



SPECIAL PUBLIC NOTICE

PROPOSAL TO ACCEPT AND EXPEND FUNDS FROM THE IDAHO
TRANSPORTATION DEPARTMENT TO EXPEDITE PERMIT APPLICATION
REVIEW

**U.S. ARMY CORPS OF ENGINEERS
WALLA WALLA DISTRICT**

Comment Period: July 11, 2022 to August 10, 2022

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This Special Public Notice announces that the U.S. Army Corps of Engineers, Walla Walla District (Corps) Regulatory Division is considering a proposal to accept and expend funds provided by the Idaho Transportation Department (ITD) to expedite processing of ITD of the Army (DA) permit applications, subject to a series of limitations in accordance with Section 214 of the Water Resources Development Act of 2000, as amended.

Section 214 of the Water Resources Development Act of 2000 (WRDA 2000, Public Law No. 106-541), as amended and codified at 33 U.S.C. 2352, authorizes the Secretary of the Army, after public notice, to accept and expend funds contributed by non-Federal public entities, public-utility companies, natural gas companies, or railroad carriers to expedite the evaluation of a permit of that entity, company, or carrier 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 Walla Walla District, U.S. Army Corps of Engineers.

The Idaho Transportation Department is eligible to provide funds to the Corps under Section 214 as a non-Federal public entity.

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 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.

Purpose for the proposed funding agreement: The Corps' Regulatory Program is funded as a Congressionally appropriated line item in the annual Federal budget. The District is unable to expedite the evaluation of the ITD's DA permit applications (i.e. Section 404 Clean Water Act, Section 10 Rivers and Harbors Act of 1899) using current resources. Funds received from ITD would be used by the Corps to expedite the review of

ITD permit applications in accordance with the provisions of Section 214 of WRDA 2000, as amended. The Walla Walla District, Regulatory Division, would establish a separate account to track receipt and expenditure of the funds to ensure they would be expended for the intended purpose. Corps employees would charge their time against the established account when processing ITD priority permit applications and conducting other related activities as specified below (see “Activities for Which Funds Would be Expended”).

Activities for which funds would be expended: Funds would be expended primarily on the labor and overhead of Corps staff processing ITD priority permit applications. Such activities would include, but are not limited to: participation in early project planning or coordination activities, pre-application meetings, application reviews, jurisdictional determinations, and site visits; preparation and distribution of public notices and correspondence; conducting endangered species, cultural resource reviews, and public interest reviews; review and/or preparation of environmental assessments, environmental impact statements, and decision documents; analyzing alternatives and compensatory mitigation proposals, to include bank instruments; conducting compliance inspections; and development of programmatic tools.

If the funds accepted by the Walla Walla District under a funding agreement are fully expended and are not renewed, any remaining tasks necessary to complete processing of the ITD permit application(s) would be handled in the same manner as any other non-participant, subject to the availability of funds.

How funds are expected to expedite permit review process:

Since the purpose of Section 214 is to expedite the permit application review process, a Section 214 funding agreement is a vehicle to improve the permitting process for ITD projects that require a DA authorization. The Corps and ITD believe that a dedicated Corps project manager would be able to develop expertise in the types of projects performed by ITD, which could improve the efficiency of the review process. Further, based on experience and the volume of expected ITD permit applications going forward, the Corps expects that using funds accepted from ITD to fund a full-time Corps project manager for ITD permit applications would result in expedited reviews for ITD projects. A Section 214 funding agreement would also improve the ability of the Corps and ITD to coordinate and prioritize the review of projects based on ITD project schedules and deadlines. In addition, funding a full-time Corps project manager for ITD permit applications would also benefit the reviews of non-ITD permit applications since existing Corps project managers that would otherwise be working on ITD applications would have additional capacity to process applications for other applicants.

Procedures to ensure impartial decision-making: To ensure the funds would not impact impartial decision-making, the Walla Walla District would incorporate the following procedures into the funding agreement:

- (a) All final permit decisions where funds were used for the permit review process would be reviewed and approved in writing by a Corps official that is at least one level above the typical Corps decision-maker. Funds accepted under the agreement would not be expended for review of such decisions by supervisors or other Corps officials in the decision-making chain of command. Additionally, the one-level-above

reviewer would hold a position that is not partially or fully funded by ITD for at least one year.

- (b) Instruments for mitigation banks or in-lieu fee programs proposed for review by the funding entity would be signed by the District Regulatory Division Chief, an equivalent, or a higher-level position that is not funded by any funding agreement.
- (c) All preliminary jurisdictional determinations (JDs) and approved JDs where funds would be used to complete the JD would have documentation in the administrative record that a non-funded Corps District Regulatory Program staff member conducted a review of the determination. This review would not require a field review. For those approved JDs that require coordination with the U.S. Environmental Protection Agency, additional internal review would not be required.
- (d) The Corps would not use funds accepted under this agreement to conduct enforcement activities; this includes, but is not limited to, the resolution of non-compliance issues.
- (e) The Corps would comply with all applicable laws and regulations, and would not eliminate any procedures or decisions that would otherwise be required for the type of project and permit application under consideration.
- (f) To ensure transparency, the Corps would ensure the funding agreement and all final permit decisions carried out using funds accepted from ITD would be made available to the public on the Corps Headquarters' public web pages at:
<https://permits.ops.usace.army.mil/orm-public#> and
<https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Section-214/>.

Impacts to the Regulatory Program: We do not expect priority review of the ITD permit applications to negatively impact the Walla Walla Regulatory Program or to increase the time for permit application evaluations of other projects in the Walla Walla District, since additional Corps Regulatory staff would likely be hired with the funds received from Idaho Transportation Department to augment this priority review.

Consideration of Comments: The Corps is soliciting comments on the proposal to accept and expend funds from ITD from the public, Federal, State and local agencies and officials, and other interested parties. Comments will be made part of the Walla Walla District's administrative record and will be considered in the District's decision of whether to enter into the proposed funding agreement. After considering public comments, if the Walla Walla District Commander determines, that the acceptance and expenditure of the funds would be beneficial and in compliance with the requirements of Section 214 of WRDA 2000, as amended, that the District would be able to preserve impartial decision-making, and that the timeframes of permit application reviews for other applicants in the District would not be adversely affected, then the District may execute a Memorandum of Agreement (MOA) with the ITD pursuant to Section 214, and accept funds from the ITD to expedite the review of their priority permit applications. A second informational public notice will be issued regarding the Walla Walla District Commander's final decision on this matter. If a MOA is executed and later amended or extended, no new public notice would be issued, provided

that the purpose of accepting funds remains the same as that described in this notice.

Submission of Comments: Interested parties may submit, in writing, any comments concerning this proposal. **Comments should refer to the “ITD WRDA 214 Agreement” and be submitted by the comment due date of August 10, 2022.** Comments can be sent to Shane Skaar at shane.k.skaar@usace.army.mil.