



# SPECIAL PUBLIC NOTICE

**U. S. ARMY CORPS OF ENGINEERS  
NEW ORLEANS DISTRICT**

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## **NOTICE OF DECISION TO ACCEPT FUNDS FROM THE LAKE CHARLES HARBOR AND TERMINAL DISTRICT FOR EXPEDITING SECTION 408 REQUESTS**

**Informational Public Notice Issue Date: May 19, 2016**

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This Special Public Notice announces that the United States Army Corps of Engineers (“USACE”), New Orleans District (“CEMVN”), District Commander has decided to accept and expend funds contributed by the Lake Charles Harbor and Terminal District (“LCHTD”) pursuant to a Memorandum of Agreement (“MOA”) between CEMVN and LCHTD, in accordance with Section 214 of the Water Resources Development Act of 2000, (“Section 214”), as amended by Section 1006 of the Water Resources Reform and Development Act of 2014. The purpose of the MOA is to establish the framework for the acceptance and expenditure of funds to be provided by LCHTD to expedite the CEMVN evaluation and processing of Department of Army applications submitted by LCHTD to CEMVN pursuant to Section 14 of the Rivers and Harbors Appropriation Act of 1899, as amended (33 U.S.C. 408) (hereinafter “Section 408”) for proposed LCHTD projects and activities that are under the jurisdiction of the Department of the Army.

CEMVN issued an initial Special Public Notice on April 29, 2016 advising the public of its proposed intent to accept and expend funds contributed by the LCHTD for the expedited review and processing of Section 408 permission requests. Following the expiration of the public comment period and the review of the comments received in response to the Special Public Notice, the CEMVN District Commander determined that expenditure of funds received from LCHTD for expedited Section 408 requests, complies with the requirements of Section 214, Engineering Circular 1165-2-216, Appendix G, and all other applicable USACE guidance, laws and regulations. The decision of the CEMVN District Commander, including all public comments received from the April 29, 2016 Special Public Notice, has been documented in a Memorandum for Record (“MFR”) which has been executed by the CEMVN District Commander and has been published on the HQUSACE Section 408 webpage at:

<http://www.usace.army.mil/Missions/CivilWorks/Section408.aspx>

On the website you will find a copy of the executed active MOA, together with other related documents, such as decision documents and annual reports will also be posted. The decision to enter into an MOA to accept funds does not constitute any endorsement or implied consent to Section 408 requests by LCHTD; rather, it enables CEMVN staff to devote the attention required to the Section 408 requests, in a more timely and more thorough manner than they may otherwise be able to.

The April 29, 2016 Special Public Notice addressed (among other things) the types of

activities for which the contributed funds would be expended, the public purposes to be served by the proposed Section 408 requests, how the expenditures will expedite the Section 408 review process, and the procedures to be used by CEMVN to ensure impartial decision-making. These procedures are included in the MOA and are summarized as follows:

- CEMVN shall establish separate accounts in the USACE Financial Management System to track the acceptance and expenditure of funds pursuant to the MOA in accordance with the USACE current fiscal year budget execution guidance.
- CEMVN personnel accomplishing the technical and administrative tasks required to expedite the evaluation of the Section 408 requests covered by the MOA, shall charge their time against the specific applicable account when working on those requests.
- Funds provided by LCHTD will be expended on direct labor, salaries, and overhead for CEMVN personnel performing expedited Section 408 permission processing activities for the proposed LCHTD projects and activities.
- Funds will only be expended to expedite the review and approval of the Section 408 permission applications. Funds will not be expended for review of the decision-maker's decision.
- The CEMVN Section 408 review shall utilize the same procedures for decisions that would otherwise be required for the evaluation of permits and permissions for similar projects or activities not carried out using funds authorized under Section 214.
- CEMVN shall not eliminate any procedures or decisions that would otherwise be required for the types of projects and Section 408 requests under consideration, and shall comply with all applicable laws, regulations, policies, and guidance.
- All final Section 408 decision documents, shall be reviewed and approved in writing by a responsible official, at least one level above the decision maker. The decision maker is the person that has been delegated signature authority. The one-level-above review must be a position that is not partially or fully funded by the same funding entity.
- If the Section 408 approval authority is at the level of the USACE Director of Civil Works, the CEMVN through the Mississippi Valley Division, shall provide sufficient information to assure the decision maker that the acceptance and expenditure of funds by the CEMVN under the MOA has not affected the CEMVN's or the Division's evaluation of the Section 408 request, either substantially or procedurally.
- Draft technical documents or draft decision documents shall be reviewed and signed by unfunded reviewers prior to consideration by the Division or District Commander. No funds received shall be expended for the CEMVN District Commander's consideration and recommendation to the Director of Civil Works regarding LCHTD Section 408 requests.
- All final decisions on Section 408 requests will be made available,

updated monthly, and published on the CEMVN public web page and at <http://www.usace.army.mil/Missions/CivilWorks/Section408.aspx>

USACE Districts nationwide have experienced improved Section 408 processing under Section 214 expedited evaluation and processing MOAs, while simultaneously being able to maintain impartial decision-making, integrity, and rigorous NEPA review and environmental compliance. Implementation of this MOA will better serve the public interest through a more cost-effective processing of Section 408 requests, enhanced evaluation capability, and streamlined processing. CEMVN's capacity to evaluate permit and permission requests and applications from applicants that are not a party to the MOA will not be adversely affected.

For additional information, please contact: Ms. Tracy A. Falk at (504) 862-2971 or by e-mail to [Tracy.A.Falk@usace.army.mil](mailto:Tracy.A.Falk@usace.army.mil)

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