DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET, NW
WASHINGTON, DC 20314-1000

REPLY TO
ATTENTION OF

CECW-CO-R

AUG 14 2015

MEMORANDUM FOR COMMANDERS, MAJOR SUBORDINATE COMMANDS, AND DISTRICT COMMANDS

SUBJECT: Implementation Guidance for Section 1006 of the Water Resources Reform and Development Act of 2014 and Guidance on the Use of Funding Agreements within the Regulatory Program

1. References.

a. Section 214 of the Water Resources Development Act (WRDA) of 2000, as amended, codified at 33 U.S.C. § 2352.

b. Section 6002(j) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users (SAFETEA-LU) and Section 1307 of the Moving Ahead for Progress in the 21st Century Act (MAP-21), codified at 23 U.S.C. Section § 139(j).

2. Purpose and Applicability. The purpose of this memorandum is to provide guidance to Regulatory offices within districts on the establishment, management, and oversight of funding agreements under the main statutory authorities that allow the Corps to accept and expend funds to expedite the permit review process, as well as incorporate changes as a result of Section 1006 of the Water Resources Reform and Development Act of 2014 (WRRDA). This document is applicable to all current and proposed funding agreements with Regulatory under any one or more of the following statutory authorities: (i) 33 U.S.C. § 2352, Section 214 of the Water Resources Development Act (WRDA) of 2000, as amended (Section 214); or (ii) 23 U.S.C. § 139(j) (Section 139(j)) added to Title 23 of the United States Code by Section 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users (SAFETEA-LU). This document is additionally applicable to those agreements that are still valid, but were originally established under the repealed Section 1309 of the Transportation Equity Act for the 21st Century (TEA-21).

3. Background.

a. Section 214 provides that the Secretary of the Army, after public notice, may accept and expend funds contributed by a non-federal public entity, public-utility company, or natural gas company to expedite the permit review process. The authority to accept and expend funds from non-federal public entities does not expire, unless modified by law. The authority to accept and expend funds from public-utility

Printed on Recycled Paper

companies and natural gas companies expires on 10 June 2021, unless otherwise extended or revoked by law. The full legislative text is enclosed in Appendix A.

b. Section 139(j) provides that the Secretary of Transportation may approve a request by a state to provide funds to affected federal agencies participating in the environmental review process to support activities that directly and meaningfully contribute to expediting and improving transportation project planning and delivery for projects in that state. The full legislative text is enclosed in Appendix A.

c. By memorandum dated 29 June 2015, the Secretary of the Army delegated his authority to the Assistant Secretary of the Army for Civil Works (ASA(CW)). This authority has been redelegated by memorandum dated 1 July 2015, to the Chief of Engineers and his authorized representatives to, after public notice, accept and expend funds contributed by non-federal public entities, public-utility companies, or natural gas companies to expedite the evaluation of permits under the jurisdiction of the Department of the Army. The Chief of Engineers redelegated this authority to district and division commanders by memorandum dated 3 August 2015. The Administrative Assistant to the Secretary of the Army was provided copies of these delegations on 3 August 2015. These delegations of authority shall remain in effect until 10 June 2021.

d. Although not a limitation on the authority of any official that has been delegated the authority indicated in 3.c., in those cases where a proposed action or decision regarding the acceptance of funds contributed by non-federal public entities, natural gas companies, or public-utility companies represents a change in precedent or policy; is of significant White House, Congressional, Department of the Army or public interest; or has been, or should be of interest or concern to the ASA(CW) or the Secretary of the Army for any reason; the following procedure should be followed:

(1) Prior to making a decision on whether to accept and expends funds under Section 214 or rendering a permit decision under a Section 214 agreement, the district shall notify their Major Subordinate Command (MSC) Regulatory Program Manager and the HQ Regulatory Section 214/Transportation Program Manager of the circumstances of the action or decision.

(2) The HQ Regulatory Section 214/Transportation Program Manager will determine if briefing of Army is required in accordance with the delegation requirements, and arrange an informational briefing, as necessary. Should a briefing be required, the district will hold the decision of concern in abeyance until the briefing is completed.

4. Guidance for All Agreements within the Regulatory Program.

a. Accountability. Funds accepted under any of the statutory authorities 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 in accordance with the current fiscal year budget execution guidance.

Any district that has accepted and/or expended funds under any of the statutory authorities in a fiscal year must provide an annual report on the funding agreement(s) to CECW-CO-R. Annual reports must include the following:

(1) A list of all active funding agreements during the subject fiscal year;

(2) An accounting only for the subject fiscal year of the total funds accepted and total funds expended per agreement;

(3) A list of all permit decisions issued under a funding agreement along with impact and mitigation data. Districts should use the "WRRDA Summary Report" function in ORM to get these data;

(4) A list of all employees that charged time to any agreement and verification that all employees have completed mandatory training on this guidance;

(5) A qualitative description of how the agreement expedited the review for the funding entity. This should include any major accomplishments including development of programmatic tools or agreements, cross-agency training or outreach efforts, or major permit decisions during the subject fiscal year; and

(6) A quantitative description of how the agreement expedited the review for the funding entity. For agreements that include review of multiple permit applications, this should include a comparison of review timeframes by type of permit for the funding entity as compared to other applicants within the same district, as well as any performance metrics established for the agreement. Districts have discretion on the parameters to compare, which may include average days in review and/or percentage of actions meeting performance metrics. For projects in which Regulatory is the lead agency under the National Environmental Policy Act (NEPA) for an Environmental Impact Statement (EIS), a discussion of the timeframes between the major NEPA steps such as notice of intent (NOI), scoping, draft EIS, final EIS, and record of decision (ROD), should be discussed.

Districts shall use the template document in Appendix B for preparing the annual report. Annual reports must be reviewed by the MSC Regulatory Program Manager, and then be provided to the HQ Regulatory Section 214/Transportation Program Manager within 30 days of the conclusion of each fiscal year. HQUSACE will compile the reports received and provide a combined annual report to ASA(CW). The ASA(CW) will submit the combined annual report to the Congressional committees within 90 days of the conclusion of each fiscal year. HQUSACE will maintain copies of the combined annual reports on the HQUSACE website for the most recent 5 years.

b. Impartial Decision Making. Maintaining impartiality in decision making is of utmost importance under any funding agreement. Division and district commanders must ensure that the acceptance and expenditure of funds from external entities will not impact impartial decision making with respect to application review and any final permit decision, either substantively or procedurally. At a minimum, all districts with funding agreements will comply with the following standards:

(1) The review must comply with all applicable laws and regulations. Any procedures or decisions that would otherwise be required for a specific type of project or review under consideration cannot be eliminated. However, process improvements that are developed under a funding agreement are encouraged to be applied widely, when applicable, for all members of the regulated public to benefit.

(2) In cases where funds are used, all final permit decisions and decision documents (e.g., decision document, and/or permit instrument, if applicable), including all reporting nationwide, general, regional general, and state programmatic general permit verifications, must be reviewed and approved in writing by a responsible official, at least one level above the decision maker. For the purposes of this guidance, the permit decision maker is the person that has been delegated signature authority. The one-level-above review additionally must be a position that is not partially or fully funded by the same funding entity. For example, if the decision maker is a Regulatory Section Chief, then the one-level-above reviewer may be the Regulatory Chief or Deputy Chief. Team leaders are appropriate one-level-above reviewers provided signature authority has been delegated to the project manager level. In accordance with national Regulatory policy and guidance, districts are encouraged to delegate signature authority to the lowest appropriate level.

(3) Instruments for mitigation banks or in-lieu-fee programs developed for an entity with a funding agreement must be signed by a Regulatory Branch/Division Chief, an equivalent, or a higher level position that is not funded by any funding agreement.

(4) All preliminary jurisdictional determinations and any approved jurisdictional determinations where funds are used must have documentation that a non-funded regulator conducted a review of the determination. This review does not need to be a field review, but is intended to maintain impartiality in the decision. For those approved jurisdictional determinations that require coordination with EPA, additional internal review is not required.

(5) Districts have primary responsibility to ensure that ORM data entry is timely and accurate so that all final permit decisions, including all nationwide, general, regional general, and state programmatic general permit verifications, made for projects where funds are used, are posted on the HQUSACE ORM2 public portal. Districts shall ensure that a link to the HQUSACE ORM2 public portal is provided on their Regulatory web pages.

(6) Funds from agreements will not be used for enforcement activities. However, funds from these agreements may be used for compliance activities including monitoring of mitigation sites and compliance inspections. If the district determines that a permittee has violated the terms or conditions of the permit and that the violation is sufficiently serious to require an enforcement action, funds provided under the agreement must not be used to address the enforcement action. Enforcement activities must be charged to Regulatory's appropriated funds in accordance with the most recent budget execution guidance.

c. Public Notice and Decision. Prior to accepting funds contributed by non-federal public entities, natural gas companies, or public-utility companies, the district must issue a public notice clearly indicating the following: the name of the funding entity, the statutory 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 funds will not impact impartial decision making. The public notice must also include information on the impacts of the proposed funding agreement on the district's Regulatory program and if there are any expected impacts on the timeframes for evaluation of applications for the general public within that district.

Following the review of the comments received in response to the public notice, the District Commander will determine if the acceptance and expenditure of funds is appropriate in consideration of the requirements under the applicable statutory authority, if the district will be able to preserve impartial decision making, and if the acceptance and expenditure of funds will not adversely affect review timeframes for the

general public. A final draft of a funding agreement must be completed to inform the District Commander's decision. This decision, as well as consideration of all public comments received from the public notice, shall be documented in a Memorandum for the Record (MFR). Upon execution of the MFR, an informational public notice will be issued indicating the District Commander's decision. If the decision is to accept funds, those funds may only be accepted after execution of the MFR, execution of the agreement, and issuance of the informational public notice.

An updated analysis based on the abovementioned requirements shall be conducted and documented in a MFR each time a funding agreement is renewed or substantively modified. An example of a substantial modification would be modifying a funding agreement to provide funding for reviews under 33 U.S.C. § 408 (Section 408). Issuance of a new public notice is not required for renewal or modification of a funding agreement if the purpose of the agreement remains the same. Upon execution of any new, modified, or renewed funding agreement, the District shall forward a signed copy of the agreement to the HQ Regulatory Section 214/Transportation Program Manager. HQUSACE will maintain a copy of all active agreements on the HQUSACE website (see subparagraph 3(e)).

d. Acceptable Activities. Prior to expending funds on any activity, the district must determine that the activity contributes to meeting the specific purpose of the appropriate statutory authority as listed below. Acceptable activities should be discussed with the funding entity and documented in the agreement. 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, acquisition of Geographic Information System (GIS) data, pre-application conferences, and participation in the transportation planning process or other early coordination activities such as NEPA/404 synchronization procedures. Funds may also be used to contract discrete tasks to inform decisions or conduct administrative actions. For contracts used to develop decision documents or NEPA documentation, such documents must be directed by USACE to be submitted as draft, and be reviewed and adopted by the USACE before a permit decision can be made. Funds are not to be used to continue activities for the funding entity, should a lapse of appropriations result in shutdown furlough for the Regulatory Program. Any exception to this policy may be requested from HQUSACE in extreme circumstances, but may be denied.

e. Transparency. HQUSACE will maintain a web page on the use of these authorities. Districts must provide all copies of active funding agreements to HQ

Regulatory upon execution or renewal to support this effort. Districts additionally are responsible for timely and accurate ORM data entry for actions reviewed under funding agreements, to ensure actions posted through the ORM2 public portal and provided in the annual report have received appropriate quality assurance/quality control (QA/QC). The HQ Regulatory web page will include:

(1) The statutory text of both Section 214 and Section 139(j);
(2) A clearly marked link to the ORM2 public portal;
(3) Copies of all active funding agreements;
(4) Copies of the most recent decision document templates;
(5) Copies of combined annual reports for the most recent 5 years developed in accordance with Section 4.a. of this guidance; and
(6) A copy of this implementing guidance.

Districts that have an active funding agreement must also provide a link to the HQ Regulatory informational web page mentioned above.

f. Submittals Under Section 408. Regulatory funding agreements that additionally cover the review of a modification to a Federal project under Section 408 must comply with Engineer Circular (EC) 1165-2-216 and its appendices, unless superseded by more recent guidance. All funding associated with Section 408 reviews should be sourced under the Operation and Maintenance account remaining item titled "Review of non-Federal Alterations of Civil Works Projects (Section 408)." Section 408 reviews should be SMART Planning compliant, including documentation of vertical alignment on the scope, schedule, and cost of reviews in order to be considered for funding.

5. Agreements Only Citing Section 214.

a. Pursuant to Section 214, the Secretary of the Army may accept and expend funds contributed by the following entities to expedite the evaluation of permit applications: (i) a non-Federal public entity who is seeking authorization for projects for a public purpose; (ii) a public-utility company as defined in Section 1006 of WRRDA; and (iii) a natural gas company as defined by Section 1006 of WRRDA. The authority to accept and expend funds from public-utility companies or natural gas companies expires on 10 June 2021 unless otherwise modified by law.

b. Non-Federal Public Entities and Projects for a Public Purpose.

(1) The term "non-federal public entity" is limited to governmental agencies or governmental public authorities, including governments of federally recognized Indian

Tribes, i.e., any Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994 [25 U.S.C. § 479(a)]. Normally, applicant agencies or authorities would be entities such as: state, local, or Tribal transportation departments, Municipal Planning Organizations (MPO), port authorities, flood and storm water management agencies, and public infrastructure departments that have the desire to expedite the permitting process programmatically, or for a specific project. Private entities cannot be considered non-federal public entities.

(2) Many projects proposed by non-federal public entities such as roads, transit facilities, air and seaport improvements, public works, flood control structures, parks, and other public facilities, are generally available for the general public's use and benefit, and serve a public purpose. Projects reviewed under a Section 214 agreement with a non-federal public entity may potentially be funded by private funds, or a mix of private and public funds. However, the non-federal public entity must be a proponent of the permit application; a permit, if granted, must be issued to a non-federal public entity; and the proposed single and complete project must have a public purpose. Examples include, but are not limited to, public-private partnerships (P3) to support construction of High Occupancy Vehicle lanes on an interstate highway or to support the maintenance or improvement of flood control structures. It is not acceptable for private entities to provide funds to a non-federal public entity to expedite a private project. An example would be, but is not limited to, a residential developer providing funds to a city government that has a Section 214 agreement to expedite the review of a residential development.

(3) Districts have discretion in determining whether a single and complete project has a public purpose and therefore, may be reviewed under a Section 214 agreement with a non-federal public entity.

(4) Agreements with municipal electric or gas authorities that meet the definition of non-federal public entity and the definition of public-utility company or natural gas company are not subject to the 10 June 2021 expiration date of the authority for public-utility and natural gas companies, because they meet the definition of non-federal public entity.

c. Public-Utility Companies. Section 214 additionally allows for agreements to be established with a "public-utility company." Public-utility companies include the following two subcategories: (1) electric utility companies, which are companies that own or operate facilities used for the generation, transmission, or distribution of electric

energy for sale; and (2) gas utility companies, which are companies that own or operate facilities used for distribution at retail of natural or manufactured gas for heat, light, or power (other than the distribution only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale). These companies are subject to federal regulation outside of USACE authorities, dating from the 1930's, because Congress determined that such companies affected the public interest. Projects involving facilities for the generation, transmission, or distribution of electric energy for sale; and facilities used for distribution at retail of natural or manufactured gas for heat, light, or power are appropriate for use with Section 214. Any exceptions to this policy should be coordinated with HQUSACE.

d. Natural Gas Companies. Section 214 also allows for agreements to be entered into with a natural gas company. A natural gas company is a company engaged in the transportation of natural gas in intrastate or interstate commerce or the sale of such gas in interstate commerce for resale. The transportation of natural gas in interstate commerce is subject to federal regulation outside of USACE authorities, dating from the 1930's, because Congress determined that such activities affected the public interest. Projects reviewed under a Section 214 agreement with a natural gas company may include projects involving the transportation and/or distribution of natural gas (inclusive of gas gathering lines, feeder lines, transmission pipelines, and distribution pipelines) and any attendant storage facilities. Any exceptions to this policy should be coordinated with HQUSACE.

e. Energy exploration and production activities, such as drilling, hydrofracturing, or mining, are not to be reviewed under Section 214 agreements with public-utility companies or natural gas companies, because these activities do not involve the generation, transmission, or distribution of electric energy; or the transportation and/or distribution of natural gas.

f. Activities conducted in accordance with a Section 214 agreement must expedite the permit review process. Expediting the review process could include generally shorter review times as compared to typical review times prior to the agreement, facilitation of a smoother review process through improved coordination and communication, or the development or use of programmatic agreements or standard operating procedures. The expedited review cannot result in an adverse effect on the timeframes for review of other applications within the same district, when considered collectively.

g. No funds provided by a federal agency to a non-federal public entity may be accepted by USACE under Section 214 unless the non-federal public entity forwards to

USACE a written confirmation from the federal agency that the use of the funds to expedite the permit review process is acceptable.

6. Agreements Citing Section 139(j).

a. Section 139(j) only allows for USACE to enter into agreements with state agencies. The U.S. Department of Transportation (USDOT) has additionally interpreted the statute as allowing tolling commissions and some Municipal Planning Organizations (MPOs) to be eligible to enter into a funding agreement. Section 139(j) agreements additionally require approval by the Secretary of Transportation, as state agencies are eligible to receive reimbursement with USDOT funds for these agreements. The USDOT has delegated approval of funding agreements down to the division level of either Federal Highways Administration (FHWA) or the Federal Transit Administration (FTA). The USDOT has not interpreted Section 139(j) as allowing other modal administrations (Federal Railroad Administration, Federal Aviation Administration, Maritime Administration) to support agreements with state agencies. Therefore, districts may only enter into a Section 139(j) agreement with highway and/or transit agencies.

b. Activities conducted in accordance with a Section 139(j) agreement must directly and meaningfully contribute to expediting and improving transportation project planning and delivery within the given state. In addition, Section 139(j) restricts the state transportation agency to only provide funds for activities beyond USACE's normal and ordinary capabilities under its general appropriations. Because transportation project planning and delivery encompasses a variety of activities and reviews, participation in the transportation planning (pre-NEPA) process and streamlining initiatives such as NEPA/404 synchronization efforts are encouraged under Section 139(j) along with activities listed in Section 4.d. above and Section 408 reviews, so long as those activities result in review times that are less than the customary time necessary for such a review. FHWA has provided guidance that the development of programmatic agreements and initiatives satisfies the requirement to reduce time limits as long as the results of those efforts are designed to provide a reduction in review time. Section 139(j) puts the onus on FHWA and FTA to interpret allowable activities under the statute. Districts shall consider FHWA or FTA's approval of a funding agreement as certification that the agreement is compliant with Section 139(j). However, districts must consider whether a Section 139(j) agreement is also compliant with the standards in paragraph 4, above, prior to the district commander approving any such agreement. In summary, Section 139(j) agreements must meet FHWA/FTA's standards and USACE implementing guidance requirements to be acceptable.

c. FHWA or FTA may require documentation of the "customary time" necessary for a review and/or establishment of performance metrics for the agreement to demonstrate it is contributing to expediting and improving transportation project planning and delivery. Districts are encouraged to use ORM data and/or the national performance metrics to establish a baseline of review times within the district, and consider that information in development of any performance metrics for the agreement. Districts have discretion on the number and type of performance metrics within an agreement, including which milestones to use to determine time in review (receipt of application, date determined complete, etc.). When considering the quantity and content of any performance metrics for an agreement, the district must consider the potential effect of those metrics on performance management within the whole Regulatory Branch or Division. Districts must be cautious to not agree to any performance metrics that would be so onerous or stringent that achieving them comes at the cost of decreased performance for other applicants in the district.

d. A Section 139(j) agreement must also include a section or appendix which establishes projects and priorities to be addressed by the agreement. If the funding transportation agency does not know a list of projects and/or priorities at the time of the agreement, then the agreement should describe the process to identify or change projects and/or priorities.

7. Agreements Citing Both Statutory Authorities. There is no legal need to cite both statutory authorities in a funding agreement. Districts should cite only Section 214 of WRDA 2000, or cite only Section 139(j) in any new or renewal of agreements. For those older agreements that do cite both statutory authorities, districts should consult with their non-federal public entity to decide which authority to use, and which requirements apply until renewal of that agreement.

8. This guidance is effective immediately. This document supersedes and rescinds the memorandum from the Director of Civil Works issued on 1 October 2008 entitled, "Implementation Guidance for Section 2002 of the Water Resources Act of 2007 (Regulatory Funds Contributed by Non-Federal Public Entities);" the memorandum from the Chief of Operations and Regulatory issued on 21 July 2010 entitled, "Annual Reporting for Regulatory Section 214 Funding Agreements with Non-Federal Public Entities;" and the memorandum from the Director of Civil Works issued 23 March 1999 entitled, "Transportation Equity Act and Federal-Aid Highway Funding Proposals." This guidance remains in effect as long as any of the aforementioned statutory authorities remain in effect.

9. POC for this action is Ms. Lauren Diaz, Regulatory Program Manager, at 202-761-4663, or Lauren.B.Diaz@usace.army.mil.

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

Appendix A – Legislative Text of Authorities

Section 214 of WRDA 2000, as amended:
Language from Section 1006 of WRRDA is marked by italicized text.

(a)FUNDING TO PROCESS PERMITS. –

(1) DEFINITIONS. – In this subsection:

(A) NATURAL GAS COMPANY. – The term 'natural gas company' has the meaning given the term in section 1262 of the Public Utility Holding Company Act of 2005 (42 U.S.C. 16451), except that the term also includes a person engaged in the transportation of natural gas in intrastate commerce.

(B) PUBLIC-UTILITY COMPANY. – The term 'public-utility company' has the meaning given the term in section 1262 of the Public Utility Holding Company Act of 2005 (42 U.S.C. 16451).

(2) PERMIT PROCESSING. – The Secretary, after public notice, may accept and expend funds contributed by a non-Federal public entity *or a public-utility company or natural gas company* to expedite the evaluation of a permit of that entity *or company* related to a project or activity for a public purpose under the jurisdiction of the Department of the Army.

(3) LIMITATION FOR PUBLIC-UTILITY AND NATURAL GAS COMPANIES. – The authority provided under paragraph (2) to a public-utility company or natural gas company shall expire on the date that is 7 years after the date of enactment of this paragraph.

(4) EFFECT ON OTHER ENTITIES. – To the maximum extent practicable, the Secretary shall ensure that expediting the evaluation of a permit through the use of funds accepted and expended under this section does not adversely affect the timeline for evaluation (in the Corps district in which the project or activity is located) of permits under the jurisdiction of the Department of the Army of other entities that have not contributed funds under this section.

(5) GAO STUDY. – Not later than 4 years after the date of enactment of this paragraph, the Comptroller General of the United States shall carry out a study of the implementation by the Secretary of the authority provided under paragraph (2) to public-utility companies and natural gas companies.

(b) EFFECT ON PERMITTING. –

(1) IN GENERAL. – In carrying out this section, the Secretary shall ensure that the use of funds accepted under sub-section (a) will not impact impartial decisionmaking with respect to permits, either substantively or procedurally.

(2) IMPARTIAL DECISIONMAKING. – In carrying out this section, the Secretary shall ensure that the evaluation of permits carried out using funds accepted under this section shall –

(A) be reviewed by –

(i) the District Commander, or the Commander's designee, of the Corps District in which the project or activity is located; or

(ii) the Commander of the Corps Division in which the District is located if the evaluation of the permit is initially conducted by the District Commander; and

(B) utilize the same procedures for decisions that would otherwise be required for the evaluation of permits for similar projects or activities not carried out using funds authorized under this section.

(c) LIMITATION ON USE OF FUNDS. – None of the funds accepted under this section shall be used to carry out a review of the evaluation of permits required under subsection (b)(2)(A).

(d) PUBLIC AVAILABILITY. –

(1) IN GENERAL. - The Secretary shall ensure that all final permit decisions carried out using funds authorized under this section are made available to the public in a common format, including on the Internet, and in a manner that distinguishes final permit decisions under this section from other final actions of the Secretary.

(2) DECISION DOCUMENT. – The Secretary shall –

(A) use a standard decision document for evaluating all permits using funds accepted under this section; and

(B) make the standard decision document, along with all final permit decisions, available to the public, including on the Internet.

(3) AGREEMENTS. – The Secretary shall make all active agreements to accept funds under this section available on a single public Internet site.

(e) REPORTING. –

(1) IN GENERAL. – The Secretary shall prepare an annual report on the implementation of this section, which, at a minimum, shall include for each district of the Corps of Engineers that accepts funds under this section –

(A) a comprehensive list of any funds accepted under this section during the previous fiscal year;

(B) a comprehensive list of the permits reviewed and approved using funds accepted under this section during the previous fiscal year, including a description of the size and type of resources impacted and the mitigation required for each permit; and

(C) a description of the training offered in the previous fiscal year for employees that is funded in whole or in part with funds accepted under this section.

(2) SUBMISSION. – Not later than 90 days after the end of each fiscal year, the Secretary shall –

(A) submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives the annual report described in paragraph (1); and

(B) make each report received under sub-paragraph (A) available on a single publicly accessible Internet site.

23 U.S.C. Section 139(j)

(1) IN GENERAL - For a project that is subject to the environmental review process established under this section and for which funds are made available to a State under this title or chapter 53 of title 49, the Secretary [of Transportation] may approve a request by the State to provide funds so made available under this title or such chapter 53 to affected Federal agencies (including the Department of Transportation), State agencies, and Indian tribes participating in the environmental review process for the projects in that State or participating in a State process that has been approved by the Secretary for that State. Such funds may be provided only to support activities that directly and meaningfully contribute to expediting and improving transportation project planning and delivery for projects in that State.

(2) ACTIVITIES ELIGIBLE FOR FUNDING - Activities for which funds may be provided under paragraph (1) include transportation planning activities that precede the initiation of the environmental review process, dedicated staffing, training of agency personnel, information gathering and mapping, and development of programmatic agreements.

(3) USE OF FEDERAL LANDS HIGHWAY FUNDS- The Secretary may also use funds made available under section 204 for a project for the purposes specified in this subsection with respect to the environmental review process for the project.

(4) AMOUNTS - Requests under paragraph (1) may be approved only for the additional amounts that the Secretary determines are necessary for the Federal agencies, State agencies, or Indian tribes participating in the environmental review process to meet the time limits for environmental review.

(5) CONDITION - A request under paragraph (1) to expedite time limits for environmental review may be approved only if such time limits are less than the customary time necessary for such review.

(6) MEMORANDUM OF UNDERSTANDING. – Prior to providing funds approved by the Secretary for dedicated staffing at an affected Federal agency under the paragraphs (1) and (2), the affected Federal agency and the State agency shall enter into a memorandum of understanding that establishes the projects and priorities to be addressed by the use of the funds.

Appendix B – Annual Reporting Template

CE

MEMORANDUM FOR CECW-CO-R

SUBJECT: FY Reporting for Funding Agreements under Section 214 of WRDA 2000, as amended and/or 23 U.S.C. Section 139(j).

1. **Active Funding Agreements:**

2. **Funding:** Section 214 of WRDA 2000 and 23 U.S.C. Section 139(j) allow the Secretary of the Army to accept and expend funds contributed by certain entities to expedite the permit evaluation process. The implementing guidance memorandum for Section 1006 of WRRDA for Regulatory funding agreements ("Implementing Guidance") gives examples of acceptable activities for funds to be expended on including technical writing, site visits, training, travel, field office set up costs, copying, coordination activities, additional personnel, and others. Funding may come directly from the funding entity's budget or may be from a grant or other source. The following outlines the funds accepted and expended during the Federal fiscal year (FY).

   a. First Agreement:

      i. Total funds accepted during this FY:
      ii. Total funds expended during this FY:
      iii. Number of FTE:

   b. Second Agreement:

      i. Total funds accepted during this FY:
      ii. Total funds expended during this FY:
      iii. Number of FTE:

3. **Assessment:** The goal of funding through an agreement is to expedite the permit evaluation process. This can be accomplished through qualitative means such as dedicating staff for improved communication, ability of the funding entity to prioritize projects with Corps staff, and more thorough submittals of information. The permit process must be expedited quantitatively; by demonstrating that permit processing times have generally improved since inception of an agreement, but not adversely impacting the timeframes for review for other applicants within the same district. Performance measures are a means to show quantitative improvement and compliance with any such measures should be indicated below. The following describes how funds have been used to expedite the permit evaluation process.

a. First Agreement:

i. Qualitative description:
ii. Quantitative description:

b. Second Agreement:

i. Qualitative description:
ii. Quantitative description:

4. **Impartial Decision Making:** While funds may be accepted to expedite the permit evaluation process, the funds must not impact impartial decision making. The main components of impartial decision making within the Implementing Guidance include a one-level higher review and signature on all decisions (JD, NPR, GP, NW, LOP, SP, compliance actions) made under a funding agreement and the posting of all of these decisions on the internet. The higher level reviewer must be a position that is not fully or partially funded under the funding agreement. The Implementing Guidance also indicates that funding may not be used for enforcement activities. The following outlines what measures have been taken to maintain impartial decision making on permit applications received from a funding entity:

   A list of all permit decisions made under any funding agreement this FY, including the impacts and mitigation data, is attached to this report. My signature below verifies that I have reviewed this data for accuracy and validity and will assume responsibility for any remaining data entry errors.

5. **Training:** The Implementing Guidance requires that all funded staff complete annual training on the requirements of the guidance. Below is a list of all employees that worked under a funding agreement at least part time during this FY and the date of completion of the required training during this FY:

Please attach any letters of satisfaction or performance evaluations received from the funding entity (or entities) regarding the agreement(s).

APPROVED BY:

Chief, Regulatory