



US Army Corps
of Engineers®
St Paul District

Public Notice

PROPOSAL TO ACCEPT FUNDS FROM THE WILD RICE WATERSHED DISTRICT, MINNESOTA

Comment Period: December 18, 2013 to January 17, 2014
Project Manager: Nanette Bischoff

This Public Notice announces the preliminary intent of the St. Paul District of the U.S. Army Corps of Engineers (“Corps”) to accept funds contributed by the Wild Rice Watershed District (“watershed district”). The St. Paul District would allocate these funds internally and distribute funds to supporting Corps districts in order to expedite the Department of Army processing action in response to the watershed district’s request for a major modification to an existing Corps project, in accordance with 33 U.S.C. 408¹ (Section 408), subject to a series of limitations specified below. The Wild Rice Watershed District proposes to relocate a portion of the current Judicial Ditch 51 (Marsh River), which is part of the authorized Corps Wild Rice - Marsh River channelization project. The original authorized channelization project was constructed between July 1950 and December 1953.

The St. Paul District may accept and expend these funds pursuant to Section 214 of the Water Resources Development Act of 2000 (WRDA 2000, Public Law No. 106-541) as amended, which provides that the Secretary of the Army, after public notice, may accept and expend funds contributed by a non-federal public entity to expedite the evaluation of a permit of that entity related to a project or activity for a public purpose under the jurisdiction of the Department of the Army. In doing so, the Secretary must ensure that the use of such funds will not impact impartial decision making with respect to permits, either substantively or procedurally. The authority provided in Section 214 is in effect from October 1, 2000, to December 31, 2016.

The Secretary of the Army delegated this responsibility for ensuring impartial decision-making to the Chief of Engineers and his authorized representatives, including district commanders of the U.S. Army Corps of Engineers.

Authorized representatives of the district commander for the St. Paul District are negotiating an agreement with the watershed district to accept and expend funds to expedite review and evaluations of Section 408 proposed modifications to the local channelization project.

Definition of non-federal public entities: Non-federal public entities are defined for Section 214 purposes as state and local governmental agencies and Indian tribal governments. The Wild Rice Watershed District meets this definition.

¹ 33 USC 408 provides authority to the Secretary of the Army to grant permission for the alteration or modification of Corps projects when in the judgment of the Secretary such alteration or modification will not be injurious to the public interest and will not impair the usefulness of the project.

How the St. Paul District's acceptance of funds from the Wild Rice Watershed District is expected to expedite the processing of the watershed district's proposed major channel modification: The Corps' Operation and Maintenance Inspection of Completed Works program is funded through the Corps' Civil Works program in the annual federal budget. Funding within the Inspection of Completed Works program is insufficient to completely fund the technical and policy reviews required for the Chief of Engineers' approval of major channel modifications undertaken under Section 408. The St. Paul District would receive additional funds from the Wild Rice Watershed District and would add those funds to the Operation and Maintenance budgets of the St. Paul District and supporting districts, in accordance with the provisions of Section 214 of WRDA 2000. Funding to supporting districts will facilitate independent reviews by staff outside the Corps resident St. Paul District, if required by Corps review policy.

Activities for which funds will be expended: Funds would be expended primarily on the direct labor and overhead of Corps' Civil Works personnel evaluating the engineering plans and report prepared by engineering consultants to the Wild Rice Watershed District. Such review and processing activities would include, but not be limited to, the following: technical analyses and writing, real estate evaluation, risk analysis, copying or other clerical/support tasks, acquisition of GIS data, site visits, training, travel, coordination activities, additional personnel (including support/clerical staff), technical contracting, environmental documentation preparation and review. Funds will not be used for drafting, negotiating, or issuing any necessary real estate instruments.

Any funds provided by the Wild Rice Watershed District that remain unexpended at completion of the Section 408 review and approval process will be returned by the Corps to the Wild Rice Watershed District.

Procedures to be used to ensure impartial decision-making: Approval of the Wild Rice - Marsh River Section 408 permit application has been determined to be at the Director of Civil Works level. To ensure the funds will not impact impartial decision-making, the following procedures would apply:

- a. No funds received under a Section 214 agreement shall be expended for the District Commander or the Division Commander's consideration and recommendation to the Director of Civil Works regarding the Wild Rice - Marsh River Section 408 permit application.
- b. Draft technical documents or draft decision documents resulting from the use of funds obtained from Wild Rice Watershed District under Section 214 will be reviewed and signed by a reviewer who is not funded by funds received under Section 214 for the watershed district's Section 408 permit application.
- c. All final permit decisions for cases where Section 214 funds are used will be made available on the St. Paul District webpage.
- d. The Corps will not eliminate any procedures or decisions that would otherwise be required for that type of project and permit application under consideration.
- e. The Corps will comply with all applicable laws and regulations.
- f. Section 214 funds will only be expended to provide priority review of the participating non-federal entity's permit application.

Impacts to the Civil Works Program: We do not expect priority review of the modification to the Wild Rice - Marsh River project to negatively impact the Corps District's Civil Works Programs or to increase the time for evaluations of other projects.

Consideration of Comments: The Corps is soliciting comments from the public; federal, state and local agencies; and other interested parties. Comments will be made part of the record, and they will be considered in determining whether it would be in the public interest to proceed with this action. If the St. Paul District Commander determines, after considering public comments, that the acceptance and expenditure of the funds is in compliance with Section 214 of WRDA 2000 and is not otherwise contrary to the general public interest, the St. Paul District will implement Section 214 of WRDA 2000 through a signed Memorandum of Agreement (“MOA”) and accept the funds from the Wild Rice Watershed District. A second public notice will be issued regarding the final decision on this matter.

Provided that the purpose for accepting funds remains the same as that described in this notice, a new public notice is not required in the event that the MOA is amended to extend the term of the agreement; to modify the list of priority projects identified in the MOA; or to adjust the terms of the annual advance payment contemplated under the MOA.

Submission of Comments: Interested parties may submit, in writing, any comments concerning this proposal. Comments should refer to Proposed Acceptance of Funds from the Wild Rice Watershed District and the date of this Public Notice, and be postmarked by the comment due date. Comments must be sent to the U.S. Army Corps of Engineers, St. Paul District, ATTN: Nanette Bischoff, 180 5th Street East, Suite 700, St. Paul, MN 55101-1678. Alternatively, comments can be sent electronically to: Nanette.m.bischoff@usace.army.mil. Comments will not be responded to individually but will be weighed in the District Commander’s decision to accept or not accept funds from the Wild Rice Watershed District in this matter.

For additional information, please contact Nanette Bischoff, (651) 290-5426. This public notice is issued by the St. Paul District of the U.S. Army Corps of Engineers.