



DEPARTMENT OF THE ARMY  
ALASKA DISTRICT, U.S. ARMY CORPS OF ENGINEERS  
P.O. BOX 6898  
JBER, AK 99506-0898

NOV 17 2014

CEPOA-DE

MEMORANDUM FOR RECORD

SUBJECT: Acceptance of Funds Contributed by Alaska Gasline Development Corporation (AGDC), a Non-Federal Public Entity and Alaska Industrial Development and Export Authority (AIDEA), a Non-Federal Public Entity

1. References:

a. Section 214 of the Water Resources Development Act (WRDA) of 2000 (Public Law 106-541) as amended.

b. Memorandum, CECW, 1 October 2008, subject: Implementation Guidance for Section 2002 of the Water Resources Act of 2007 (Regulatory Program Funds Contributed by Non-Federal Entities).

2. The purpose of this memorandum is to document my decision to enter into an agreement to accept and expend funds contributed by AGDC and AIDEA, both non-Federal public entities, to expedite evaluation of permit applications and processes under consideration of our Regulatory Division in accordance with Reference 1a.

3. Per reference 1b, an initial public notice was circulated on 31 January 2014. Three comments were received, as follows: AGDC, AIDEA and the State of Alaska Department of Environmental Conservation (ADEC) responded that they were all interested in potential agreements.

4. Alaska District Regulatory Division recommends acceptance of funds from AGDC and AIDEA.

5. I have carefully considered AGDC's and AIDEA's requests and the recommendation of the Regulatory Division. I have determined that acceptance and expenditure of funds from AGDC and AIDEA will not adversely impact impartial decision-making with respect to regulatory permit applications, either substantively or procedurally. The funding program will better serve the public interest through more cost-effective processing of permit applications, enhanced evaluation capability, and a streamlined permit processing system. Our capacity to evaluate permit applications from applicants not party to this funding agreement will not be adversely affected. Accordingly, I find that acceptance and expenditure of funds from AGDC and AIDEA is appropriate and is in accordance with the provisions of Section 214 of WRDA 2000.

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6. Please contact Benjamin Soiseth, North Central Section Chief, of my staff via Benjamin.N.Soiseth@usace.army.mil, or telephone 907-753-2690.

A handwritten signature in black ink, appearing to read 'C. D. Lestochi', written over a horizontal line.

CHRISTOPHER D. LESTOCHI  
COL, EN  
Commander

Enclosures



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS  
WASHINGTON, D.C. 20314-1000

CECW-CO

OCT - 1 2008

MEMORANDUM FOR MAJOR SUBORDINATE COMMANDS AND DISTRICT  
COMMANDS

SUBJECT: Implementation Guidance for Section 2002 of the Water Resources Act of 2007  
(Regulatory Program Funds Contributed by Non-Federal Public Entities)

1. Section 214 of the Water Resources Development Act of 2000 (Public Law 106-541), as amended, provides;

(a) The Secretary, 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 in effect from October 1, 2000, through March 31, 2009.

2. The Secretary of the Army delegated his authority to the Chief of Engineers and his authorized representatives to, after public notice, 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 on 11 July 2001. District and Division Commanders are hereby authorized to accept and expend funds contributed by non-Federal public entities subject to the limitations described in this guidance memorandum.

3. Initial Public Notice for Intent to Accept Funds. Prior to accepting and expending funds contributed by non-Federal public entities, the District must issue a public notice indicating: the non-Federal public entity providing such funds, the Corps authority to accept and expend such funds, the reason for such contributions, how acceptance of the funds is expected to expedite the permit review process, what types of activities the funds will be expended on, and what procedures will be in place to ensure that the funds will not impact impartial decision making.

Examples of acceptable activities that the funds may be expended on include, but are not limited to: technical writing, site visits, training, travel, field office set up costs, copying, coordination activities, additional personnel (including support/clerical staff), technical contracting, programmatic tool development and improvement, and acquisition of GIS data.

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(Regulatory Program Funds Contributed by Non-Federal Public Entities)

Funds may also be used to hire contract staff. Since the process of accepting funds may have the effect of giving priority to the evaluation of projects proposed by public entities, the Public Notice should include information on the impacts to the District's regulatory program and permit evaluations that are not subsidized by funds contributed by non-Federal public sponsors. A new public notice is not required if the non-Federal public entity is changing the amount of funds previously furnished, provided that the purpose remains the same. This possibility should be clearly stated in the initial public notice.

4. Basis for Acceptance of Funds. Following the review of the comments received in response to the public notice, the District Commander will determine if accepting funds will expedite processing of permits for the funding entity, if the District can put in place measures to ensure impartial decision making, and if accepting these funds will not slow down evaluation of other permits. If the District Commander determines, after considering public comments, that the acceptance and expenditure of the funds is appropriate, the funds may be accepted and expended. 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. An informational public notice will be issued regarding the District Commander's decision.

5. Accountability. The funds must be accounted for to ensure they are expended for the intended purpose. District Commanders will establish separate accounts to track the acceptance and expenditure of the funds. Within 30 days of the conclusion of each fiscal year, Division Commanders will provide to CECW-CO, for review, letter reports documenting the acceptance and expenditure of funds; an accounting of the amount, type, and source of funds accepted and spent; copies of any public notices published within that fiscal year, any comments received with responses given; a quantitative and qualitative assessment of how the use of the funds expedited the permit review process; an analysis of any issues regarding impartial decision making; a copy of the performance metrics used by the District to evaluate the effectiveness of the use of funds; a statement certifying that all funded project managers are aware of and appropriately trained on the requirements contained in this guidance memorandum; and a letter from the funding entity detailing their level of satisfaction with the District's performance under the agreement. CECW-CO will compile the reports received and provide an information copy to the OASA (CW) within 60 days of the conclusion of each fiscal year.

6. Non-Federal Public Entity. Non-Federal public entities are limited to governmental agencies, including tribal governments of Indian Tribes as defined in Section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(b)). Normally, applicant agencies would be entities such as: state, local, or Tribal transportation departments, port authorities, flood and storm water management agencies, economic development agencies, and housing agencies that have the desire to expedite the permitting process programmatically, or

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for a specific project. Private entities are prohibited from entering into agreements with Districts. Permit applications from private entities for infrastructure projects paid for by private funds, or a mix of private and public funds, such as roads and utility trunk lines, but designed and built to benefit the public may be considered by non-Federal entities for submission to the Corps for processing under a funded agreement. However, it remains the District Commander's decision whether or not such applications will be processed by a funded position or to have such an application be processed by Corps-funded regulators. Applications from private entities for private projects will not be considered or accepted for processing under a funded agreement.

7. Impartial Decision making. Division and District Commanders must insure that the acceptance and expenditure of these funds will not impact impartial decision making with respect to permit review and final permit decisions, either substantially or procedurally. At a minimum, District will comply with the following standards.

**For the purposes of this guidance, the decision maker is the person with signature authority.**

a. In cases where funds are used, all final permit decisions, including all reporting nationwide, general, and regional permit verifications, must be reviewed and signed by at least one level above the decision maker, unless the decision maker is the District Commander. For example, if the decision maker is the Chief, Regulatory Branch, then the reviewer would be the Chief, Operations Division. Team leaders are appropriate one-level-above reviewers provided signature authority has been delegated to the project manager level. In accordance with all national policy and guidance, Districts are encouraged to delegate signature authority to the lowest appropriate level.

b. All documents involved in the decision making process (e.g. decision document and permit instrument, if applicable) must be reviewed and signed by the one-level-above reviewer as defined above.

c. All jurisdictional determinations made on projects where funds are used must have documentation that a non-funded, Regulator reviewed and agreed with the determination (e.g. peer review). This review does not need to be a field review.

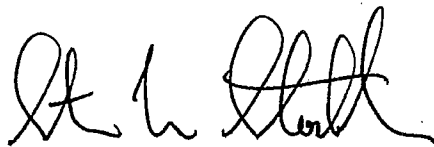
d. All final permit decisions, including all reporting nationwide, general, and regional permit verifications, for cases where these funds are used will be made available and updated monthly on the District's web page in an area separate from any other final actions, clearly identifiable as being for projects funded by through this authority.

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(Regulatory Program Funds Contributed by Non-Federal Public Entities)

- e. Any procedures or decisions that would otherwise be required for a specific type of project or permit under consideration cannot be eliminated; however, process improvements that are developed can be shared in order for all members of the regulated public to benefit.
  - f. The Corps must comply with all applicable laws and regulations.
  - g. 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 before the permit decision is made.
  - h. Funds will not be used for enforcement activities. Funding may be used for compliance activities including monitoring of mitigation sites.
8. This guidance is effective immediately and will remain in effect as long as the authority to accept and expend funds from non-Federal public entities is valid. That authority currently expires on 31 December 2009, unless otherwise extended by Congress.

FOR THE COMMANDER:



STEVEN L. STOCKTON, P.E.  
Director of Civil Works



US Army Corps  
of Engineer  
Alaska District

# Special Public Notice

DATE: January 31, 2014

Identification No: POA-2014-12  
(In reply refer to above number)

Expiration Date: March 3, 2014

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This Special Public Notice announces the preliminary intent of the Alaska District to accept and expend funds contributed by non-Federal public entities under the provisions of the Water Resources Development Act (WRDA) of 2000, as amended. If a non-Federal public entity is interested in pursuing a WRDA agreement, please contact this office at the above address. The Alaska District point of contact for this public notice is Mike Holley, who can be reached at (907) 753-2777.

This Public Notice also solicits comments from the general public on the subject of acceptance and expenditure of funds contributed by the non-Federal public entity to expedite the evaluation of Department of the Army (DA) permit applications.

Section 214 of WRDA 2000 is designed to enable the Alaska District regulatory program to expedite the processing of permits identified as priority non-Federal 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 would 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 issues, and a more predictable time-line for obtaining DA authorizations.

We do not expect this method of expediting the permit review of certain public projects to negatively impact the Alaska 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 Division 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 participants.

This public notice has a 30-day comment period. Following the review of comments we receive in response to this public notice, the Alaska 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 Alaska District will proceed to accept and expend such funds from the non-Federal public entity. 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 increases the amount of funds previously furnished, provided that the purpose remains the same.

The authority to accept and expend funds from non-Federal public entities expires on December 31, 2016.

Comments on implementing Section 214 of WRDA 2000 will be accepted and made part of the record, and they will be considered in determining whether it would be in the public interest to proceed with this administrative practice. Comments should reach this office, Attn: Regulatory Division, not later than the expiration date of this public notice.

Note: This Public Notice and other documents dealing with various aspects of WRDA 2000 funding, also appear under the Water Resources Development Act link at the Alaska District's internet Regulatory Home Page:

*<http://www.poa.usace.army.mil/Reg/>*

District Engineer  
U.S. Army, Corps of Engineers



## ATTACHMENT

Background: On December 11, 2000, WRDA 2000 (Public Law No. 106-541) was signed into law by the President of the United States.

Section 214 of WRDA 2000 reads as follows:

(a) IN GENERAL.-In Fiscal Years 2001 through 2003, 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) EFFECT ON PERMITTING.-In carrying out this section, the Secretary shall ensure that the use of funds accepted under subsection (a) will not impact impartial decisionmaking with respect to permits, either substantively or procedurally."

On December 1, 2003, the Energy and Water Appropriations Bill, (H2754, Public Law 108-137) was signed into law by the President of the United States.

Section 214 of WRDA 2000 was amended by striking "2003" and inserting "2005", and was subsequently amended to "December 31, 2006". Amendments over the years have extended this authority, and H.R. 4165 extended the WRDA 214 authority until December 31, 2016.

The Secretary of the Army has delegated this responsibility to the Chief of Engineers and his authorized representatives, including the Commander of the Alaska District, U.S. Army Corps of Engineers (Alaska District).

We also want to discuss the following subjects with this Public Notice:

- definition of non-Federal public entities,
- how the Alaska District would expend the funds, the kind of activities for which funds would be expended,
- the procedures we will use to ensure that the funds will not impact impartial decisionmaking,
- the benefits non-Federal public entities would receive from their funds,
- impacts we foresee to our regulatory program and to DA permit evaluations that are not subsidized by funds contributed by non-Federal public entities.

Non-Federal public entities are comprised of various forms of state and local governmental agencies and Indian tribal governments. They include, but are not limited to, local transportation agencies desiring to expedite highway projects, port authorities wanting permits expedited for marine terminals, flood and storm water management agencies, or governmental economic development agencies seeking to expedite permit applications for certain kinds of work, including industrial or commercial development. Two or more non-Federal public entities could jointly fund a single account. To date, the Alaska District has had funding discussions with the Alaska Department of Environmental Conservation (ADEC) and the Alaska Department of Natural Resources (ADNR). We expect participating entities would be public agencies with a number of permit applications being simultaneously considered by the Alaska District, and enough future projects in the planning stage to warrant this form of partnership.

The Corps of Engineers' regulatory program is funded as a congressionally appropriated line item in the annual Federal budget. Additional funds received from non-Federal public entities would be used to augment the Alaska District regulatory budget in accordance with the provisions of WRDA 2000. The Alaska District would establish separate accounts for each funding non-Federal public entity to

track receipt and expenditure of the funds. Alaska District regulatory employees would charge their time against the respective account of a non-Federal public entity when they did work to expedite resolution of one of the applications from a state agency other than ADEC or ADNR. With an increased regulatory budget, the Alaska District would hire additional employees, paying salaries in part from the non-Federal public entity funding to the degree the employees work on expediting certain permit applications.

Funds would mainly be expended on the salaries and overhead of Regulatory Project Managers performing expedited processing activities for priority projects as identified by participating non-Federal 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 Alaska District, or other persons in the decisionmaking 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, the 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.

To ensure that the funds will not impact impartial decisionmaking, 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 entities:

- a. All final permit decisions for cases where these funds are used must be reviewed at least by one level above the decisionmaker, unless the decisionmaker is the District Commander. For example, if the decisionmaker is the Chief, South Branch, Regulatory Division, then the reviewer would be the Deputy Chief, Regulatory Division.
- b. All final permit decisions for cases where these funds are used will be made available on the Alaska District Regulatory web page.
- c. The Alaska District will not eliminate any procedures or decisions that would otherwise be required for that type of project and permit application under consideration.
- d. The Alaska 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 decisionmaker'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.

# ASAP

Alaska's In-State Gas Pipeline

Mike Thompson  
ERL Manager  
Alaska Stand Alone Pipeline / ASAP  
Alaska Gas Development Corporation  
3201 C St., Suite 200  
Anchorage, AK 99503

February 24, 2014


Mike Holley  
Team Leader  
US Army Corps of Engineers  
Alaska District  
P.O. Box 6898  
JBER, Alaska 99506

Re: WRDA Agreement to Reimburse USACE

Dear Mike,

The Alaska Gas Development Corporation (AGDC) expresses its interest in entering into an agreement with the United States Army Corps of Engineers (USACE) to reimburse costs associated with expediting the permitting of the Alaska Stand Alone Pipeline (ASAP) project, as specified in Section 214 of the Water Resources Development Act (WRDA) of 2000, amended under H.R. 4165. The AGDC is a public corporation of the State of Alaska and a non-Federal public entity, as defined by the WRDA. The ASAP project can, as a priority non-Federal public project, therefore engage in an agreement that allows the USACE Alaska District to accept and expend AGDC funds to expedite the project. Please consider this letter as an expression of interest in pursuing a WRDA agreement and contact me to discuss further details.

Sincerely,



Mike Thompson  
ERL Manager  
Alaska Stand Alone Pipeline / ASAP

cc: Kurt Fredriksson, ASAP ERL Deputy Manager  
cc: Kalb Stevenson, ASAP Environmental Section Lead  
cc: Mary Romero, USACE Alaska District  
cc: Estrella Campellone, USACE Alaska District