

CEMVK-OD-F

MEMORANDUM FOR RECORD

SUBJECT: Decision to Accept Funds from Non-Federal Agency under SAFETEA-LU

1. The purpose of this memorandum is to document the decision by the Vicksburg District to accept and expend funds from a non-Federal agency. In accordance with Section 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), the Mississippi Department of Transportation (MDOT), with approval from the U.S. Federal Highway Administration (FHWA), has entered into an Cooperative Agreement (CA) with the Vicksburg District of the U.S. Army Corps of Engineers (USACE) to provide funding for expedited and streamlined review of project specific and programmatic issues related to Department of the Army authorizations for work in Waters of the United States, including jurisdictional wetlands, pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. This agreement and standard operating procedures are provided as Enclosure 1.
2. Headquarters, U.S. Army Corps of Engineers (HQUSACE) provided guidance on acceptance and use of such funds in a memorandum dated 1 Oct 08 (enclosure 2). That guidance included instructions to circulate an initial public notice that would explain the authorized funding mechanism and provide information regarding the names of the participating non-federal public entities, Corps authority to accept and expend such funds, reason(s) for such contributions, how it would impact the permit review process, kinds of activities the funds would be expended on, and procedures to be placed in effect to ensure the funds would not impact impartial decision-making.
3. HQUSACE in an e-mail dated 27 Oct 08 (enclosure 3), clarified that funding agreements between a State Department of Transportation and USACE, does not need to cite the Water Resources Development Act of 2000 (WRDA Section 214) authority to accept and expend such funds, but instead could cite SAFETEA-LU, Section 6002, which provides the Secretary of Transportation the authority to approve requests by a State to provide funds to Federal agencies involved in the environmental review process to support activities that directly and meaningfully contribute to expediting and improving transportation projects. The acceptance and expenditure of such funds under Section 6002 enables the USACE to perform activities beyond its normal duties provided by existing appropriations without added authority.
4. The Vicksburg District published a public notice announcing the Vicksburg District's preliminary intent to accept such funds from MDOT on 3 Dec 08 (enclosure 4). The public notice presented information on the authority to accept and expend such funds, on how the Vicksburg District would expend the funds, the kinds of activities for which the funds would be expended, the procedures to be used to ensure that the funds would not impact impartial decision-making, the benefits MDOT would receive from their funds, and the foreseen impact to the regulatory program and to Department of the Army (DA)

permit evaluations that are not subsidized by funds contributed by the non-Federal public entity. The notice indicated that the Vicksburg District would review comments received in response to the initial public notice, and determine if the District's acceptance and expenditure of the funds is in accordance with the provisions of SAFETEA-LU, regulations and guidance.

5. No comments were received from the general public during the comment period.

6. Funding will be used to hire additional staff and/or to provide for existing staff to be dedicated to review of MDOT projects. The agreement will not affect the Vicksburg District's ability to provide scheduled service to the general public, as there will be no reduction in available staff or changes in allotment of staff time to accommodate MDOT requirements. Additional resources will be dedicated to expediting and streamlining transportation related projects only, thus reducing costs to MDOT in planning and permitting. Environmental concerns should benefit through early coordination and pre-application review provided through this agreement.

7. Funding will be received by the Vicksburg District, the Lead Corps District in Mississippi, and will be dispersed as outlined in the CA. To ensure compliance with applicable laws, regulations, and guidance, the Corps Districts will establish the following procedures:

a. All final permit decisions for cases where these funds are used must be reviewed by at least one level above the decision-maker, unless the decision-maker is the District Commander.

b. All final permit decisions for cases where these funds are used will be made available on the participating Corps District's Regulatory web page.

c. The Corps cannot eliminate any procedures or decisions that would normally be required for the type of project under consideration.

d. The Corps must comply with all applicable laws and regulations.

e. Funds will only be expended to provide priority review of the participating non-federal entity application and programmatic issues.

8. With these assurances, as outlined in the funding agreement and supporting standard operating procedures, the funding agreement meets the requirements of Federal law and guidance from Corps Headquarters.

9. It is my determination that the subject agreement to accept funding from the Mississippi Department of Transportation by the Vicksburg District will not impact impartial decision-making with respect to permits, either substantively or procedurally. The funding will better serve the public interest through more cost effective evaluation of

permit applications, enhanced evaluation capability, a streamlined permit processing system, and is consistent with applicable Corps regulations and guidance.

PREPARED BY: Charles R. Allred, Jr. MAR 18 2009
Charles R. Allred, Jr.
Senior Environmental Specialist
U.S. Army Corps of Engineers-Vicksburg District

PREPARED BY: Anthony R. Lobred MAR 18 2009
Anthony R. Lobred
Mississippi Department of Transportation Coordinator
U.S. Army Corps of Engineers-Vicksburg District

APPROVED BY: Michael F. McNair MAR 18 2009
Michael F. McNair, R.F.
Chief, Regulatory Branch
U.S. Army Corps of Engineers-Vicksburg District