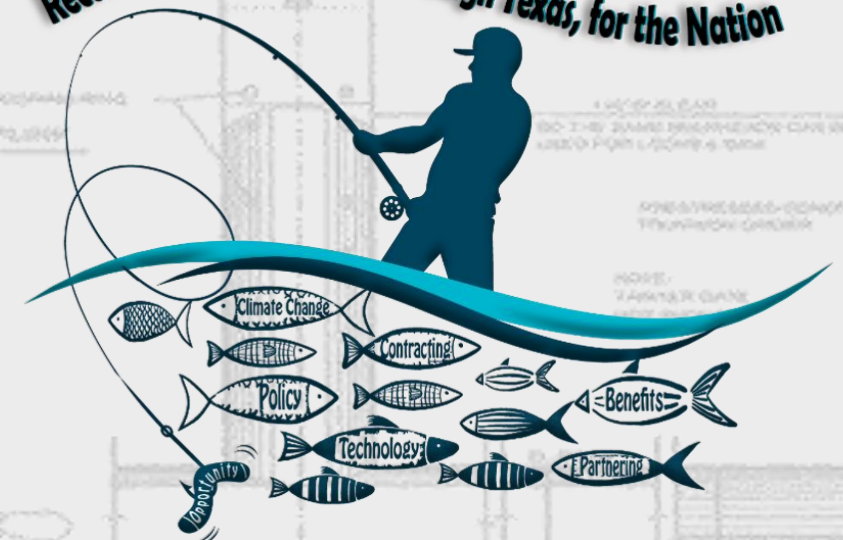


# Regulatory Water Resources Development Act (WRDA) Section 214 Funding: Can We? Should We? Why Would We?



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*Recasting Project Delivery through Texas, for the Nation*



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# WRDA 214: CAN WE? SHOULD WE? WHY WOULD WE?

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# CAN WE? AUTHORITY TO ACCEPT FUNDS



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Permissible under [Section 214 of the Water Resources Development Act](#) of 2000, as amended  
("Section 214", 33 U.S.C. 2352)

Allows Corps to accept and expend funds from certain entities to expedite permit evaluations and certain other actions submitted **BY THAT ENTITY** for projects **WITH A PUBLIC PURPOSE**

## Allowable Entities:

- Non-federal public entities (State transportation, certain City/County offices)
- Public utility companies (electricity, other utility services)
- Natural gas companies
- Railroad carriers (in certain cases)





# CAN WE? ALLOWABLE ENTITIES



## Non-federal Public Entities:

- Municipalities or Councils of Government
- Government agencies (transportation departments, tribes, etc.)
- Public Authorities (Port Authorities, Flood Control Districts, etc.)

## Public Utility Companies:

- Electric utility providers
- Gas utility companies
- Certain other public utilities
- Must meet Public Purpose standard:
  - Facilities for generation, transmission, or distribution of electric energy for sale OR
  - Distribution of natural or manufactured gas at retail for heat, light, or power.





# CAN WE? ALLOWABLE ENTITIES



## Natural Gas Companies\*

- Companies transporting natural gas for INTERstate or INTRAstater commerce
- Companies selling natural gas in INTERstate commerce
- Must meet Public Purpose standard:
  - Transportation and/or distribution of natural gas
  - Attendant storage facilities

## Railroad Carriers\*\*

- Commuter rail, high speed rail
  - Certain other carriers may be permitted after required coordination with Federal Railroad Administration (FRA)
- Excludes “plant railroads” and urban area rapid transit operations not connected to a general railroad system
  - examples of commuter rail and urban rapid transit provided by FRA
- Railroad Agreements require coordination with Corps Headquarters
- Must meet Public Purpose standard

\*As defined at 42 U.S.C. 16451 from Public Utility Holding Company Act of 2005;  
(companies that affect the public interest)

\*\* As defined at 49 U.S.C. 20102



# SHOULD WE? STANDARDS FOR 214 REVIEW



## The 214 Entity must be the applicant

- Applications submitted with subs, consultants, partner entities listed as the applicant cannot be reviewed under 214.
- Subs, Consulting firms, Partner Entities can be co-applicants.

## Project must be FOR A PUBLIC PURPOSE

- Project funding can be a mix of public-private sources, provided the project is for a public purpose.
- Each action is evaluated individually to evaluate public purpose standard.

## Impartial Decision Making by the Corps

- Review must comply with all applicable laws and regs
- No skipping steps or loopholes
- Final permit decisions made by a non-funded one-level-higher reviewer





# WHY WOULD WE? ALLOWABLE ACTIVITIES



- Jurisdictional Determinations (AJD, PJD, reevaluations under new regs)
- Site Visits and Delineation Verifications
- Pre-Application meetings
- Permit applications, renewals, modifications, NWPs, etc.
- Compliance Review as part of a permit modification
- Mitigation Bank creation and management
- Hiring of dedicated Corps Regulators (FTE is a Corps Employee)
- Process improvements (within the limits of regulations)
- Collaboration meetings
- Programmatic Agreements
- Creation of Regional General Permits
- Staff Training (Entity or Corps)
- Travel for approved activities and events
- Attending Entity events for training and networking (depending on workload)





- Enforcement Actions
- Actions submitted under another applicant's name (subcontractor, consulting firm, partner Entity), without the 214 Entity listed as a co-applicant
- Actions to resolve non-compliance situations
- EPA coordination of an AJD
- Section 408 review and coordination by other Corps offices
- Any review when sufficient funds are not available in 214 account (will continue review per non-expedited process)
- Any work when under a Federal furlough, shutdown, or lapse in appropriations





# OK, SO HOW?

## PROCESS TO INITIATE A 214 AGREEMENT



### Steps to create an Agreement:

1. Pre-application consultation – Do we qualify? Will this benefit us? What can we use it for?
2. Letter requesting an agreement
3. Additional information requests, and determination of Merit (does the request qualify)
4. Corps Public Notice – soliciting comments on request for agreement
5. Development of a Memorandum of Agreement (MOA) between Regulatory (Galveston District) and Entity (terms, initial deposit amount, supplemental payment schedule, etc.)
6. Entity responds to PN comments
7. Corps Decision Document
8. If agreed by all parties, final MOA sent for signatures (Entity first, then Corps)
9. Public Notice advising MOA was signed (no comments solicited)
10. Funds transferred by Entity (wire transfer preferred)
11. Funding accounts and labor codes created by Corps to track execution.
12. Applications accepted for 214 review, any pending actions that qualify may be transitioned to expedited review.



# THEN WHAT? ACCOUNTABILITY



## Well performing Agreements are a Partnership

- Quality applications
- Use available training
- Communication is key

## Reporting Standards:

- Notification of actions pending and priorities when multiple actions in process at once
- Monthly status checks if multiple actions in process at once
- Quarterly reports of funds expended, labor hours, actions worked
- Notification when funds are depleted
- Satisfaction letter annually from the Entity to the Corps
- Annual report from the Corps to the Entity to track funds, usage, and performance





# OTHER COMMON QUESTIONS



## How long does it take?

~1 year from letter of request to funding, provided all parties stay engaged in the process.

## How will this benefit my timeframes?

– Generally, 15-20% reduction in review timelines compared to non-214 similar actions

- The timing of each action depends on the complexity and controversial nature of the action, as well as the number of other actions the Entity is requesting at the same time.

## When does it make sense to have an Agreement?

- Entity has many projects on their 5-year horizon (or indefinitely)
- Entity has a single project with long construction timeframes, and expects multiple permit actions (AJDs, SP, permit MODs) in the future
- Entity is willing to commit funds for 3-5 years

## What if we don't need/want our Agreement anymore?

- An Entity can decide to use or not use funds on a project by project basis. Funds are held for the period of the agreement until needed.
- Provisions to cancel are agreed upon when the MOA is created, and can be enacted per that process at the Entity or Corps discretion.

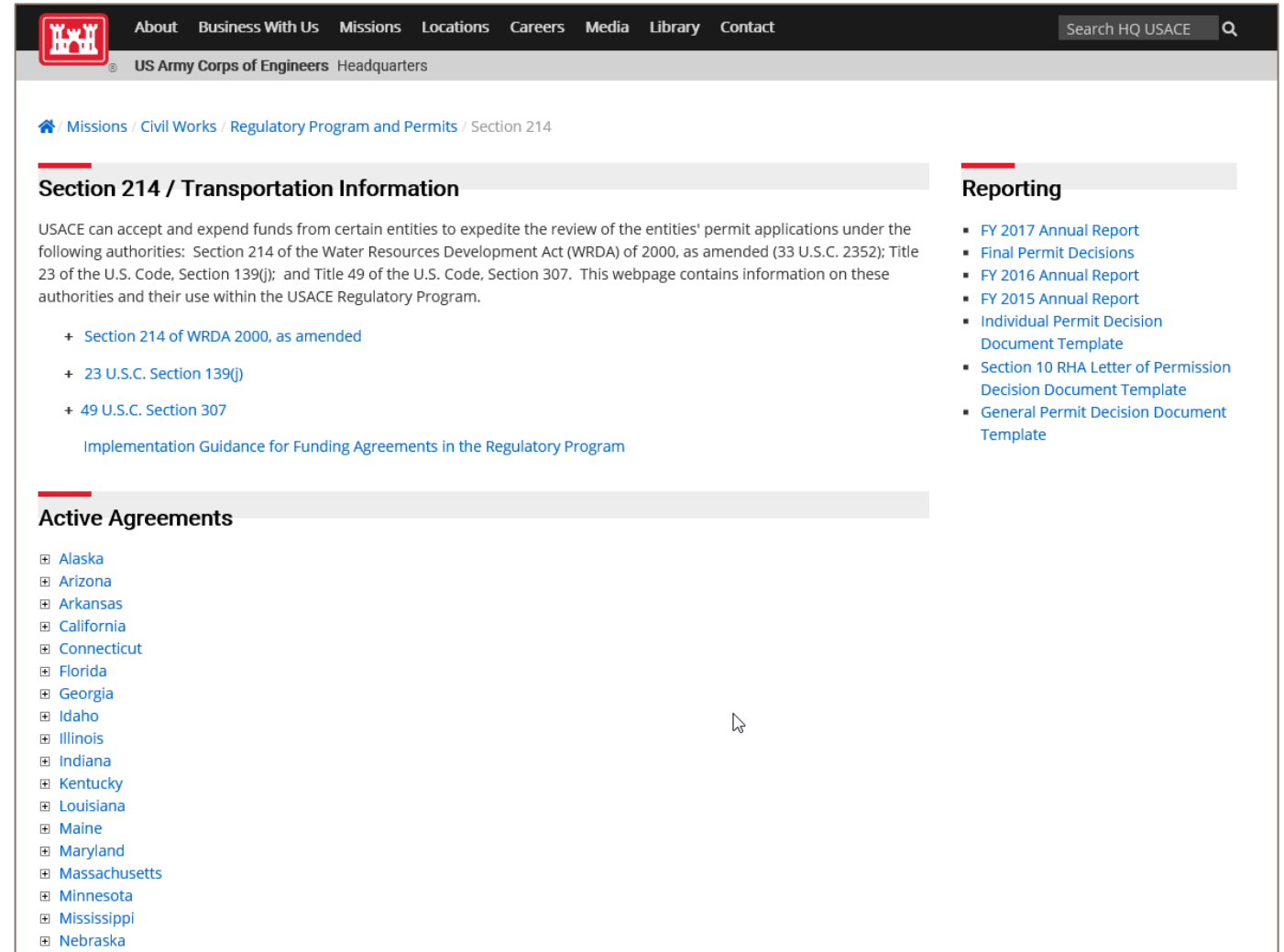


# MORE INFORMATION



## HQ 214 WRDA web page

<https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Section-214/>



The screenshot shows the US Army Corps of Engineers Headquarters website. The navigation bar includes links for About, Business With Us, Missions, Locations, Careers, Media, Library, and Contact. A search bar is located on the right. The main content area is titled "Section 214 / Transportation Information" and provides information about USACE's role in reviewing permit applications under the Water Resources Development Act (WRDA) of 2000. It lists several key authorities: Section 214 of WRDA 2000, as amended; 23 U.S.C. Section 139(j); and 49 U.S.C. Section 307. A link for "Implementation Guidance for Funding Agreements in the Regulatory Program" is also provided. On the right side, there is a "Reporting" section with links to various annual reports and decision templates. At the bottom, an "Active Agreements" section lists states with expandable icons.

**Section 214 / Transportation Information**

USACE can accept and expend funds from certain entities to expedite the review of the entities' permit applications under the following authorities: Section 214 of the Water Resources Development Act (WRDA) of 2000, as amended (33 U.S.C. 2352); Title 23 of the U.S. Code, Section 139(j); and Title 49 of the U.S. Code, Section 307. This webpage contains information on these authorities and their use within the USACE Regulatory Program.

- + [Section 214 of WRDA 2000, as amended](#)
- + [23 U.S.C. Section 139\(j\)](#)
- + [49 U.S.C. Section 307](#)

[Implementation Guidance for Funding Agreements in the Regulatory Program](#)

**Reporting**

- [FY 2017 Annual Report](#)
- [Final Permit Decisions](#)
- [FY 2016 Annual Report](#)
- [FY 2015 Annual Report](#)
- [Individual Permit Decision Document Template](#)
- [Section 10 RHA Letter of Permission Decision Document Template](#)
- [General Permit Decision Document Template](#)

**Active Agreements**

- ▣ [Alaska](#)
- ▣ [Arizona](#)
- ▣ [Arkansas](#)
- ▣ [California](#)
- ▣ [Connecticut](#)
- ▣ [Florida](#)
- ▣ [Georgia](#)
- ▣ [Idaho](#)
- ▣ [Illinois](#)
- ▣ [Indiana](#)
- ▣ [Kentucky](#)
- ▣ [Louisiana](#)
- ▣ [Maine](#)
- ▣ [Maryland](#)
- ▣ [Massachusetts](#)
- ▣ [Minnesota](#)
- ▣ [Mississippi](#)
- ▣ [Nebraska](#)



# NOW WHAT?



To set up a pre-application consultation,  
or to ask specific questions:

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409-766-3105

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