



SPECIAL PUBLIC NOTICE

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

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**NOTICE OF DECISION TO ACCEPT FUNDS FROM THE
STATE OF LOUISIANA, COASTAL PROTECTION & RESTORATION AUTHORITY
FOR EXPEDITING A DEPARTMENT OF THE ARMY
JOINT SECTION 10/404 PERMIT APPLICATION AND A SECTION 408 REQUEST**

Informational Public Notice Issue Date: June 17, 2016

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 State of Louisiana, through the Coastal Protection and Restoration Authority (“CPRA”) pursuant to a Memorandum of Agreement (“MOA”) between CEMVN and CPRA, 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 CPRA to expedite the CEMVN evaluation and processing of applications submitted by CPRA 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”) and pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) (hereinafter “Section 404”), and Section 10 of the Rivers and Harbors Appropriation Act of 1899, as amended (33 U.S.C. 403) (“Section 10”) collectively referred to as “Section 10/404” herein, for proposed Mid-Breton Sediment Diversion Project (“Project”) that serves a public purpose.

CEMVN issued an initial Special Public Notice on May 13, 2016 advising the public of its proposed intent to accept and expend funds contributed by CPRA for the expedited review and processing of the Joint Section 10/404 permit application and the Section 408 permission request for the Project. 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 to be received from CPRA for expedited processing of Section 10/404 and Section 408 requests, is appropriate and in compliance with the requirements of Section 214, Engineering Circular 1165-2-216, Appendix G, and all other applicable USACE guidance, laws and regulations, and that the acceptance and expenditure of the funds will not adversely affect the permit evaluation, review and processing timeframes for the general public who have not provided Section 214 funding. The decision of the CEMVN District Commander, including all public comments received from the May 13, 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 CEMVN web page at

<http://www.mvn.usace.army.mil/Missions/214Agreements.aspx> and forwarded to HQUSACE Regulatory Section 214 Manager where it will be published on the HQUSACE Section 408 webpage at: <http://www.usace.army.mil/Missions/CivilWorks/Section408.aspx> along with other related documents, such as decision documents and annual reports as they are issued over the term of the MOA. The decision to enter into an MOA to accept funds does not constitute any endorsement or implied consent to the Section 10/404 and Section 408 request by CPRA; rather, it enables CEMVN staff to devote the attention required to the Section 10/404 permit application and Section 408 request in a more timely and more thorough manner than they may otherwise be able to.

The May 13, 2016 Special Public Notice addressed (among other things) the types of activities for which the contributed funds would be expended, the public purpose to be served by the proposed Section 10/404 permit application and Section 408 request, how the expenditures will expedite the Section 10/404 and 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 for the Section 10/404 permits processing and Section 408 permission request processing for each individual project for which expedited review will be conducted pursuant to the MOA in the USACE Financial Management System to track the acceptance and expenditure of funds 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 10/404 and Section 408 reviews, evaluations and processing shall charge their time against the individual accounts established for the expedited review for the Project when working on the requests.
- Regulatory funds can only be used for Section 10/404 actions, which may include actions associated with Section 408 requests. Regulatory staff can use Regulatory funds to participate in joint meetings and internally coordinated portions of shared documents when a Section 408 request also requires a Section 10/404 action. Regulatory funds cannot be used to develop or coordinate any components of a Section 408 request independent of a Section 10/404 action. If a Section 408 request requires Division or HQUSACE coordination and/or review, no Section 10/404 permit decision documentation will be forwarded to Division or HQUSACE in order to preserve the independent decision-making authority of CEMVN and Division Commander. CEMVN, however, shall ensure that the Section 408 documentation clearly articulates that the Section 10/404 authorization is required.
- A decision on a Section 10/404 permit application cannot be rendered prior to the decision on the Section 408 permission request.
- The District Commander shall designate a Section 408 Coordinator responsible for ensuring the processes in USACE regulations are met, and that the proper coordination occurs among all necessary CEMVN elements, including but not limited to, regulatory, real estate, counsel, planning, engineering, programs and project management, and operations.

- The Section 408 Coordinator shall ensure that the processes in USACE regulations are met and that the proper coordination occurs among all necessary CEMVN elements.
- The District Commander, or his authorized designee, shall designate a Regulatory Project Manager to oversee the Section 10/404 permit application processed by CEMVN to ensure that USACE regulations are met and that proper coordination occurs among CEMVN elements. The Regulatory Project Manager will coordinate as necessary with the Section 408 Coordinator, throughout their respective evaluations.
- The Section 10/404 and Section 408 reviews, processing, and evaluations conducted by CEMVN shall follow the same procedures for decisions that would otherwise be required for the evaluation of Section 10/404 permit applications and Section 408 permissions for similar projects or activities not carried out using funds authorized under Section 214.
- No prescribed procedures, analyses, decisions, or other activities will be eliminated, curtailed, or omitted by CEMVN for purposes of expediency, and all Section 10/404 and Section 408 review processes shall comply with all applicable laws, regulations, policies, and guidance.
- Activities under the MOA shall expedite the Section 10/404 and Section 408 review processes and may include generally shorter review times as compared to typical review times, facilitation of a smoother review process through improved coordination and communication, and/or the development or use of programmatic agreements or standard operating procedures.
- CEMVN shall ensure that expediting the evaluation of the Section 10/404 and Section 408 requests do not adversely affect the timeline for evaluation by CEMVN of permits and permissions under the jurisdiction of the Department of the Army of other entities that have not contributed funds under Section 214.
- All final Section 10/404 and permit Section 408 decisions and decision documents, including all reporting and state programmatic permit verifications, 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.
- 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 will be used by the Division or District Commanders for their review, recommendation, or decision concerning Section 408 requests. Funds will not be expended for review of the decision-maker's decision. CEMVN will submit annual reports and other required reporting information and data related to the activities and decisions made pursuant to the MOA to CECW-CO-R as required by USACE Guidance, including a list of permit decisions issued under the MOA together with impact and mitigation data, and accounting for each federal fiscal during the active term of the MOA, data regarding CEMVN employees who charged time to accounts established for projects covered by the MOA, and qualitative and quantitative descriptions of how the MOA expedited the review process.

- All final decisions on the Section 10/404 permit application will be made available and published on the CEMVN public web page. A copy of the executed MOA, together with other related documents such as decision documents and annual reports, will be posted at the <http://www.mvn.usace.army.mil/Missions/214Agreements.aspx>.
- A copy of the executed MOA, together with other related documents such as decision documents and annual reports will also be forwarded to the HQUSACE Regulatory Section 214 Manager, and maintained by HQUSACE during the active term of the MOA on the HQUACE Regulatory informational Internet web page at <http://www.usace.army.mil/Missions/CivilWorks/Section408.aspx>. This webpage will include an executed copy of the MOA, a list of all permit and permission decisions made under the MOA during each federal fiscal year of the MOA, including the impacts and mitigation data, among other additional required data, information and documentation. CEMVN will provide a link to the HQUSACE Regulatory informational web page on the CEMVN web page.

USACE Districts nationwide have experienced improved Section 10/404 and 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 the MOA will better serve the public interest through a more cost-effective processing of Section 10/404 and 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 or that have not provided Section 214 funding will not be adversely affected.

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