



DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
P. O. BOX 4970
JACKSONVILLE, FLORIDA 32232-0019

REPLY TO
ATTENTION OF

Project Management

PUBLIC NOTICE

Proposal to Accept Funds from The South Florida Water Management District

TO WHOM IT MAY CONCERN: The Jacksonville District, U.S. Army Corps of Engineers is considering accepting funds from the South Florida Water Management District (SFWMD) to expedite the evaluation of the SFWMD's application for modifications to Federal projects in connection with its Lake Hicpochee Shallow Storage and Hydrologic Enhancement Project in accordance with Section 14 of the Rivers and Harbors Act (33 U.S.C. §408), subject to a series of limitations specified below.

AUTHORITY: Section 214 of the Water Resources Development of Act of 2000 (WRDA 2000, Public Law 106-541) as amended, provides:

(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 decision making with respect to permits, either substantively or procedurally.

This authority was extended to December 31, 2016, via HR 6184 (PL 111-315).

Section 14 of the Rivers and Harbors Act, 33 USC § 408, **TAKING POSSESSION OF, USE OF, OR INJURY TO HARBOR OR RIVER IMPROVEMENTS** provides:

It shall not be lawful for any person or persons to take possession of or make use of for any purpose, or build upon, alter, deface, destroy, move, injure, obstruct by fastening vessels thereto or otherwise, or in any manner whatever impair the usefulness of any sea wall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the United States, or any piece of plant, floating or otherwise, used in the construction of such work under the control of the United States, in whole or in part, for the preservation and improvement of any of its navigable waters or to prevent floods, or as boundary marks, tide gauges, surveying stations, buoys, or other

established marks, nor remove for ballast or other purposes any stone or other material composing such works: Provided, That the Secretary of the Army may, on the recommendation of the Chief of Engineers, grant permission for the temporary occupation or use of any of the aforementioned public works when in his judgment such occupation or use will not be injurious to the public interest: Provided further, That the Secretary may, on the recommendation of the Chief of Engineers, grant permission for the alteration or permanent occupation or use of any of the aforementioned public works when in the judgment of the Secretary such occupation or use will not be injurious to the public interest and will not impair the usefulness of such work.

The Secretary of the Army has delegated this responsibility to the Chief of Engineers and his authorized representatives, including the Commander of the Jacksonville District, U.S. Army Corps of Engineers. The authorization to accept and expend funds received from non-Federal public entities after December 31, 2016 is conditioned on a future extension of the authority in Section 214 of WRDA 2000. The Jacksonville District previously had an agreement in place with the SFWMD to accept and expend funds to expedite evaluations of permits pursuant to Section 404 of the Clean Water Act (33 U.S.C. §1344) and/or Section 10 of the Rivers and Harbors Act (33 U.S.C. §403) for the SFWMD's priority water resource projects. That agreement allowed the Corps to expedite the processing of the 404 Permits.

NON-FEDERAL PUBLIC ENTITY PROVIDING FUNDS: Non-Federal public entities are defined in Corps of Engineers guidance for implementing Section 214, as state and local governmental agencies and Indian tribal governments. They include, but are not limited to, local transportation agencies, port authorities, flood and storm water management agencies, and governmental economic development agencies. The South Florida Water Management District is a public entity of the State of Florida consistent with this definition.

HOW ACCEPTANCE OF FUNDS WOULD EXPEDITE THE PERMIT REVIEW PROCESS: Section 408 reviews may be federally funded through the Corps' Operation and Maintenance Inspection of Completed Works (ICW) program, by authorized project budgets if there is an ongoing funded project activity directly related to the 408 proposal, or by any other legally available source of funding. However, these funds are limited, and the Jacksonville District does not have sufficient funding in FY16 to expedite Section 408 reviews. Additional funds may be received by the Jacksonville District from the SFWMD in accordance with the provisions of Section 214 of WRDA 2000 as cited above. The Jacksonville District would establish a separate account to track receipt and expenditure of the funds in the Corps of Engineers Financial Management System. With the supplemental funding, the Jacksonville District would pay for technical support services. Corps personnel would charge their time against a specific account when working on this Section 408 permit application, which the SFWMD has deemed a priority.

WHAT ACTIVITIES THE FUNDS WOULD BE EXPENDED ON: Funds would be expended primarily on the labor and overhead of the Corps' Civil Works personnel evaluating the permit application. Such permit processing activities would include, but not be limited to, the following: technical/engineering analyses, real estate evaluation, risk analysis, coordination activities, technical contracting, environmental evaluations, documentation preparation and review, site visits, and travel. Funds will not be used for drafting, negotiating, or issuing any necessary real estate instruments.

PROCEDURES TO ENSURE THAT THE FUNDS WOULD NOT IMPACT IMPARTIAL DECISION-MAKING: Depending on the magnitude of the impacts of the proposed modifications to the Federally authorized projects, approval of the SFWMD's Section 408 permit applications may be granted by the Secretary of the Army to the Chief of Engineers, or further delegated to the District Commander. To ensure funds will not impact impartial decision-making, the following procedures would apply:

- a. No funds received from SFWMD will be used by Corps management, specifically the District Commander, in making a final district level determination on the Section 408 permits included in this agreement. The funds will only be used by Corps staff for technical and policy review to develop a recommendation to Corps management.
- b. All final permit decisions for cases where Section 214 funds are used will be made available on the Jacksonville District web page.
- c. The Corps will not eliminate any procedure 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 expedite review of the SFWMD's permit applications.

IMPACTS ON JACKSONVILLE DISTRICT'S SECTION 408 AND CIVIL WORKS PROGRAMS: Review of SFWMD's proposed project will not adversely affect the Jacksonville District's Civil Works Program. Sufficient engineering and other technical resources exist within the District to accomplish the proposed reviews without impacting other Civil Works projects or programs. Additionally, the Corps will ensure that acceptance of funds to expedite review of SFWMD's Section 408 request will not slow the evaluation of other Section 408 requests.

MEMORANDUM OF AGREEMENT:

Prior to accepting and expending funds provided by SFWMD for expedited Section 408 review, the Jacksonville District and SFWMD will execute a Memorandum of Agreement ("MOA") that will describe the terms and conditions associated with the provision and expenditure of the funds. A new public notice will not be posted in the event that the MOA is amended to extend the term of the agreement, to modify the proposed alteration identified in the MOA, or to adjust the terms of the annual advance payment contemplated under the MOA; provided that the purpose for accepting funds remains the same as that described in this notice.

POINT OF CONTACT: Questions regarding the subject of this public notice should be directed to:

U.S. Army Corps of Engineers
Jacksonville District
Project Management
ATTN: James Hourican
PO Box 4970
Jacksonville, FL 32232

Or e-mailed to: James.J.Hourican@usace.army.mil

For additional information you may contact James Hourican by telephone at 904-232-1268.

A handwritten signature in black ink, appearing to read "J. T. Murphy", with a long, sweeping horizontal line extending to the right.

Jerry T. Murphy, P.E., PMP
Deputy District Engineer
for Programs and Project Management