



**US Army Corps
of Engineers**
Omaha District

INFORMATIONAL PUBLIC NOTICE

**Proposal to accept funds contributed by the
Northern Colorado Water Conservancy District**
Issue Date: April 2, 2013
Closing Date: April 17, 2013

REPLY TO:
U.S. Army Corps of Engineers
Omaha District, Regulatory Branch
1616 Capitol Avenue
Omaha, NE 68102-4901
Phone: (402) 995-2458
Fax: (402) 996-3842

15 DAY NOTICE

INFORMATIONAL PUBLIC NOTICE FOR USE OF NON-FEDERAL FUNDS UNDER SECTION 214 OF THE WATER RESOURCES DEVELOPMENT ACT

This Public Notice announces the preliminary intent of the U.S. Army Corps of Engineers, Omaha District (Corps) to accept funds contributed by the Northern Colorado Water Conservancy District (Northern Water), a quasi-municipal entity and political subdivision of the State of Colorado, acting through its Northern Integrated Supply Project Water Activity Enterprise (NISP), in order to expedite processing of preparation of the NISP EIS and evaluation of the NISP 404 Permit application, subject to a series of limitations below.

Purpose of this notice: This agreement is made in accordance with Section 214 of the Water Resources Development Act (WRDA) of 2000 (Public Law 106-541), as amended. These non-federal funds contributed by Northern Water during federal fiscal years¹ 2013 and 2014 will expand the Corps' resources available to more expeditiously evaluate and process the NISP Environmental Impact Statement (EIS) and 404 Permit application. Northern Water may elect to extend the funding beyond fiscal year 2014, subject to the terms of the agreement. The Secretary of the Army has delegated this responsibility to the Chief of Engineers and his authorized representatives, including the Commander of the Omaha District, U.S. Army Corps of Engineers.

Additional Information on Section 214 of WRDA:
<http://www.nwo.usace.army.mil/Missions/RegulatoryProgram/WRDA.aspx>

¹ The federal fiscal year refers to the period beginning October 1 of each year and ending on September 30 of the following year.

Definition of non-Federal public entities: Non-Federal public entities are comprised of state and local governmental agencies and tribal governments. Northern Water, acting through its NISP Water Activity Enterprise meets this definition.

How the Corps would expend the funds: The Corps regulatory program is funded as a congressionally appropriated line item in the annual Federal budget. Additional funds received from Northern Water would be used to augment the budget of the Corps in accordance with the provisions of Section 214 of WRDA 2000, as amended.

Activities for which funds will be expended: Specifically, the funds will be used for, but not be limited to, the following tasks: ensuring continuity and transfer of institutional knowledge to an appropriate Corps NISP EIS Project Manager (Corps PM); coordination with the NISP-related Common Technical Platform; coordination with several other Corps water supply EIS-level projects ongoing in the South Platte Basin in Colorado; coordination between the Corps PM, Northern Water, Corps management, and cooperating agencies; review of products generated by the third party contractor in conjunction with the Corps PM and State Program Manager, including but not limited to, technical resource reports, responses to cooperating agency comments on products, preparation of a Supplemental Draft Environmental Impact Statement (SDEIS), memoranda, meeting minutes, schedule, and other related work products; evaluation of a NISP 404 Permit application; and assisting in development of a NISP Record of Decision (ROD).

Procedures to be used to ensure impartial decision-making: To ensure the use of non-federal funds received from Northern Water will not impact impartial decision-making with respect to the NISP EIS and 404 Permit application, either substantively or procedurally, the Corps will implement the following procedures.

- a) The Corps will establish a separate account to track receipt and expenditure of the funds associated with its preparation of the NISP EIS and evaluation of the 404 Permit application. A dedicated Corps employee will charge that person's time against the account when the employee does work to expedite preparation of the NISP EIS and evaluation 404 Permit application.
- b) When these funds are used, the final 404 Permit decision for NISP will be reviewed by Corps staff at least one level above the decision maker, unless the decision maker is the Corps Omaha District Commander.
- c) The final EIS and 404 Permit decision regarding NISP will be made available on the Omaha District Regulatory web page.
- d) The Corps will not eliminate any procedures or decisions that would otherwise be required for the NISP EIS and 404 Permit application under consideration.
- e) The Corps will continue to comply with all applicable Federal laws, statutes, regulations, and guidance.
- f) Funds will be expended only to expedite the preparation, review and coordination of the NISP EIS and the evaluation of the NISP 404 Permit application. Funds will not be expended for review by supervisors or other persons or elements of the Corps in the decision-making chain of command. Any enforcement activities will not be paid for from the funds contributed by Northern Water, nor will such funds be used to pay for the costs of public hearings and distribution of public notices.

Impacts to the Regulatory Program: Use of the non-federal funds is not expected to negatively impact the Corps' Omaha District Regulatory Program or to increase the processing time for other permit evaluations. With the addition of personnel dedicated to work on preparation of the NISP EIS and evaluation of the 404 Permit application, current Regulatory staff in the State of Colorado will be able to devote their resources to remaining projects.

Consideration of Comments: The Corps is soliciting comments from the public, Federal, State and local agencies and officials, and other interested parties. Comments on implementing Section 214 of WRDA 2000 as amended will be accepted and made part of the record, and they will be considered in determining whether it would be in the best public interest to proceed with this action. If the Corps Omaha District Commander determines, after considering public comments, that the acceptance and expenditure of the funds is in compliance with Section 214 of WRDA 2000 as amended, the Corps will implement the act through a signed memorandum of agreement and accept funds from Northern Water. A second public notice will be issued regarding the final decision on this matter.

Submission of Comments: Interested parties may submit, in writing, any comments concerning this proposal. Comments should refer to the NISP WRDA 214 Agreement and be forwarded by the comment due date of April 17, 2013 to:

Martha Chieply
U.S. Army Corps of Engineers
Omaha District, Regulatory Branch
1616 Capitol Avenue
Omaha, NE 68102-4901
or to martha.s.chieply@usace.army.mil

Comments received after the close of business on the expiration date of this public notice will not be considered.



**US Army Corps
of Engineers**
Omaha District

INFORMATIONAL PUBLIC NOTICE

**Decision to accept funds contributed by the
Northern Colorado Water Conservancy District**
Issue Date: May 23, 2013
Action No. NWO-2003-80509-DEN

REPLY TO:
U.S. Army Corps of Engineers
Omaha District, Regulatory Branch
1616 Capitol Avenue
Omaha, NE 68102-4901
Phone: (402) 995-2458
Fax: (402) 996-3842

INFORMATIONAL PUBLIC NOTICE FOR USE OF NON-FEDERAL FUNDS UNDER SECTION 214 OF THE WATER RESOURCES DEVELOPMENT ACT (WRDA)

This Public Notice informs the general public that the District Commander of the Omaha District, U.S. Army Corps of Engineers (Corps) has decided to accept and expend funds contributed by the Northern Colorado Water Conservancy District (Northern Water), a quasi-municipal entity and political subdivision of the State of Colorado, acting through its Northern Integrated Supply Project Water Activity Enterprise (NISP), in order to expedite processing of preparation of the NISP EIS and evaluation of the NISP 404 Permit application, subject to a series of limitations below.

An initial public notice was circulated on 2 April through 1 May 2013, announcing the Corps' preliminary intent to accept and expend funds. The public notice discussed the kinds of activities for which funds would be expended, detailed procedures to be used to ensure impartial decision-making, and solicited comments from the general public. Seven comments were received on the initial public notice.

Procedures to be used to ensure impartial decision-making: To ensure the use of non-federal funds received from Northern Water will not impact impartial decision-making with respect to the NISP EIS and 404 Permit applications, either substantively or procedurally, the Corps will implement the following procedures.

- a) The Corps will establish a separate account to track receipt and expenditure of the funds associated with its preparation of the NISP EIS and evaluation of the 404 Permit application. A dedicated Corps employee will charge that person's time against the account when the employee does work to expedite preparation of the NISP EIS and evaluation of the 404 Permit application.
- b) When these funds are used, the final 404 Permit decision for NISP will be reviewed by Corps staff at least one level above the decision maker, unless the decision maker is the Corps Omaha District Commander.

- c) The final EIS and 404 Permit decision regarding NISP will be made available on the Omaha District Regulatory web page at:
<http://www.nwo.usace.army.mil/Missions/RegulatoryProgram/Colorado.aspx>
- d) The Corps will not eliminate any procedures or decisions that would otherwise be required for the NISP EIS and 404 Permit application under consideration.
- e) The Corps will continue to comply with all applicable Federal laws, statutes, regulations, and guidance.
- f) Funds will be expended only to expedite the preparation, review and coordination of the NISP EIS and the evaluation of the NISP 404 Permit application. Funds will not be expended for review by supervisors or other persons or elements of the Corps in the decision-making chain of command. Any enforcement activities will not be paid for from the funds contributed by Northern Water, nor will such funds be used to pay for the costs of public hearings and distribution of public notices.

Information concerning WRDA, including documents referenced in this notice, may be found on the Corps' Omaha District website:

<http://www.nwo.usace.army.mil/Missions/RegulatoryProgram/WRDA.aspx>

If you have questions or need additional information regarding these issues, please contact:

Martha Chieply
1616 Capitol Avenue
ATTN: CENWO-OD-R
Omaha, Nebraska 68102-4901

E-mail: Martha.S.Chieply@usace.army.mil.

**MEMORANDUM OF AGREEMENT (MOA)
BETWEEN NORTHERN COLORADO WATER CONSERVANCY
DISTRICT
AND THE U.S. ARMY CORPS OF ENGINEERS,
OMAHA DISTRICT**

THIS AGREEMENT is entered into as of this 17th day of May 2013, between the Northern Colorado Water Conservancy District, a quasi-municipal entity and political subdivision of the State of Colorado (hereinafter "Northern Water"), acting through its Northern Integrated Supply Project Water Activity Enterprise (hereinafter NISP) and the Department of the Army, represented by the U.S. Army Corps of Engineers, Omaha District (hereinafter the "District"), collectively referred to as "the Parties."

WITNESSETH THAT:

WHEREAS, the U.S. Army Corps of Engineers ("Corps") has jurisdiction over certain activities occurring in waters of the United States, including wetlands; and

WHEREAS, Section 214 of the Federal Water Resources Development Act of 2000, Public Law 106-541 ("WRDA 2000"), as amended by Public Law 111-315, authorizes the Secretary of the Army, after public notice, to accept and expend funds contributed by a non-Federal public entity to expedite the preparation of the NISP Environmental Impact Statement (EIS) to comply with the National Environmental Policy Act (NEPA) and the evaluation of a Clean Water Act Section 404 Permit (404 Permit) application under the jurisdiction of the Department of the Army; and

WHEREAS, the Secretary of the Army has delegated the responsibility of carrying out Section 214 of the Water Resources Development Act (WRDA) 2000, as amended by Public Law 111-315, to the Chief of Engineers and his delegated representatives; and

WHEREAS, the Chief of Engineers, by memorandum dated March 29, 2004, as modified October 1, 2008, has authorized the District and Division Engineers of the Corps to accept and expend funds contributed by non-Federal entities subject to certain limitations; and

WHEREAS, the Corps has indicated it is not able, without additional resources, to expedite their evaluation of the NISP EIS and 404 Permit for the non-Federal entity related to projects for a public purpose; and

WHEREAS, Northern Water requires expedited and priority review of NISP; and

WHEREAS, the District issued an initial Public Notice dated April 2, 2013, regarding its intent to accept and expend funds contributed by non-Federal public entities for such purposes; and

WHEREAS, the District has determined that expenditure of funds received from Northern Water will be in compliance with Section 214 of WRDA 2000, as amended by Public Law 111-315; and

WHEREAS, it is understood and acknowledged by all Parties that the District's review of material associated with NISP will be completely impartial and in accordance with all applicable Federal laws and regulations; and

WHEREAS, Northern Water is a non-Federal public entity.

NOW, THEREFORE, Northern Water and the District agree as follows:

AGREEMENT

Article I. - PURPOSE AND AUTHORITIES

Pursuant to Section 214 of WRDA 2000, as amended by Public Law 111-315, this MOA is entered into by the Parties for the purpose of establishing a mutual framework governing the respective responsibilities of the Parties for the acceptance and expenditure of funds contributed by Northern Water to expedite the District's preparation of the NISP EIS under NEPA and evaluation of the 404 Permit application under the jurisdiction of the Department of the Army. This MOA is not intended as the exclusive means of obtaining District review of Northern Water projects. This MOA is a vehicle by which Northern Water may obtain expedited review of Northern Water's NISP project designated as a priority, outside of the ordinary District review process.

Article II. - SCOPE

A. Northern Water will provide funds to the District for Federal fiscal year(s) (FY) 13 and 14 to expedite the preparation of the NISP EIS and evaluation of Northern Water's NISP 404 Permit application under the jurisdiction of the District. Northern Water may elect to extend the funding beyond FY14, subject to the terms of this MOA. The phrase "Federal fiscal year" in this MOA refers to the period beginning October 1 of each year and ending on September 30 of the following year. The District's regulatory program is funded as a congressionally appropriated line item in the annual Federal budget. Funds received from Northern Water will be used to augment the District regulatory budget in accordance with the provisions of WRDA.

B. The District will establish a separate account to track receipt and expenditure of the funds associated with its preparation of the NISP EIS and 404 Permit evaluation. A dedicated District employee will charge that person's time against the account when the employee does work to expedite preparation of the NISP EIS and 404 Permit evaluation.

C. Funds contributed by Northern Water hereunder will mainly be expended to defray the costs of salary, associated benefits, overhead, and travel expenses for the dedicated person and other costs in order to expedite the evaluation and preparation of the NISP EIS and 404 Permit evaluation. Such activities will include, but not be limited to, the following: ensuring continuity and transfer of institutional knowledge to an appropriate District Project Manager (PM); coordination with the Common Technical Platform; coordination with several other District water supply EIS-level projects ongoing in the South Platte Basin in Colorado; coordination with

the NISP EIS PM, Northern Water, Corps management, and cooperating agencies; review and edit of products generated by the third party contractor in conjunction with the NISP PM and State Program Manager, including but not limited to, technical resource reports, responses to cooperating agency comments on products, preparation of a Supplemental Draft Environmental Impact Statement (SDEIS), memoranda, meeting minutes, schedule progress, and other related work products; and assisting in development of a draft Record of Decision (ROD).

D. Funds will *not* be expended for review by supervisors or other persons or elements of the District in the decision-making chain of command. Any enforcement activities will not be paid for from the funds contributed by Northern Water, nor will such funds be used to pay for the costs of public hearings and distribution of public notices.

E. If Northern Water's funds are expended and are not renewed, the Parties will terminate this MOA in accordance with Article X.A and any remaining evaluation related to the NISP EIS or 404 Permit be processed pursuant to the standard procedures, in a manner decided by the assigned Regulatory Project Manager and his or her supervisor.

Article III. - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the District and Northern Water, each party will appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA. Additional representatives may also be appointed to serve as points of contact on specific permit actions. Each party will issue a delegation letter to the other designating the Principal Representative for each agency.

Article IV. - RESPONSIBILITIES OF THE PARTIES

A. Northern Water shall:

1. Provide adequate information for the District's preparation of the NISP EIS and 404 Permit evaluation. Upon request, Northern Water or the designated third party contractor shall provide supplemental information necessary to assure the District can effectively accomplish the required review.

2. In consultation with the District, schedule District involvement in NISP-related activities.

3. To the best of its ability, ensure the participation of all essential personnel, customers and decision makers during the NISP EIS and 404 Permit evaluation process.

4. Work closely with the District to resolve workload conflicts and adjust priorities and schedules in order to make optimal use of available staff resources.

B. The District shall:

1. Expedite evaluation in accordance with the purpose, terms, and conditions of this MOA. The District shall not redirect resources from, or otherwise postpone, other Northern Water projects submitted through the standard District review process.

2. Consult with Northern Water regarding an adjustment or establishment of priorities if the current and/or projected NISP-related workload exceeds the District's ability to provide the services specified in this MOA.

3. Provide Northern Water an annual summary report of progress made under this MOA. This report will describe achievements, including any improvements the District has documented in coordinating and improving the efficiency of environmental reviews, and will summarize expenditures to date. The report also will identify any recommendations for improving consultation and coordination among the Parties to this MOA.

4. Designate a Regulatory Project Manager who will make his or her best efforts to attend periodic meetings with Northern Water.

Article V. FUNDING

A. Northern Water will pay the District an amount not to exceed \$139,254.95 for purposes of funding a part time project manager for two years, including overhead, and associated support personnel for the term of this MOA.

B. Upon receipt of a signed Agreement/modification or task order in advance of the District incurring any financial obligations or performing work under this MOA and no later than ninety (90) days after the effective date of this MOA as defined in Article XI, Northern Water will provide payment by check or electronic funds transfer to the Finance and Accounting Officer, U.S. Army Corps of Engineers, Omaha District. The first payment will be prorated to begin with the start date of the employee to January 31, 2014.

C. Before February 1, 2014, Northern Water will pay the District the - remaining amount.

D. Costs incurred by the District under this MOA may increase due to the Federal Government's General Schedule increases and locality pay adjustments. In the event of such increases, the District will promptly notify Northern Water of the additional amount necessary to continue services under this MOA. Upon receipt of such notice, Northern Water shall either make a lump sum payment for the additional amount or agree to a reduced level of service.

E. Any carry-over funds from year-to-year would be credited to the following fiscal year's payment, or refunded if this MOA is terminated or expires.

Article VI. - APPLICABLE LAWS

All applicable statutes, regulations, policies, directives, and procedures of the United States will govern this MOA and all documents and actions pursuant to it. Unless otherwise required by

law, all expediting of environmental permit applications undertaken by the District will be governed by District regulations, policies and procedures.

Article VII. - DISPUTE RESOLUTION

The Parties agree that, in the event of a dispute between the Parties, Northern Water and the District shall use their best efforts to resolve the dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the Parties. The Parties agree that, in the event such measures fail to resolve the dispute, they shall refer the dispute for resolution to an appropriate forum in accordance with Federal law.

Article VIII. - PUBLIC INFORMATION

Other than those actions previously agreed upon between the District and Northern Water and the designated third party contractor, the District will not be responsible for justifying or explaining Northern Water programs or projects before other agencies, departments and offices. The District may provide, upon request from Northern Water, any assistance necessary to support justification or explanations of activities conducted under this MOA. In general, the District is responsible only for public information regarding District regulatory activities. Northern Water will give the District advance notice before making formal, official statements regarding District activities funded under this MOA.

Article IX. - MISCELLANEOUS

A. Other Relationships or Obligations

This MOA will not affect any pre-existing or independent relationships or obligations between Northern Water and the District.

B. Severability

If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions will remain in force and unaffected to the fullest extent permitted by law and regulation.

Article X. - AMENDMENT, MODIFICATION AND TERMINATION

A. This Agreement may be modified, amended, or extended only by written, mutual agreement of the Parties. Either party may terminate this MOA prior to its expiration date by providing written notice to the other party. Such termination shall be effective upon the sixtieth (60th) calendar day following notice, unless a later date is set forth. In the event of termination, Northern Water shall continue to be responsible for all costs incurred by the District under this MOA prior to the effective date of such termination and for the costs of closing out or transferring any on-going Northern Water priority projects.

B. If Northern Water elects to extend the services under this MOA and fund those costs during FY15 and subsequent Federal fiscal years, no later than August 1, 2014 and annually thereafter, Northern Water shall provide written notice of this decision to the District's Principle Representative. After receipt of Northern Water's notice and no later than September 1, 2014 and annually thereafter, the District will provide Northern Water with an updated cost estimate that provides an estimate of costs for the next Federal fiscal year, including any proposed changes in the level of staffing. Upon receipt of the District's updated cost estimate and in advance of the District incurring any costs for the next Federal fiscal year, Northern Water will make a lump sum payment to the District in the total amount specified in the District's revised cost estimate for the fiscal year.

C. Within ninety (90) days of termination, or expiration of the MOA, the District shall conduct an accounting to determine the actual costs of the work. Within thirty (30) days of completion of this accounting, the District shall return to Northern Water any funds advanced in excess of the actual costs. Funds may be provided to Northern Water either by check or by electronic funds transfer.

Article XI. - EFFECTIVE DATE AND DURATION

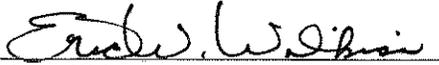
This MOA will become effective when signed by both Northern Water and the District. This MOA shall remain in force until the earlier of the following events: (1) December 31, 2016, unless the sunset clause in Section 214 of WRDA 2000, as amended by Public Law 111-315, is extended prior to that date, in which case the MOA will remain in effect for the duration of the statutory extension; or (2) the MOA is terminated pursuant to Article X.

Article XII. – INTEGRATION

This MOA, including any documents incorporated by reference or attachments thereto, constitute the entire agreement between the Parties. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein and shall be of no further force or effect.

IN WITNESS WHEREOF, the Agreement is executed by Northern Water, acting by and through its Northern Water Manager or their designee and by the U.S. Army Corps of Engineers, through its authorized officer. By affixing their signatures below, each signatory certifies and affirms that s/he has the authority to enter into this MOA on behalf of his/her organization and to bind that organization to the terms of this MOA.

For Northern Water:

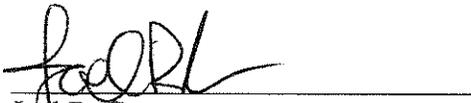


Eric Wilkinson

General Manager

Date: 05/08/13

For the U.S. Army Corps of Engineers, Omaha District



Joel R. Cross

Colonel, Corps of Engineers

District Commander

Date: 05/17/13