



Special Public Notice

**U.S. Army Corps
Of Engineers
Galveston District**

Texas Department of Transportation
(TXDOT) – WRDA 2000 – Section 214

Date Issued: 10 December 2020

Comments Due: 11 January 2021

**PROPOSED FUNDING AGREEMENT
BETWEEN
U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT
AND TEXAS DEPARTMENT OF TRANSPORTATION
PURSUANT TO
SECTION 214 WATER RESOURCE DEVELOPMENT ACT 2000,
AS AMENDED (DECEMBER 2016)**

PURPOSE OF PUBLIC NOTICE: To inform you of a proposed agreement between the U.S. Army Corps of Engineers, Galveston District, and the Texas Department of Transportation (TXDOT), to transfer funds pursuant to Section 214 of the *Water Resources Development Act of 2000, as amended (December 2016)* to expedite the evaluation of permits under jurisdiction of the Department of the Army (DA).

AUTHORITY: 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, or a public utility company, 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 in effect through December 31, 2021.

The Secretary of the Army has designated this responsibility to the Chief of Engineers and his authorized representatives, including the Commander of the Galveston District, U.S. Army Corps of Engineers.

The Galveston District entered into an Agreement with TXDOT to accept and expend funds from TXDOT pursuant to WRDA 2000, as amended, on 9 October 2015 (the Original Agreement). The Original Agreement expired on 30 September 2020. An Amendment to extend the time of the Original Agreement was executed on 25 September 2020. The Amendment did not change the provisions of the Original Agreement, with the exception of the expiration date, which is extended to 30 September 2021.

This Public Notice announces the preliminary intent of the Galveston District to enter into a new Agreement with TXDOT to accept and expend funds contributed by TXDOT to expedite processing of their DA permit applications, subject to a series of limitations. The new Agreement is proposed to go into effect on or after 1 October 2021. This Public Notice also solicits comments from the general public on the subject of acceptance and expenditure of funds contributed by a non-Federal public entity to expedite the evaluation of DA permit applications.

How the Galveston District would expend the funds: The Corps of Engineers' Regulatory Program is funded as a Congressionally-appropriated line item in the annual Federal budget. Additional funds received from a non-Federal public entity, or public utility company, would be used to augment the Galveston District Regulatory budget in accordance with the provisions of WRDA 2000. The Galveston District would establish separate accounts for each funding non-Federal public entity, or public utility company, to track receipt and expenditure of the funds. Galveston District Regulatory employees would charge their time against the respective account of a non-Federal public entity, or public utility company, when they did work to expedite resolution of one of that entity's permit requests. With an increased Regulatory budget, the Galveston District may hire additional employees, paying salaries in part from the non-Federal public entity, or public utility company, funding to the degree the employees work on expediting those entities' permit applications.

The kind of activities for which funds would be expended: Funds would mainly be expended on the salaries and overhead of Regulatory Project Managers performing expedited processing activities for participating public entities. Such activities would include, but not be limited to, the following: application intake review, drawings correction, jurisdictional determinations, site visits, public notice preparation, preparation of correspondence, conduct of the public interest review, preparation of draft permit decision documents, and meetings with the applicant. Funds would not be expended for review of project managers' work by supervisors, other elements of the Galveston District, or other persons in the decision making chain of command. No enforcement or compliance activities would be paid from the augmenting funds, nor would the funds be used for paying the costs of public hearings and distribution of public notices.

If a participating entity's funds are expended and are not renewed, their remaining permit applications would be handled like those of any other non-participant, in a manner decided by the assigned Regulatory Project Manager and his or her supervisor.

Procedures Galveston District will use to ensure that the funds will not impact impartial decision making: To ensure that the funds will not impact impartial decision making, the following procedures, mandated from Headquarters, U.S. Army Corps of Engineers, would apply to all cases using additional funds provided by the participating non-Federal public entity, or public utility company:

- a. All final permit decisions for cases where these funds are used must be reviewed at least by one level above the decision maker. For example, if the decision maker is the Chief, Regulatory Division, then the reviewer would be the District Commander. If the decision maker is the District Commander, the final decision must be reviewed by the Division Commander.
- b. All final permit decisions for cases where these funds are used will be made available on the Galveston District Regulatory web page.
- c. The Galveston District will not eliminate any procedure or decisions that would otherwise be required for that type of project and permit application under consideration.
- d. The Galveston District 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 Regulatory Program employees, before the decision is made.

Benefits non-Federal public entity, or public utility company, would receive from their funds: Section 214 of WRDA 2000 is designed to enable the Galveston District Regulatory Program to expedite the processing of public projects. Participating agencies can expect some of their permit applications to receive expedited handling, and to the degree we consider it appropriate, they can set priorities. Their augmentation of our Regulatory budget may allow us to hire additional people, increasing the size of the pool from which we would assign people to expedite these applications. The result for participants should be streamlined permit processing, new tools to resolve jurisdictional determination issues, and a more predictable time-line for obtaining DA authorizations.

Impacts we foresee to our Regulatory Program and to DA permit evaluations that are not subsidized by funds contributed by non-Federal public entity, or public utility company: We do not expect this method of expediting the permit review of certain public projects to negatively impact the Galveston District's Regulatory Program, or to increase the waiting time for permit evaluations that are not subsidized by funds contributed by non-Federal sponsors. Rather, the Regulatory Branch Project Managers could process the remaining applications which are not assigned to the WRDA 2000 employees/contractors on a quicker basis. Reference documents and programmatic tools developed by public entity funding will also be available to the general public. We expect the benefits of implementing this program to translate into an enhanced evaluation capability for all.

Consideration of Comments: This public notice has a 30-day comment period. Following the review of comments we receive in response to the public notice, the Galveston District Commander will determine if acceptance and expenditure of the funds is in compliance with Section 214 of WRDA 2000. If the District Commander determines, after considering public comments, that the acceptance and expenditure of the funds is in compliance with the Act and is not otherwise contrary to the general public interest, the Galveston District will proceed to accept and expend such funds from TXDOT. 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 final public notice will be issued regarding the District Commander's decision. Beyond that, no new public notice will be issued if a participating non-Federal public entity, or public utility company, changes the amount of funds previously furnished, provided that the purpose remains the same.

The 214 authority to accept and expend funds from non-Federal public entities has no expiration date. The 214 authority to accept and expend funds from a public utility company expires on 10 June 2024, unless extended by the appropriate authority.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before 11 January 2021. Extensions of the comment period may be granted for valid reasons provided a written request is received by the limiting date. **If no comments are received by that date, it will be considered that there are no objections.** Comments and requests for additional information should be submitted to:

Policy Analysis Branch
Regulatory Division, CESWG-RD-P
U.S. Army Corps of Engineers
P.O. Box 1229
Galveston, Texas 77553-1229
409-766-3869 Phone
409-766-3931 Fax
swg_public_notice@usace.army.mil

DISTRICT ENGINEER
GALVESTON DISTRICT
CORPS OF ENGINEERS