant Secretary of the Army. Such attention results in the incumbent being requested to provide information, respond to inquiries, conduct briefings, attend meetings with high level officials, and/or expedite an application or enforcement action. Such requests normally require a short response time, making it difficult to plan for and meet established work objectives. In addition, work processes and procedures are continuously changing, increasing in complexity and placing greater demands on time and expertise. These changes tend to be additive in nature and are due to such factors as the impact of the political climate, court decisions, public interest, changes in ancillary programs, and developing technology and/or scientific information, all of which may create a need for additional guidance and/or training.

FACTOR 5. SCOPE AND EFFECT, (GS-12) FL 5-4, 225 pts (GS-11) Level 5-3, 150 pts.

The purpose of the work is to make decisions on applications for permits and permit modifications, resolve enforcement cases and manage Corps Regulatory Program requirements in a manner which insures that the nations water resources are safeguarded and used in the best interest of the people, that environmental, social and economic concerns are considered, and that authorized activities are not contrary to the public interest. Results of the work affect construction and/or production processes, influence the economic and technical ability of project proponents, and affect the nature, life, and populace of communities receiving benefits from the water resources which are impacted by the proposal.

Any individual, company, corporation or government body planning fill and/or construction activities in waters of the United States, including wetlands, must obtain a permit from the Corps. Industries which are significantly affected by the Corps Regulatory Program include building/development (commercial, industrial and residential), mining, recreational boating, commercial navigation, forestry, and agriculture. Compliance with the requirements of the Corps Regulatory Program are also integrated into major Federal programs such as those administered by U. S. Department of Agriculture, Natural Resources Conservation Service, Federal Highway Administration, U. S. Fish and Wildlife Service, Federal Energy Regulatory Commission, the U. S. Forest Service and the Department of Defense. State and local public works, resource management and land use planning activities must also integrate

Corps Regulatory Program requirements.

Due to its broad scope, complexity and impact the Corps Regulatory Program receives high public visibility and scrutiny, which is not limited to individual actions which are controversial or complex. The program has major regional economic effects extending beyond the regulated community. Affected, cumulative construction costs can reach several billion dollars per year. Regional industries, private and commercial ventures and the regional environment are impacted by the everyday and cumulative decisions of the District's regulatory program. Inquiries from Federal and State congressional representatives and local, regional and national media are daily occurrences. In addition, District offices are frequently the target of the efforts of special interest groups to stop or delay unwanted projects by any means available. Administration of the Corps Regulatory Program is actively monitored by environmental groups, such as the National Audubon Society, the Sierra Club, the Isaac Walton League, the National Wildlife Federation and Ducks Unlimited, as well as industry representatives and other special interest groups and organizations.

FACTOR 6. PERSONAL CONTACTS, (GS-12) 120 FL 6-4, (GS-11) Level 6-3, 90 pts.

Incumbent meets regularly with a wide variety of groups and individuals concerning project-related issues. These contacts involve permit applicants and violators, often accompanied by their legal and scientific representatives and consultants; staff of the Environmental Protection Agency, the U. S. Fish and Wildlife Service, the National Marine Fisheries Service and other Federal agencies having a statutory interest in the program, as well as staff from State and local government departments, including water and land use planning authorities. Occasional contacts involve influential individuals or organized groups including staff members of congressional and legislative offices; elected officials; key staff and scientific representatives of public interest and conservation groups having a definite interest in the outcome of particular cases under review; and national or local newspaper, radio and television journalists.

Within the District there are staff meetings and briefings and occasional contacts with the District Commander and key staff, including legal counsel. There are occasional contacts through telephone conferences, task forces and meetings with the regulatory program staff in North Pacific Division, Corps Headquarters and the office of the Assistant Secretary of the Army for Civil Works.

FACTOR 7. PURPOSE OF CONTACTS, FL 7-3, (GS-11/12) 90 pts

The primary purpose of contacts outside the District is to persuade and influence individuals and groups to accept the local, regional and national goals and objectives of the Corps Regulatory Program. This includes informing and persuading the regulated public of the need for compliance with regulatory program and statutory requirements. With respect to individual permit and enforcement actions, the purpose of contacts is to

motivate, justify, persuade and/or defend recommendations, actions and decisions to those affected by such. These encounters are made more complex by the broad economic impacts of the projects, lack of cooperation between agencies and groups, and well organized and funded opposition to the objectives of the regulatory program as well as the specific case under discussion. Recommendations may involve avoidance, reduction and/or mitigation of impacts on waters and wetlands, which may involve large costs and potential project delays to the applicants, violators and other interested parties. The contacts are frequently skeptical, uncooperative, or in direct conflict and opposition to the proposed solutions. Highly developed communication, negotiation, conflict resolution and leadership skills are required to influence or persuade applicants and violators, as well as their legal counsel and technical/scientific consultants to effect desired actions and avoid litigation or escalation of the issues.

Contacts with other Corps offices and other Federal, state or local agencies are for the purposes of providing information, committing the District to a particular course of action, or establishing, or negotiating changes in, program objectives and/or procedures which will result in more efficient and effective administration of the Corps Regulatory Program. Contacts are also intended to persuade others to accept opinions on particular issues and/or permit applications and enforcement cases to avoid escalation of the issues. Contacts also often are for the purpose of gaining acceptance of methodology, which is new or unfamiliar. There are often conflicting programs and interest between the various agencies and individuals, made more complex by participation of individuals or groups who hold opposing scientific views on applicability to the program or a particular case.

FACTOR 8. PHYSICAL DEMANDS, (GS11/12) FL 8-2, 20 pts

Field visits require regular and recurring physical exertion such as: hiking long distances through rough country, repeated digging of soil pits, frequent bending or stooping to sample vegetation, climbing steep inclines, jumping over obstructions, and within water work including wading. The incumbent must possess the required physical abilities, which have allowed him/her to obtain a valid and current motor vehicle operator's license.

FACTOR 9. WORK ENVIRONMENT, (GS11/12) FL 9-2, 20 pts

Work is performed both in an office and field setting. Field visits involve regular and recurrent exposure to adverse weather conditions or situations in which one is exposed to heavy earth moving equipment or driving on unimproved roads. Such work environments may also involve exposure to unfavorable conditions such as icy slick roads, dangerous chemicals, noise, fumes, and contaminated water and require use of protective equipment such as hard hats, protective shoes, etc.

Total Points 2395-2900

OTHER CONDITIONS OF EMPLOYMENT:

1. The incumbent must possess the required physical abilities, which have allowed him/her to obtain a valid and current motor vehicle operator's license. [Reference: FL 8] (5-17-06)

** Incumbent is required to submit a Financial Disclosure Statement, OGE-450, (5CFR Part 2634, Subpart I USOGE, 6/08). Executive Branch Personnel Confidential Financial Disclosure Report upon entering the position and annually, in accordance with DoD Directive 5500-7-R, Joint Ethics Regulation, dated 23 March 2006.

Fair Labor Standards Act (FLSA) Determination = (EXEMPT)

1. Availability Pay Exemption - (e.g., Criminal Investigators, U.S. Customs and Border Protection pilots who are also Law Enforcement Officers).

2. Foreign Exemption - (Note: Puerto Rico and certain other locations do not qualify for this exemption – [See 5 CFR 551.104](#) for a list of Nonexempt areas.)

3. Executive Exemption:

a. Exercises appropriate management responsibility (primary duty) over a recognized organizational unit with a continuing function, AND

b. Customarily and regularly directs 2 or more employees, AND

c. Has the authority to make or recommend hiring, firing, or other status-change decisions, when such recommendations have particular weight.

Note: Shared supervision or "matrix management" responsibility for a project team does not meet the above criteria. Limited "assistant manager" functions or "acting in the absence" of the manager does not meet the above criteria.

4. Professional Exemption:



a. Professional work (primary duty)



b. Learned Professional, ([See 5 CFR, 551.208](#)) (Registered Nurses, Dental Hygienists, Physician's Assistants, Medical Technologists, Teachers, Attorneys, Physicians, Dentists, Podiatrists, Optometrists, Engineers, Architects, and Accountants at the independent level as just some of the typical examples of exempt professionals). Or



c. Creative Professional, ([See 5 CFR, 551.209](#)) (The primary duty requires invention and originality in a recognized artistic field (music, writing, etc.) and does not typically include newspapers or other media or work subject to control by the organization are just some examples of Creative Professionals). Or



d. Computer Employee, ([See 5 CFR, 551.210](#)) (must meet salary test and perform such duties as system analysis, program/system design, or program/system testing, documentation, and modification). Computer manufacture or repair is excluded (non-exempt work).



5. Administrative Exemption:



a. Primary duty consistent with [5 CFR 551](#) (e.g.; non-manual work directly related to the management or general business operations of the employer or its customers), AND job duties require exercise of discretion & independent judgment.



FLSA Conclusion:



Exempt



Non Exempt

FLSA Comments/Explanations:

Exempt: Professional Exemption: Professional work (primary duty) and Learned Professional, (See 5 CFR, 551.208) (Engineers at the independent level as just some of the typical examples of exempt professionals).

CONDITIONS OF EMPLOYMENT & NOTES:

A state issued driver's license is required to perform duties.

POSITION EVALUATION:

2018 03 20 Added Environmental Resource Specialist back to series after realizing several employees were using that position title. (SRR)

2018 01 29 Updated title of GS-0401 series at manager's request and fixed a few typos. (SRR)

Position Evaluation:

GS 12

FL 1-7, 1250 points

FL 2-4, 450 points

FL 3-4, 450 points

FL 4-4, 275 points

FL 5-4, 225 points

FL 6-3 120 points

FL 7-3, 90 points

FL 8-2, 20 points

FL 9-2, 20 points

GS-12: 2900

The supervisor has determined this position requires Financial Disclosure and a state issued driver's license. (SRR 28 Jul 2016) Added ladder down to GS-11 HG332092. (SRR 1 Aug 2016)