



PUBLIC NOTICE

**US Army Corps
Of Engineers**

Fort Worth District

Comment Start Date: July 5, 2012

Comment Due Date: August 4, 2012

Subject: Proposal to accept funds from the North Central Texas Council of Governments in order to expedite 408 Permit Applications

This Public Notice announces the preliminary intent of the Fort Worth District, Fort Worth, Texas of the U.S. Army Corps of Engineers (“Corps”) to accept funds contributed by the North Central Texas Council of Governments (hereinafter the “Authority”). The Fort Worth District would allocate funds internally in order to expedite processing of the Authority’s Department of the Army (DA) permit applications in accordance with 33 U.S.C. 408 (hereinafter “Section 408”), subject to a series of limitations specified below.

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

- a. 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.
- 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.
- c. The authority provided under this section shall be effective immediately and will remain in effect as long as the authority to accept and expend funds from non-Federal public entities is valid.

The Secretary of the Army has delegated this responsibility to the Chief of Engineers and his authorized representatives, including District Commanders of the U.S. Army Corps of Engineers. The authorization to accept and expend funds from non-Federal public entities will be effective immediately and will remain in effect as long as the authority to accept and expend funds from non-Federal public entities is valid under Section 214 of WRDA 2000, as amended. Public Law 111-315 currently extends the authority to December 31, 2016. The District Commander of the Fort Worth District for the Civil Works Program is negotiating an agreement with the Authority to accept and expend funds to expedite their priority projects evaluation of “Section 408” permits pursuant to Section 14 of the Rivers and Harbors Act of 1899 ([33 U.S.C. 408](#)) for alteration of Federal project levees.

Definition of non-Federal public entities: Non-Federal public entities are limited to governmental agencies, including the governments of Indian Tribes as defined in Section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(b)). Typical applicant agencies may include: flood risk management districts, water conservation agencies, storm water management agencies, transportation departments, hydropower agencies, and port authorities that have the desire to expedite the permitting process programmatically, or for a specific project. The non-Federal public entity seeking expedited permit review under Section 408 need not be the non-Federal sponsor of the Federally authorized project.

How the Fort Worth District would expend the funds: Funds will be received by the Fort Worth District from the Authority for the purpose of expediting the review of applications to alter or modify flood control projects under the jurisdiction of the Fort Worth District. The Fort Worth District will establish a separate account to track receipt and expenditure of the funds. Funds will be expended primarily on the labor and overhead of Corps' Civil Works personnel evaluating those Section 408 applications the Authority designates as needing expedited review. Such permit processing activities would include, but not be limited to, the following: technical analyses and writing, real estate evaluation, risk analysis, copying or other clerical/support tasks, acquisition of GIS data, site visits, training, travel, coordination activities, additional personnel (including support/clerical staff), technical contracting for technical services (e.g., structural risk evaluation, geotechnical analysis, hydraulic and hydrological engineering review), creation of procedures to expedite processing, environmental documentation preparation and review. Funds will not be used for drafting, negotiating, issuing any necessary real estate instruments, review by supervisors or other persons in the decision-making chain of command, or for enforcement activities. If the Authority's funds are fully expended and are not renewed, the remaining permit applications would be handled like those of any other non-participant, subject to the availability of Inspection of Completed Works (ICW) federal funding.

Procedures to be used to ensure impartial decision-making: Approval of the Authority's Section 408 permit applications may be at the Director of Civil Works level or at the District Commander level, depending on the estimated magnitude of the impacts of the proposed modifications on Corps projects. To ensure the funds will not impact impartial decision-making, the following procedures will apply:

a. No funds received under a Section 214 agreement shall be expended to complete the District level determinations, including the determinations of the District Commander, whether these determinations result in a recommendation to the Director of Civil Works through the Division Commander, or a final permit decision approving or disapproving the permit by the District Commander under delegated Section 408 approval authority.

b. All final permit decisions for cases where Section 214 funds are used will be made available on the Fort Worth District 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. Section 214 funds will only be expended to provide priority review of the participating Authority's permit applications.

Impacts to the Civil Works Program: We do not expect priority review of the Authority's projects to negatively impact the Fort Worth District Civil Works Program, or to increase the time for standard permit evaluations of other projects.

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 Fort Worth 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 and is not otherwise contrary to the general public interest, the Fort Worth District will implement Section 214 of WRDA 2000, as amended through a signed Memorandum of Agreement (hereinafter "MOA") and accept the funds from the Authority. A second public notice will be issued regarding the final decision on this matter.

Provided that the purpose for accepting funds remains the same as that described in this notice, a new public notice is not required in the event that the MOA is amended to extend the term of the agreement; to modify the list of priority projects identified in the MOA; or to adjust the terms of the payments contemplated under the MOA.

Submission of Comments: Comments on implementing Section 214 of WRDA 2000, as amended will be accepted and made part of the record, and they will be considered in determining whether it would be in the best public interest to proceed with this administrative practice. Interested parties may submit, in writing, any comments concerning this proposal. Comments should refer to the Subject matter and the date of this Public Notice, and be forwarded by the comment due date. Comments must be sent to the U.S. Army Corps of Engineers, Attn: CESWF-PM-C, P.O. Box 17300, 819 Taylor Street, Fort Worth, Texas 76102. Alternatively, comments can be sent electronically to: michael.j.kingston@usace.army.mil

For additional information, please call Michael Kingston of my staff (817) 886-1438. This public notice is issued by the Commander of the Fort Worth District of the U.S. Army Corps of Engineers.