

GAO

Report to the Chairman, Committee on  
Transportation and Infrastructure,  
House of Representatives

May 2007

# WATERS AND WETLANDS

Corps of Engineers  
Needs to Ensure That  
Permit Decisions  
Made Using Funds  
from Nonfederal  
Public Entities Are  
Transparent and  
Impartial





Highlights of [GAO-07-478](#), a report to the Chairman, Committee on Transportation and Infrastructure, House of Representatives

## Why GAO Did This Study

When a nonfederal public entity such as a city or county wants to build a public works project that could degrade or damage federally regulated waters and wetlands, it must obtain a permit from the U.S. Army Corps of Engineers (Corps) before proceeding. To help expedite the permit process for these entities, the Congress enacted section 214 of the Water Resources and Development Act of 2000, providing the Corps with temporary authority to receive funds from such entities and use the funds to process permits. To ensure the impartiality and transparency of section 214 permit decisions, the Corps requires its districts to adhere to all existing permit review processes, as well as some additional requirements.

GAO was asked to identify (1) how many districts have used the section 214 authority, (2) the amount of funds they have received, (3) how permit processing times have changed, (4) the extent to which districts have adhered to the existing review processes and the additional requirements.

## What GAO Recommends

GAO recommends that the Corps improve its guidance and oversight of districts' use of the section 214 authority. The agency generally concurred with our recommendations.

[www.gao.gov/cgi-bin/getrpt?GAO-07-478](http://www.gao.gov/cgi-bin/getrpt?GAO-07-478).

To view the full product, including the scope and methodology, click on the link above. For more information, contact Anu K. Mittal at (202) 512-3841 or [mittala@gao.gov](mailto:mittala@gao.gov).

# WATERS AND WETLANDS

## Corps of Engineers Needs to Ensure That Permit Decisions Made Using Funds from Nonfederal Public Entities Are Transparent and Impartial

### What GAO Found

As of August 2006, 4 of the Corps' 38 districts had agreements with 11 nonfederal public entities to receive section 214 funds, which have been used to evaluate permit applications. These districts received, evaluated, and approved 187 applications using section 214 funds. The types of projects for which permits were requested included ecological restoration, water storage, transportation, and port construction. Most of the section 214 applicants were city or county departments, port authorities, or regional water authorities, but two applicants were private companies that were allowed to submit applications under section 214 agreements with the Corps. The legislation does not expressly prohibit private companies from submitting applications under section 214 agreements. The use of the section 214 authority may become more prevalent in the future because 7 additional districts are in the process of entering into such agreements, and 19 other districts told GAO that they would consider using the authority if the Congress makes it permanent.

The Corps received more than \$2 million in section 214 funds from nonfederal public entities between December 2001 and September 2006 and used these funds primarily to hire additional project managers to process permits. About 61 percent of the funds were used to cover personnel costs for the project managers who processed section 214 permits; the remainder covered overhead and other costs incurred to implement the authority.

Since the Corps began using the section 214 authority, permit processing times have increased in some districts and decreased in others for both section 214 applicants and non-section 214 applicants. However, it is difficult to attribute the changes in processing time directly to the use of the section 214 authority because many other factors may have influenced processing times and may have masked the effects of the authority. For example, the complexity of 214 permit applications may have resulted in greater processing time for these applicants. Generally, Corps officials and nonfederal public entities who used the authority believe that it has expedited permit processing, saved them cost and time, and improved communication between the Corps and the section 214 applicants.

The four districts varied in the extent to which they adhered to the existing permit review process and the additional requirements to ensure impartiality of section 214 permit decisions. For example, one district did not follow a key step in reviewing certain types of section 214 permits because officials did not know they were required to do so. In two other districts, lack of documentation in the permit files prevented GAO from determining whether they followed the existing review processes for another type of permit. With regard to the additional requirements imposed by the Corps for section 214 permits, some districts did not comply with these requirements because they were not aware of them, and others did not comply with them because they interpreted the requirements differently than Corps headquarters intended.

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## Abbreviations

CEFMS	Corps of Engineers Financial Management System
DCI	data collection instrument
FWS	Fish and Wildlife Service
NMFS	National Marine Fisheries Service

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United States Government Accountability Office  
Washington, DC 20548

May 16, 2007

The Honorable James L. Oberstar  
Chairman  
Committee on Transportation and Infrastructure  
House of Representatives

Dear Mr. Chairman:

When cities, counties, or other nonfederal public entities propose public works projects, such as road construction and sewer line construction or maintenance, that could degrade or damage federally regulated waters and wetlands, they must obtain a permit from the U.S. Army Corps of Engineers (Corps) before proceeding. The Corps is responsible for regulating activities that may impact wetlands, streams, and other waters throughout much of the United States and decides whether to allow such activities to occur. To obtain the Corps' approval, the nonfederal public entity, like any other property owner, must submit a permit application that contains a description of the proposed project, including its purpose and location, and other information the Corps needs to evaluate how the project will impact wetlands and other federally regulated waters. Once the Corps receives all of the required information from the applicant, the permit review process begins. This process varies depending on the complexity of the proposed project, the extent of the resources likely to be impacted, and the type of permit required.

Some policymakers and others have expressed concerns that the Corps' permit process takes too long and has significantly delayed some public works projects. In 2000, the Congress included a provision in the Water Resources and Development Act to expedite permit processing for nonfederal public entities. Specifically, section 214 of the act authorizes the Secretary of the Army, after providing public notice, to accept and expend funds from nonfederal public entities to expedite the evaluation of permit applications that fall under the jurisdiction of the Department of the Army. The act also requires the Secretary to ensure that the funds accepted will not impact impartial decision making with respect to permit approvals. Originally set to expire at the end of fiscal year 2003, this temporary authority has been extended four times and is currently set to expire in December 2008. The Secretary of the Army has delegated this authority to the Corps and, in turn, the Corps has delegated day-to-day

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responsibility for implementing the section 214 authority to its 38 districts that have responsibility for processing permit applications.

To accept funds under the section 214 authority, a Corps district typically enters into a legal agreement with a nonfederal public entity that specifies the duration of the arrangement, the amount of funds to be received, and how the funds are to be used. Although the agreements are generally between the Corps and one nonfederal public entity, such as a city or county, various departments within an entity may submit permit applications for expedited review under the agreement.

To ensure the transparency and impartiality of permit decisions when using section 214 funds, Corps districts must not only follow the same basic permit processing procedures applicable to all applicants but also meet two additional requirements. The basic permit processing procedures that all districts must adhere to depends upon the type of permit that is being considered for a project. For example, for those projects that are likely to have only minimal impacts on water and wetland resources, the Corps generally grants approvals under its “nationwide” category of permits. Applications for these types of projects generally only undergo a limited review process, which includes two key steps. In contrast, some projects could have substantial impacts on water and wetland resources, and for these projects the Corps generally issues what is known as a “standard” permit. The review process for standard permits is more extensive and includes six key steps. In addition to these basic review processes, permit decisions that are made using section 214 funds must also (1) undergo a “higher level” review—in other words, a Corps official senior to the decision maker must review the decision and (2) be posted on the district’s Web site.

In this context, you asked us to review the (1) extent to which Corps districts have entered into agreements with nonfederal public entities to receive section 214 funds since 2001 and how many permit applications the Corps has evaluated using these funds, (2) amount of section 214 funds the Corps has received and how it has used these funds, (3) extent to which permit processing times have changed since the Corps began using section 214 funds, (4) extent to which the Corps districts have followed the basic permit review processes when evaluating applications using section 214 funds, and (5) extent to which the districts have met the additional requirements for ensuring that permit decisions made using the section 214 funds are impartial and transparent.

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We contacted each of the 38 Corps districts that have responsibilities for issuing permits to identify those districts that had entered into agreements with nonfederal public entities and used section 214 funds to process permit applications. We also surveyed districts that had not used the section 214 authority to determine their reasons for not doing so, and their plans, if any, to use the authority in the future. We also visited each of the districts that had entered into section 214 agreements and processed permit applications with these funds to obtain and review financial and processing time data. We found the financial data related to the use of the section 214 authority to be sufficiently reliable for our purposes, and while the processing time data were generally reliable, it was not reliable for one district that had recently participated in a pilot program for a new permit database. We also reviewed permit files to determine the number and types of projects the districts had evaluated with section 214 funds between 2001 and the time of our review. To determine the extent to which Corps districts followed the basic review process when approving projects using section 214 funds, we first identified key steps for processing permits, in general. These steps were identified by the Corps as being important “safeguards” for ensuring objectivity in its permit decisions and must be completed before a permit is issued. In each district, we reviewed permit files to determine whether they contained evidence that the Corps followed each of these steps. We also reviewed the files for evidence that the Corps met the two additional requirements it had established to ensure that decisions for permits processed with section 214 funds are made impartially and were transparent. A more detailed description of our objectives, scope, and methodology is presented in appendix I. We performed our work between April 2006 and April 2007 in accordance with generally accepted auditing standards.

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## Results in Brief

Four Corps districts had entered into agreements with 11 nonfederal public entities to receive section 214 funds and had evaluated permit applications using these funds, as of August 2006 when we conducted our file reviews. These districts—Jacksonville, Fla.; Los Angeles and Sacramento, Calif.; and Seattle, Wash.—had received, evaluated, and approved 187 permit applications using section 214 funds. The types of projects for which applicants sought permits using section 214 funds varied. For example, nearly half of the projects in Seattle were for ecological restoration and pier and port repair, while the projects in Los Angeles were mainly for maintaining sewer lines. Almost all of the section 214 permit applicants were city or county departments, port authorities, or regional water authorities. However, two applicants in the Sacramento District were private companies that were allowed to submit permit



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applications for expedited review under nonfederal public entities' section 214 agreements with the Corps. The legislation does not expressly prohibit private companies from submitting permit applications under a nonfederal public entity's section 214 agreement with the Corps. We also determined that the use of the section 214 authority may become more prevalent in the future. Of the 34 Corps districts with regulatory responsibilities that had not yet used the section 214 authority, officials from 7 told us they had begun negotiations to enter into such agreements or had entered into such agreements, but had not yet processed any permit applications under this authority, at the time of our review. Moreover, officials from an additional 19 districts told us that they would consider using the authority if it were made permanent.

The Corps received more than \$2 million in section 214 funds between December 2001 and September 2006 and used these funds primarily to hire additional project managers to process permits. Specifically, about 61 percent of the funds were used to cover personnel costs associated with the project managers who were designated to process section 214 permit applications; about 37 percent of the funds were used to cover overhead costs such as the cost of office space, utilities, and administrative support directly attributable to implementing the section 214 authority; and about 1 percent of the funds were used to cover other costs such as equipment, transportation, and the cost of site visits, as well as legal advice related to the processing of section 214 permits.

Since the Corps began using section 214 funds, permit processing times have increased in some districts and decreased in others for both section 214 applicants and non-section 214 applicants. A goal of using the section 214 authority was to expedite permit processing for section 214 applicants; however, we found that the processing times for these applicants have not consistently decreased in all four districts. For example, although the median processing times for some permits processed with section 214 funds decreased by 37 percent in the Sacramento District they increased by 21 percent in the Seattle District. Another goal of using the section 214 authority was to ensure that the use of the authority did not result in processing delays for non-section 214 applicants. However, we found that processing times for these applicants have not consistently remained the same since section 214 funds have been available. For example, while the median processing time for permits processed without section 214 funds remained constant in the Los Angeles District, it increased by 29 percent in the Sacramento District. However, it is difficult to attribute the changes in processing time directly to the section 214 authority because many other factors may have influenced processing times and may have masked the

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effects of the authority. For example, Seattle officials told us that section 214 applications are considerably more complex than applications submitted by other permit applicants, and the extra time needed to process these applications has contributed to the overall processing time increases. Generally, Corps officials and nonfederal public entities in each of the four districts told us that they believe the authority has expedited permit processing and has had other benefits as well. For example, they said that because permit applicants communicate earlier and more frequently with the Corps during the permit review process, applicants are able to avoid submitting project designs that might otherwise have required costly revisions in order to obtain Corps approval.

One Corps district did not follow all the required steps of the basic project review process for standard permits, and it is unclear whether two districts followed the review process for nationwide permits because of lack of documentation in the permit files. Specifically, we determined that three districts used section 214 funds to review projects that were seeking a standard permit. Two of the three districts—Jacksonville and Seattle—followed the established permit review process for standard permits. One district—Sacramento—followed most of the steps in the established standard review process but did not complete one key step, which requires officials to balance the project’s benefits against the project’s detriments and ensure that the project is not contrary to the public interest. In addition, we found that all four districts used section 214 funds to approve projects with nationwide permits. Two districts—Jacksonville and Seattle—generally followed the established permit review process for approving projects with nationwide permits, but we could not make a similar determination for the Los Angeles and Sacramento districts because their permit files contained limited documentation supporting their permit decisions. Corps headquarters has recently recognized that maintaining consistent documentation of the districts’ permit decisions would help ensure that the decisions are transparent and legally defensible and has begun to develop Corps-wide standards to address this issue. We are recommending that the Corps clearly identify the steps district officials must complete when approving projects under a standard permit and clarify the information that needs to be documented to justify and support permit approval decisions for nationwide permits in the standards that are currently under development. In commenting on a draft of this report, the agency generally concurred with our recommendation.

The four districts varied in the extent to which they met the two additional requirements for ensuring that permit decisions made using section 214 funds are impartial and transparent. With regard to the Corps requirement

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that permit decisions made using section 214 funds are to receive a higher level review, we found that the Sacramento and Seattle districts more frequently met this requirement for standard and nationwide permit decisions, 87 and 65 percent, respectively, than did the Jacksonville and Los Angeles districts, who met the requirement only 8 and 9 percent, respectively. With regard to the second requirement to post final decisions to the district's Web site, both the Sacramento and Seattle districts generally posted the permit decisions made using section 214 funds to their district's Web site, but the Jacksonville and Los Angeles districts did not. According to district officials, variations in their compliance with the additional section 214-related requirements were caused by the lack of specificity in the Corps guidance, causing some districts to believe that the requirements did not apply to projects that were approved with nationwide permits. In other cases, some project managers told us that they were simply unaware of one or both of the requirements. To monitor the districts' implementation of the section 214 authority, the Corps' guidance requires that annual reports be submitted to headquarters on their implementation processes. However, no reports have been submitted since the districts began using the section 214 authority in 2001. We believe if these reports had been filed Corps headquarters may have become aware that some districts were not meeting the additional section 214 requirements and could have taken corrective actions needed to resolve these omissions. We are recommending that the Corps clarify which additional requirements districts must adhere to when evaluating projects with the section 214 authority, provide training to ensure that district officials are aware of the additional requirements, and develop an effective oversight approach to ensure that the districts are following required procedures when evaluating projects under the authority. In commenting on draft of this report, the agency generally concurred with our recommendation.

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## Background

Section 404 of the Clean Water Act is the principal federal program that provides regulatory protections for wetlands, which include bogs, swamps, and marshes. It generally prohibits the discharge of dredged or fill material into waters of the United States, which include certain wetlands, without a permit from the Corps. In addition, under the Rivers and Harbors Act of 1899, the construction, excavation, or deposition of materials in, over, or under any navigable water of the United States, or any work which would affect the course, location, condition, or capacity of those waters is prohibited without a permit from the Corps. The Corps receives thousands of permit applications each year from individuals, businesses, and public agencies seeking to build houses, golf courses, and

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infrastructure projects, or to perform other activities that could destroy or degrade wetlands, streams, and rivers. The Corps' decisions to allow particular activities to occur—and if so, under what conditions—are to reflect the national concern for both the use and protection of these important water resources. The Corps must balance the impacts that proposed projects may have on many factors, from wetlands and wildlife to recreation and the economy, and authorize projects only if it finds the projects are in the public interest.

The Corps' regulatory program is highly decentralized. Most of the authority to issue permits has been delegated from the Secretary of the Army to the Chief of Engineers who, in turn, has delegated the authority to 38 Corps districts. Regulatory program management and administration is focused at the district office level, with policy oversight at higher levels—including the Corps' 8 division offices and headquarters.

To obtain a permit, project proponents, who may be the property owner or the owner's authorized agent, such as a consultant, must submit an application to the Corps. The application details the proposed project, its purpose, location, and likely impacts to the aquatic environment. The Corps reviews the application to ensure it contains the minimum required information. The amount and type of information the Corps requests from the applicant may vary by the type of applicant and project, as well as the extent and functional values of the water resources that may be impacted. If the information submitted does not sufficiently identify the location or nature of the project, the Corps will request additional information.

Once the permit application is complete, the permit review process begins. This process is governed by federal regulations and guidance documents from Corps headquarters. The regulations set the overall review framework by describing the factors the districts must consider when deciding whether to issue a permit and the general evaluation procedures.<sup>1</sup> The guidance documents, including the Corps' "Standard Operating Procedures" and "Regulatory Guidance Letters," describe in more detail the steps the districts must follow to implement the regulations, including documentation that should be maintained in the administrative record to support the permit decisions. The regulations allow the districts to issue different types of permits—including nationwide permits, letters of permission, and standard permits—depending on the scope and likely

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<sup>1</sup>33 C.F.R. Parts 320–331.

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impacts of the proposed projects. The specific steps the districts must follow to review a permit application depend on the type of permit the Corps uses to approve the proposed project.

The Corps approves most projects using nationwide permits. These permits authorize classes of activities throughout the nation such as minor dredging, road crossings, and bank stabilization that the Corps has determined are likely to have minimal impacts to water and wetland resources. The Corps has developed nationwide permits for 49 different classes of activities. Each permit contains specific terms and conditions that a proposed project must meet to ensure its impacts will be minimal. The purpose of nationwide permits is to allow certain activities to be performed in an expeditious manner with limited, if any, delay or paperwork. Most prospective permittees may proceed with their activity without ever contacting the Corps; they simply review the terms of the different nationwide permits and self-certify that their activity falls within the restrictions of one or more of the permits. However, for some nationwide permits, a prospective permittee must notify the Corps if the impacts of their proposed activity exceed a certain threshold, for example filling in more than 1/10 acre of wetlands or other federally regulated waters. The Corps then reviews the project outlined in the permit application to determine whether it meets the terms and conditions of one or more of the classes of activities authorized by nationwide permits. If it does, the Corps notifies the applicant that the project is approved under certain nationwide permit(s). The Corps can combine two or more different nationwide permits to approve a single project. The Corps can also approve projects using regional general permits—which are similar to nationwide permits, but cover smaller geographic areas, such as a single state. In fiscal year 2006, the Corps issued about 67,000 nationwide and regional permit authorizations.

For projects likely to have more substantial impacts on waters and wetlands, the Corps can issue standard permits. Given the potentially larger impacts of these projects, federal regulations and related guidance require a more extensive review for these permits. Specifically, the Corps must evaluate the proposed activity's impact on a wide range of factors, from wetlands and fish habitat to public safety and energy needs. If the proposed project will adversely impact one or more of these factors, the Corps can place conditions on the issued permit, such as limiting work during particular times of the year to reduce impacts on wildlife or requiring the applicant to undertake mitigation activities to compensate for wetlands they damage or degrade. The Corps may issue a permit only if it concludes, after carefully weighing the project's costs and benefits, that

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the project is not contrary to the public interest. As part of this public interest review, the Corps must notify the public of the proposed project, request comments, and incorporate any comments they receive into their review of the overall public value of the project. In addition, the Corps must determine that the proposed project will (1) not adversely impact endangered or threatened species, (2) not discharge pollutants into federally regulated waters that violate state water quality standards, and (3) comply with guidelines developed by the Environmental Protection Agency to protect wetlands and other federally regulated waters.<sup>2</sup> In making these determinations, the Corps often coordinates with other federal and state agencies, such as the U.S. Fish and Wildlife Service. In fiscal year 2006, the Corps issued about 4,000 standard permits.

The Corps may use letters of permission in lieu of a standard permit when it determines that the proposed work would be minor, not have significant individual or cumulative impacts on the environment, and is not expected to be controversial. In these situations, an abbreviated standard permit review process, involving coordination with other federal and state regulatory agencies and adjacent property owners—but not the general public—is used to expedite the permit's approval.

Some concerns have been expressed that the Corps' permitting process takes too long and has significantly delayed public works projects, such as constructing and repairing ports. For example, the Pacific Northwest Waterways Association, which represents ports and businesses, believes that delays in permit processing in the Northwest have put U.S. ports at a competitive disadvantage to ports in Canada, where they argue permit requirements are not as strict. In 2000, the Congress included a provision in the Water Resources and Development Act to expedite permit processing for nonfederal public agencies. Specifically, section 214 of the act authorizes the Secretary of the Army, after public notice, to accept and expend funds contributed by nonfederal public entities, such as cities and port authorities, to expedite the evaluation of permit applications under the jurisdiction of the Department of the Army. The act also requires the Secretary to ensure that the funds accepted will not impact impartial decision making with respect to permits. Originally set to expire at the end of fiscal year 2003, this authority has been extended four times and is currently set to expire in December 2008. The authority to accept section

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<sup>2</sup>EPA has overall authority and responsibility for carrying out the Clean Water Act.

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214 funds has been delegated to the Corps' 38 districts that have regulatory responsibilities.

In 2001, and again in 2004, Corps headquarters issued guidance that described the procedures that Corps districts must follow to accept and use section 214 funds. Specifically, the guidance directs any district accepting such funds to

- issue for public comment notices announcing the Corps' intent to accept funds from a nonfederal public entity that include the reasons for accepting the funds and what activities the funds will be expended on,
- after review of comments, notify the public of the District Commander's decision to accept these funds, and
- establish separate accounts to track the acceptance and expenditure of these funds.

The guidance also calls for strict upward reporting to ensure that the section 214 funds will be used for their intended purpose. Specifically, the Corps' divisions are to submit annual reports to headquarters that (1) document the acceptance and expenditure of funds, along with any public notices, (2) assess how the use of the funds expedited the permit review process, and (3) highlight any issues regarding impartial decision making.

The guidance also specifies two steps that Corps districts must take to ensure that the permit decisions they make using section 214 funds are impartial and transparent. In addition to following the permit review process described above, the districts must (1) ensure that a Corps official senior to the decision maker reviews the final permit decision before issuing the permit and (2) post permit decisions to the district's Web site. Finally, the guidance requires that section 214 funds be expended only to expedite the final permit decision; funds cannot be expended on the higher level review.

## Four Corps Districts Have Evaluated Projects Using Section 214 Funds, and Use of This Authority is Likely to Expand in the Future

Four of the 38 Corps districts that have regulatory responsibilities had entered into agreements with 11 nonfederal public entities to receive section 214 funds and had evaluated 187 projects using these funds as of August 2006. Almost all of the section 214 applicants were city or county departments, port authorities, or regional water authorities. However, two applicants were private companies that were allowed to submit permit applications for expedited review under a nonfederal public entity's agreement with the Corps. In addition, of the 34 Corps districts with regulatory responsibilities that had not used section 214 authority to evaluate permit applications, 7 had entered into agreements, or had begun negotiations to enter into such agreements, with nonfederal public entities at the time of our review. An additional 19 districts told us that they would consider using the authority if it were made permanent.

## Four Districts Have Evaluated Permit Applications Using Section 214 Funds

Since 2000 when Congress gave the Corps the authority to accept funds from nonfederal public entities, four Corps districts—Jacksonville, Fla.; Los Angeles and Sacramento, Calif.; and Seattle, Wash.—have entered into agreements with 11 nonfederal public entities and processed permit applications using funds received from these entities. These agreements generally specify the duration of the agreement, the amount of funds to be received, and how the funds are to be used. Although the agreements are generally between the Corps and one entity, such as a city or county, various departments within that entity may submit permit applications for expedited review under the agreements. The Seattle District was the first to enter into an agreement with a nonfederal public entity and has entered into more agreements than the other three districts. Table 1 shows the nonfederal public entities with whom the four districts have agreements and the effective dates of the agreements.

**Table 1: District Agreements with Nonfederal Public Entities to Receive Section 214 Funds and the Date of the Agreements**

District	Nonfederal public entity	Date of agreement
Jacksonville	South Florida Water Management District	August 2005
Los Angeles	City of San Diego	September 2004
Sacramento	City of Elk Grove	October 2004
	City of Redding	October 2004
	City of Lathrop	November 2004
	Sacramento County	November 2004
Seattle	City of Seattle	December 2001
	Port of Seattle	February 2002



District	Nonfederal public entity	Date of agreement
	Port of Tacoma	February 2002
	King County	October 2002 <sup>a</sup>
	Snohomish County	April 2003 <sup>a</sup>

Source: GAO generated from Corps data.

<sup>a</sup>This agreement expired on September 30, 2005, and was not renewed.

Using the funds received under the section 214 authority, the four districts evaluated and approved 187 permit applications, as of August 2006. As table 2 shows, 82 percent of these applications were for projects seeking approval under a nationwide permit. The districts approved the remaining applications with standard permits, regional permits, or letters of permission. The districts did not deny any permit applications processed using section 214 funds. According to district officials, the Corps rarely denies any permit applications, regardless of the source of funding used to evaluate the applications. Instead, the Corps frequently requires applicants to redesign their projects to reduce impacts to the aquatic environment before receiving permit approvals.

**Table 2: Permit Applications Approved Using Section 214 Funds, by Type of Permit and by District, as of August 2006**

District	Number of applications approved using section 214 funds			Total
	Nationwide permits	Standard permits	Letters of permission and regional permits	
Jacksonville	10	2	0	12
Los Angeles	11	0	3	14
Sacramento	29	2	0	31
Seattle	103	23	4	130
<b>Total</b>	<b>153 (82%)</b>	<b>27 (14%)</b>	<b>7 (4%)</b>	<b>187 (100%)</b>

Source: GAO analysis of Corps data.

The types of projects for which permits were sought under the section 214 authority varied by Corps district. For example, nearly half the projects evaluated and approved by the Seattle District were for ecological restoration and pier and port repair, while the projects evaluated and approved by the Los Angeles District were mainly for maintaining sewer lines. Table 3 shows the number of projects that fell into each category, and table 4 provides examples of the different types of projects evaluated by the Corps districts using section 214 funds.

**Table 3: Types of Projects Approved by the Four Corps Districts That Processed Permit Applications with Section 214 Funds, as of August 2006**

Type of project	Jacksonville	Los Angeles	Sacramento	Seattle	Total
Bank stabilization	0	0	0	14	14
Dredging	0	0	0	4	4
Pier repair	0	0	0	22	22
Port construction	0	0	0	16	16
Residential and commercial development	0	0	1	0	1
Ecological restoration	4	2	2	25	33
Sewer line maintenance and construction	0	10	3	1	14
Survey activities	4	0	2	8	14
Transportation	0	1	10	17	28
Water storage, supply, and treatment	4	1	10	14	29
Other construction and maintenance	0	0	1	3	4
Other utility line maintenance and construction	0	0	2	5	7
<b>Total</b>	<b>12</b>	<b>14</b>	<b>31</b>	<b>129<sup>a</sup></b>	<b>186</b>

Source: GAO analysis of Corps permit files.

<sup>a</sup>We were unable to determine the purpose of one of the projects approved by the district because district staff were unable to locate the permit file.

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**Table 4: Examples of Projects Evaluated and Approved by Four Corps Districts Using Section 214 Funds**

District	Project
Jacksonville	In December 2005, the Corps approved a request from the South Florida Water Management District to construct two temporary storage reservoirs, approximately 30 acres each. These temporary reservoirs will provide data that will guide design and construction of a future water storage project in southwest Florida that is part of the Everglades restoration initiative. As a condition of the permit, the Corps required the applicant to implement measures to prevent harm to endangered species, including the Florida panther, that might be found within the project area. Because the loss of almost 28 acres of federally regulated waters caused by this project is expected to be offset by the construction of the larger water storage project, the Corps did not require the applicant to mitigate for the acres impacted, pending completion of that project.
Los Angeles	In July 2005, the Corps approved a request from the City of San Diego's Engineering and Capital Projects Department to temporarily dewater approximately 0.1 acres of the San Diego River to conduct an emergency repair/reconstruction of a river crossing. To ensure that impacts of the project were temporary, the Corps required that the department comply with 19 special conditions, including that all disturbed areas be replanted with preexisting or native vegetation and that a qualified biologist be on-site during project construction to ensure compliance with the permit.
Sacramento	In July 2005, the Corps issued a permit to the City of Elk Grove, Calif., authorizing the fill of .46 acres of wetlands and other federally regulated waters to construct a new roadway and intersection. As a condition of the permit, the Corps required the applicant to implement measures to prevent harm to endangered species that might be found within the project area and to undertake mitigation activities to compensate for the wetlands destroyed by the project.
Seattle	In September 2002, the Corps issued a permit to the Port of Seattle to repair and upgrade port piers to meet new seismic and building codes and increase port capacity. The project, encompassing 215 acres of urban waterfront, required the placement of fill and riprap and was expected to have short-term impacts on some fish and wildlife species and water quality. The Corps concluded that the proposed project represented the least environmentally damaging practicable alternative and would not result in the unacceptable degradation of the aquatic environment. The Corps also placed several conditions on the issued permit, including limiting when the work could be performed and implementing measures to protect endangered species that might be present in the project area, to mitigate the project's effects.

Source: GAO analysis of Corps permit files.

Under the section 214 authority, the Corps received applications from 31 different applicants. Most of the permit applications were from city or county departments, port authorities, or regional water authorities. In general, the applicants were either the entities, or departments within the entities, that entered into the section 214 agreement with the Corps. For example, San Diego's Department of Engineering and Capital Projects and Metropolitan Waste Water Department both submitted applications for expedited review under the city's agreement with the Corps' Los Angeles District. However, in the Corps' Sacramento District, we found that two applications were submitted by private companies that were not part of the nonfederal public entities with whom the Corps had an agreement. One project was for a large, multiuse development that would fill 1.8 acres of wetlands. The other project was to fill in .46 acres of streams as part of a larger ecological restoration effort to compensate for wetlands and other waters that may be modified or destroyed by other construction projects.

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According to Corps officials, in each case, a nonfederal public entity requested that the Corps process the private company's application under the section 214 agreement. The legislation does not expressly prohibit the practice of allowing private companies from requesting permit approval under a nonfederal public entity's section 214 agreement with the Corps.

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### The Districts' Use of Section 214 Authority Is Likely to Expand in the Future

Thirty-four Corps districts had not yet used the section 214 authority to evaluate permit applications at the time of our review, but many are considering doing so in the future. Officials from 28 Corps districts that had not entered into section 214 agreements cited two primary reasons for not yet doing so: (1) nonfederal public entities in their districts had not expressed an interest in entering into such agreements and (2) the districts were concerned that the section 214 authority was not permanent and could expire in the future. In addition, district officials identified two other disadvantages of using the section 214 authority. First, officials were concerned about the public's perception of the objectivity of permit decisions made using section 214 funds. Second, officials were concerned that because the authority was not permanent and they could not guarantee a prospective employee's tenure, it would be difficult for them to hire and retain qualified staff to process these types of applications.

Despite these concerns, many of the districts are considering the use of the section 214 authority soon or in the future. Seven districts—Huntington, W.Va.; Louisville, Ky.; Mobile, Ala.; Omaha, Neb.; Portland, Ore.; San Francisco, Calif.; and Savannah, Ga.—had already entered into agreements or had begun negotiations with nonfederal public entities but had not completed the evaluation of any permit applications at the time of our review. Nineteen districts told us that they would consider entering into agreements with nonfederal public entities if the section 214 authority were made permanent. In addition, two of the four districts included in our review that had used section 214 funds to review permit applications have expanded their use of the authority. The Los Angeles District has entered into three new agreements—San Bernardino County in September 2006 and Port of Los Angeles and San Diego Water Authority in October 2006. The Sacramento District entered into two new agreements—one with the City of Roseville in September 2006 and one with the City of Rancho Cordova in October 2006.

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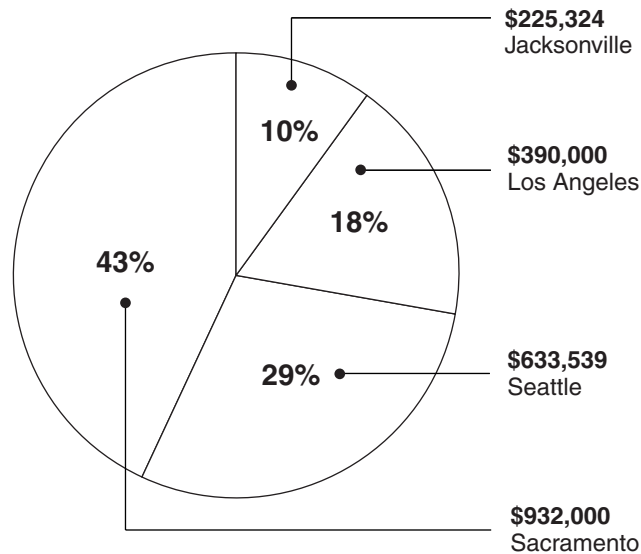
## Corps Districts Received More Than \$2 Million in Section 214 Funds That Were Used to Primarily Cover Personnel-Related Costs

From December 2001 through September 2006, nonfederal public entities provided over \$2 million in section 214 funds to the four Corps districts with whom they had section 214 agreements. The districts hired additional project managers to process permit applications and primarily used the section 214 funds received to cover personnel-related costs, such as salaries and benefits.

As figure 1 shows, of the four districts that received section 214 funds from nonfederal public entities from December 2001 through September 2006, the Sacramento District received the most, \$932,000, and the Jacksonville District the least, \$225,324. Table 5 shows the amounts provided by each of the 13 nonfederal public entities.

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**Figure 1: Section 214 Funds Received by the Four Corps Districts from December 2001 through September 2006**



Source: Data provided by the Corps districts.

**Table 5: Total Section 214 Funds Provided by the 13 Nonfederal Public Entities to Four Corps Districts from December 2001 through September 2006**

District	Nonfederal public entity	Amount provided
Jacksonville	South Florida Water Management District	\$225,324
Los Angeles	City of San Diego	240,000
	San Bernardino County	150,000 <sup>a</sup>
Sacramento	City of Elk Grove	178,000
	City of Redding	220,000
	City of Lathrop	178,000
	Sacramento County	178,000
	City of Roseville	178,000 <sup>a</sup>
Seattle	Port of Seattle	130,000
	Port of Tacoma	150,000
	City of Seattle	200,000
	Snohomish County	8,539
	King County	\$145,000

Source: GAO analysis of Corps data.

<sup>a</sup>This nonfederal public entity entered into an agreement with the Corps district and provided section 214 funds in September 2006 after we conducted our file reviews.

Each of the four Corps districts that received section 214 funds was able to increase its regulatory staff by either (1) combining the section 214 funds with appropriated funds to hire new project managers to process section 214 applications or (2) paying existing employees to process section 214 applications and using the offsets in regular program expenditures to hire new project managers to process non-section 214 applications. Although the districts initially thought that project managers would work full-time on section 214 permits, this has not happened. None of the project managers added using section 214 funds worked full-time on processing section 214 permits; instead they split their time between evaluating section 214 permits and permits for other applicants. Table 6 shows the number of additional project managers added using section 214 funds and the full-time equivalent staff devoted to processing section 214 permits in each of the four districts.<sup>3</sup>

<sup>3</sup>A full-time equivalent staff generally consists of one or more employed individuals who collectively complete 2,080 work hours in a given year. Therefore, either one full-time employee, or two half-time employees, equal one full-time equivalent staff.

**Table 6: Number of Additional Project Managers Hired Using Section 214 Funds and the Full-time Equivalent Staff Used by the Corps Districts to Process Permits Using Section 214 Funds, Fiscal Year 2001 through Fiscal Year 2006**

District	Total number of additional project managers hired	FY 2001 <sup>a</sup>	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Jacksonville	1	N/A	N/A	N/A	N/A	.2	.7
Los Angeles	1	N/A	N/A	N/A	N/A	.9	.5
Sacramento	4	N/A	N/A	N/A	N/A	2.2	1.5
Seattle	4 <sup>b</sup>	N/A	.6	1.5	.6	1.4	.5
<b>Total</b>	<b>10</b>		<b>.6</b>	<b>1.5</b>	<b>.6</b>	<b>4.7</b>	<b>3.2</b>

Source: GAO generated from Corps data.

<sup>a</sup>Although Seattle entered into agreements in 2001, it did not expend any funds from these agreements until fiscal year 2002.

<sup>b</sup>Unlike the other three districts, Seattle does not have designated section 214 positions. Instead, these project managers are assigned section 214 workload periodically.

Through September 2006, the districts used \$1.398 million of the section 214 funds that they received for costs associated with the project managers assigned to process section 214 permits. Specifically the funding was used for the following purposes: \$858,000, or 61.4 percent, was used to pay for personnel costs, including the salaries and cost of benefits, for project managers processing section 214 permits; \$522,000, or 37.3 percent, was used to cover overhead costs, such as office space, utilities, and administrative support associated with the section 214 authority; and \$18,000, or 1.3 percent, was used to pay for equipment, transportation costs associated with site visits, and legal advice from the Corps for processing applications under the section 214 authority.

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## Changes in Permit Processing Times Have Varied Since the Districts Started Using Section 214 Funds, but Officials Agree That the Authority Provides Many Benefits

Permit processing times have increased in some districts and decreased in others since the Corps began using section 214 funds. Although officials from both the Corps and nonfederal public entities said they believe the use of the section 214 authority has been effective in expediting permit applications of nonfederal public entities, other factors may have also impacted processing times. Nonetheless, officials from both the Corps and nonfederal entities believe the authority provides significant other benefits. In addition, Corps officials identified some challenges in implementing the section 214 authority in their districts.

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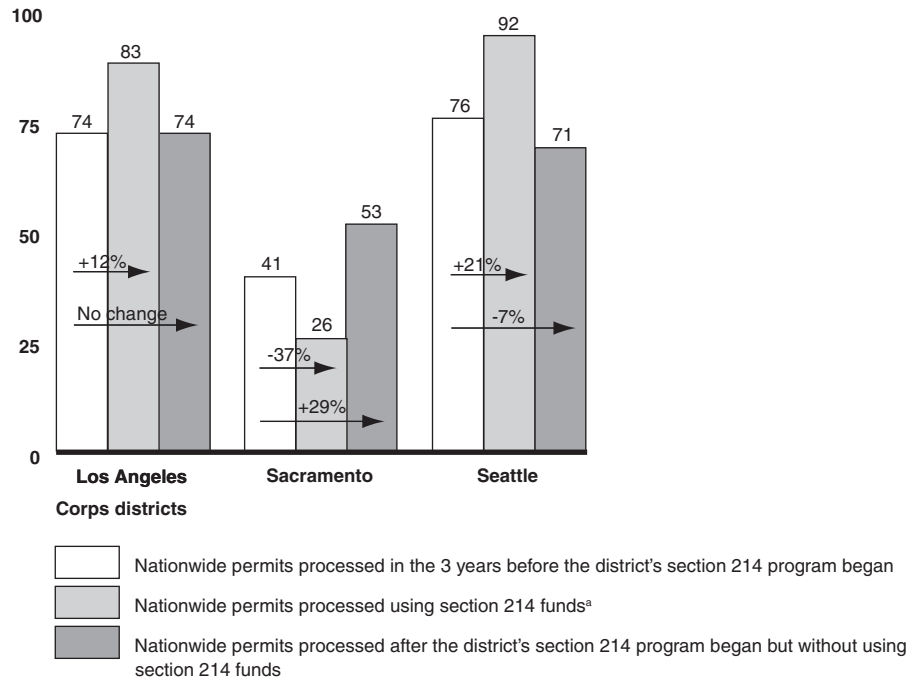
## Processing Times Have Both Increased and Decreased Since the Use of the Section 214 Authority Began

Although a main goal of the Corps in using the section 214 authority is to expedite permit processing for section 214 applicants, the processing times for these applicants have not consistently decreased. For example, the median processing times for nationwide permits decreased by 37 percent in the Sacramento District, from 41 to 26 days, but increased by 21 percent in the Seattle District, from 76 to 92 days. Similarly, another Corps goal is to ensure that the section 214 program does not delay permit processing for non-section 214 applicants; however, the processing times for these applicants have not consistently remained the same. For example, the median times for permits processed without section 214 funds remained constant in the Los Angeles District but increased by 29 percent in the Sacramento District, from 41 days to 53 days. Figure 2 shows changes in nationwide permit processing times for the three districts that had data sufficiently reliable for this analysis: Los Angeles, Sacramento, and Seattle. The data in the Jacksonville District were not reliable because the district experienced difficulties entering data during its participation in a pilot project for a new permit database. We did not conduct a similar analysis for standard permits because the districts had not processed enough of these permits using section 214 funds to calculate a reliable estimate of processing times under the authority.



**Figure 2: Median Processing Times for Nationwide Permits Before and After Three Districts Began Using the Section 214 Authority**

Median permit processing times (days)



Source: GAO analysis of Corps data.

Note: The median is the midpoint, with half of the permits taking more days to process and half taking fewer.

<sup>a</sup>According to Corps officials, because some section 214 agreements in the Seattle District had temporarily expired, some permits may have been only partially processed using section 214 funds.

We believe that several factors may have influenced the permit processing times and masked the effect, if any, that the use of the section 214 authority had on them. Specifically:

- Seattle District officials told us that the applications from section 214 permittees were considerably more complex than typical applications. For example, these officials said the section 214 applicants frequently sought permission for activities in or near Superfund sites, which required the Corps to consult with the Environmental Protection Agency before issuing the permits. According to Seattle officials, these consultations add several weeks or months to the typical permit review process. These officials said the extra time the Corps needed to process these applications because of their complexity exceeded the time savings that resulted from the section

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214 authority. As a result, they said, the net processing times for these applicants increased, obscuring the benefit of the authority to section 214 applicants.

- Seattle District officials also told us that there are many threatened and endangered species within their district and that they must consult with the Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS) for almost every permit the district issues to ensure that the proposed activity will not harm these species. According to these officials, the consultation process can add several months to the overall permit review process. In 2000, the district entered into agreements with FWS and NMFS to streamline the consultation process for endangered species. Seattle officials said that this streamlined consultation is the main reason the permit processing times for non-section 214 applications decreased—as compared with the median processing time for the 3 years prior to the section 214 program. Therefore, while the decrease for these applicants appears consistent with the goal of ensuring that the section 214 authority does not introduce delays for non-section 214 applicants, it is not necessarily proof that the district met this goal. The section 214 authority may have introduced delays, but these delays could have been more than offset by the streamlined consultation process that began close to when the section 214 authority became available.
- The Los Angeles District had processed only 11 permit applications using section 214 funds at the time of our review. These few permits may be outliers and may not accurately represent what processing times will be in the long-term for permits processed using section 214 funds. The impact the section 214 authority has, if any, on processing times may become more apparent as the district processes a larger number of permit applications using section 214 funds.

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### Officials Cited Other Benefits of Using the Section 214 Authority

Officials from the Corps and from nonfederal public entities that entered into section 214 agreements with the Corps told us that they believe the use of the section 214 authority has significantly expedited processing of permits for these applicants. For example, Sacramento officials said the project managers dedicated to working on section 214 applications typically work on two to three times fewer permits, at any given time, than the other project managers. As a result, they have more time to review section 214 permit applications and determine more quickly whether they are complete. These officials said that, by contrast, it can take several weeks for other project managers to review permit applications for completeness.

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Officials from the Corps and nonfederal public entities that we spoke with also cited other benefits of the section 214 authority including the following:

*Project prioritization.* Nonfederal public entities that enter into section 214 agreements with the Corps may specify which permit applications they want the Corps to complete first and which projects can wait. Officials from participating nonfederal public entities told us that being able to set priorities for projects in this manner has allowed them to receive permits for their most important projects quickly. For example, officials from Elk Grove, Calif., said that, in 2004, city employees discovered that an old culvert was at risk of collapsing during a heavy rainstorm. City officials told the Corps' Sacramento District that repairing the culvert was a top priority for them and, as a result, were able to get the permit needed to complete the repairs before the next large storm.

*Enhanced communication.* Officials from both the Corps and nonfederal public entities said that the section 214 authority has helped improve communication between them. For example, Corps officials in the Seattle District said that the section 214 funding has enabled project managers to meet with the applicants before they submit their applications. During these preapplication meetings, the Corps officials and the applicants discuss ways to design the project to avoid impacting important resources and increasing the likelihood of receiving a permit. Officials from participating entities said that these conversations have reduced the overall costs of completing their projects because these conversations have enabled them to submit initial project designs that are more likely to receive approval, thereby avoiding costly revisions and project delays.

*Increased staffing.* Corps district officials said the section 214 funds have provided a valuable way for them to augment their regulatory staff, particularly given the large permit workloads these districts face. As we discussed earlier, each district has used the section 214 funds received from the nonfederal public entities to add between one and four project managers to its regulatory staff.

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District Officials Also Identified Several Challenges to Implementing the Section 214 Authority

Corps officials have faced the following challenges when implementing the section 214 authority:

*Insufficient permit workloads.* Officials in each of the four districts said that, when they first started using the section 214 authority, they expected each participating entity to submit enough applications to keep one

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project manager busy full-time. However, this has not happened in any of the four districts. Insufficient section 214 permit workloads have caused particular problems in two districts. In the Seattle District, the permit workloads have been so small from some entities that the revenues generated from the agreement have not justified the costs of negotiating and establishing the agreement to accept section 214 funds. As a result, the Seattle District decided eventually not to renew agreements with some entities and is considering not entering into any new agreements unless they can sustain at least half a full-time equivalent staff worth of work from each agreement. Similarly, in the Sacramento District, an insufficient section 214 permit workload has meant that section 214 project managers have had to work on some non-section 214 permit applications to maintain a full workload. According to officials in the Sacramento District, this arrangement has meant that non-section 214 applications experienced some processing delays because project managers stopped working on them when higher priority section 214 applications came in. To avoid the need to make choices between section 214 and other applications, the Sacramento District is currently considering assigning all section 214 applications to a small pool of project managers who will work exclusively on section 214 permit applications.

*Delays in replacing project managers.* Officials in the Sacramento District said that they were unable to hire new project managers to replace the ones they had transferred to work primarily on section 214 applications as quickly as they had anticipated. This lag in hiring project managers delayed permit processing for some non-section 214 applications because it meant that fewer staff hours could be devoted to processing these applications. According to these officials, one main reason for the hiring lag was that the district did not begin looking for new employees until after it had signed the section 214 agreements and transferred experienced project managers into the new positions. The district is considering adjusting its hiring policy to transfer experienced project managers into the new section 214 positions only after it has hired employees to fill the non-section 214 positions.

*Decrease in project manager expertise.* The Corps districts that received section 214 funds typically replaced more experienced project managers that were transferred to work primarily on the section 214 permit applications with new staff. Sacramento District officials said that this practice has decreased the overall level of expertise devoted to processing non-section 214 permit applications, which has both delayed processing for some of these applications and overburdened the experienced project managers who have remained to process non-section 214 applications. To

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help increase the skill level of the new staff, the district now requires experienced project managers to mentor new employees. Officials from the Seattle and Los Angeles districts said that, while their section 214 application workload is not yet large enough to significantly deplete the expertise devoted to non-section 214 applications, this could become a problem if the number of applications and agreements continues to rise.

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### When Using Section 214 Funds, the Districts Generally Followed the Permit Review Process for Standard Permits, but It Is Unclear Whether They Did So for Nationwide Permits

Three districts that used section 214 funds to process standard permits generally followed the permit review process, but one district did not follow all the required steps. Specifically, the Sacramento District did not comply with the Corps' process that requires the districts to sufficiently demonstrate why the projects they approve are in the public interest. The four districts also used section 214 funds to approve projects using nationwide permits, however, we could only confirm that the Jacksonville and Seattle districts had generally followed the review process for these types of projects and could not make this determination for the Los Angeles and Sacramento districts because their files had limited permit documentation. Detailed results of our file reviews are presented in appendix II.

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### Two of the Three Districts That Processed Standard Permit Applications under the Section 214 Authority Generally Followed the Permit Review Process

The Jacksonville and Seattle districts followed all of the six key steps in the permit review process for standard permit applications that they processed using section 214 funds. Specifically, these districts (1) ensured that the project proposed in the permit application would not harm threatened or endangered species; (2) analyzed whether alternative designs that would have fewer impacts to aquatic resources were feasible; (3) ensured the project would not violate state water quality standards; (4) evaluated likely impacts to historic properties; (5) evaluated likely impacts to a wide range of other factors, from recreation to energy needs; and (6) balanced the project's benefits against its detriments, when applicable, and concluded that the project would not be contrary to the public interest. In contrast, the Sacramento District followed five of the six steps but did not follow the last step for the standard permits it processed using section 214 funds. As a result, for the projects for which it approved standard permits, the Sacramento District did not show that the adverse effects of the projects were outweighed by the positive impacts of the projects and did not conclude that the projects were in the public interest.

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Officials in the Sacramento District recognize that they did not complete the sixth step of the review process, as required, and said that this happened because the section 214 project managers who processed these applications were relatively new to the district and were not fully aware of the requirement. These officials also said that a major reason why the project managers were unaware of the requirement is that, while the Corps guidance describes documentation requirements for standard permits in general terms, Corps headquarters has not provided explicit guidance that would clearly show project managers how to document their decisions. Corps headquarters recognizes that more explicit guidance would help ensure consistency across its districts and is in the process of developing a template for a standard decision document for all districts to use. However, since the template is not yet complete, we could not assess whether it will provide sufficient detail to prevent the types of lapses we observed in the Sacramento District from occurring again.

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**Lack of Documentation for Projects Approved Using Nationwide Permits Inhibits the Assessment of the Process for Two of the Four Districts**

For the projects that the four districts reviewed and approved using section 214 funds under the Corps' nationwide permits, we found that the Jacksonville and Seattle districts generally followed the steps that are key to the review process. Specifically, of their nationwide permit decisions, the Jacksonville and Seattle districts (1) evaluated 100 percent and 79 percent, respectively, of the proposed projects to ensure they met the terms and conditions of the relevant nationwide permit(s) and (2) ensured that 90 percent and 96 percent, respectively, of the projects they evaluated would not harm endangered species. For the remaining permit applications, there was not enough documentation in the permit files for us to determine whether Jacksonville and Seattle district officials had complied with these two requirements. In contrast, we were unable to make a determination of the extent to which the Los Angeles and Sacramento districts had evaluated projects for compliance with the terms and conditions of the nationwide permit(s) because only 3 percent of their files contained enough evidence. In addition, 31 percent of the permit files in the Sacramento District also did not contain evidence that the district had considered the impacts of the proposed projects on endangered species. In the Los Angeles District, however, most files did contain evidence that officials had considered the impacts of the proposed projects on endangered species.

We found that the districts vary in their level of documentation for projects approved using nationwide permits because, unlike standard permits, Corps headquarters has not developed uniform documentation standards for the districts to follow when making these decisions. In the

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absence of such guidance, the Seattle and Jacksonville districts have developed local standards that are more stringent than those in Los Angeles or Sacramento. Corps headquarters officials recognize that consistent documentation is needed to ensure permit decisions are both transparent and legally defensible and have begun to develop Corps-wide standards. However, because the Corps has not completed these standards, we could not determine to what extent they will require districts to fully document the basis for their determinations that the projects meet the terms and conditions of the nationwide permit(s) they used to approve the projects, and whether these requirements will alleviate the concerns we identified.

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## The Districts Varied in Their Compliance with the Corps' Additional Requirements for Ensuring Impartiality of Decisions Made Using Section 214 Funds

The districts were uneven in their adherence to the additional requirements established by the Corps to ensure that permit decisions made using section 214 funds were impartial and transparent. Two of the districts—Sacramento and Seattle—more often met both requirements, while the Jacksonville and Los Angeles districts rarely did. Corps officials cited several reasons for the variance in their adherence to the additional requirements.

In addition to following the established permit review processes discussed in the prior section of this report, Corps districts must meet two other requirements designed to ensure the impartiality and transparency of decisions made using section 214 funds. First, a Corps official senior to the decision maker must review the final permit decision (higher level review) and second, the district must post its final decision to the district's Web site. However, as shown in table 7, our review of the applications reviewed and approved by the four districts that used section 214 funds, indicates significant variations in the extent to which each district complied with these two additional requirements.

**Table 7: Extent to Which Four Corps Districts Adhered to the Additional Requirements for Processing Section 214 Permits**

Requirement	Jacksonville	Los Angeles	Sacramento	Seattle
Higher level review—standard permits	50%	<sup>a</sup>	100%	0%
Higher level review—nationwide permits	0%	9%	86%	78%
Higher level review—both permit types	8%	9%	87%	65%
Post permit decisions to Web page	0%	0%	74%	85%

Source: GAO analysis of Corps data.

<sup>a</sup>The Los Angeles District had not processed any standard permits using section 214 funds at the time of our review.

According to district officials, the following factors contributed to why the districts varied in the extent to which they adhered to the additional Corps requirements for ensuring that section 214 permit decisions are impartial.

- Different interpretations of the applicability of the requirements.* Officials in the Los Angeles and Jacksonville districts told us that they had believed the additional requirements did not apply to projects approved using nationwide permits, which constitute the bulk of the permit applications processed in their districts using section 214 funds. According to these officials, they had believed the requirements applied only to new permit decisions and, since approvals under existing nationwide permits did not count as new permit decisions, the requirements did not apply to such approvals. Corps headquarters officials and legal counsel do not agree with the districts' interpretation and said that the additional requirements apply to all permit types including approvals using nationwide permits. Los Angeles District officials told us that they have subsequently changed their position and plan to apply the requirements to nationwide permits in the future, but Jacksonville District officials have not changed their position.
- Varying awareness of the requirements.* The project manager responsible for processing section 214 permit applications in the Los Angeles District told us that he was unaware of the higher level review requirement and, therefore, did not adhere to it. Similarly, the project manager responsible for section 214 applications in the Jacksonville District told us she was unaware of the Web-posting requirement. In contrast, project managers in the other two districts were aware of both of the requirements and, as a result, did comply with them more often.



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- *Lack of specificity as to what higher level review entails.* Corps headquarters guidance does not specify which documents the senior level officials must review and sign to meet the higher level review requirement. While Seattle District officials thought that it was sufficient for senior officials to review and sign the documents supporting standard permit decisions, Corps headquarters officials told us that it is the final permit document itself—not the supporting documents—that must be reviewed and signed. We noted during our review, that while many standard permits in the Seattle District did not receive higher level review in accordance with headquarters requirements, they frequently did have decision documents reviewed by a Corps official senior to the official who would typically review those documents. According to Seattle District officials, it is more important for a reviewer to review the decision documents than the issued permit since the decision documents provide the rationale for why the project manager arrived at the decision to issue the permit while the permit itself is largely pro forma.
  - *Lack of compliance with annual reporting requirement.* Corps guidance calls for annual reports on the districts' implementation of the section 214 authority to be submitted to headquarters. However, according to the head of the Corps' Regulatory Branch, no reports have been submitted since the section 214 authority was first used in 2001. If this guidance had been followed, we believe that Corps headquarters may have been alerted to the fact that some districts were not fully meeting the additional requirements and could have taken actions needed to resolve this lack of compliance.

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## Conclusions

When the Congress enacted the section 214 authority in 2000, it was to help expedite the permit review process for nonfederal public entities. Since that time, a handful of nonfederal public entities have taken advantage of the authority and believe that it has been beneficial to them. These nonfederal entities had entered into agreements with four Corps districts that had actually received and used section 214 funds to process permit applications at the time of our review. However, the experiences of these four districts indicate that implementation of the section 214 authority has been uneven. We identified a number of areas where improved oversight is needed to ensure that decisions made using the authority adhere to established permit processing regulations and guidance and are also impartial and transparent. Specifically, we found evidence to suggest that the district officials do not know what guidance they are to follow, do not know how to document the decisions that they make, and do not know which special requirements apply to the permit applications that they review under the section 214 authority. Because it appears that there is significant potential for many more Corps districts to

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begin accepting funds under the section 214 authority, and many are already poised to do so, we believe that it is imperative for Corps headquarters to address the concerns that have already been identified at the four districts that have used the section 214 authority to process permit applications.

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## Recommendations for Executive Action

To ensure that the permits processed under the section 214 authority comply with federal regulations and guidance, we are recommending that the Secretary of the Army direct the Corps of Engineers to take the following four actions:

- clarify the guidance that the districts must follow when evaluating permit applications under the section 214 authority,
- clarify the documentation that district officials must include in project files to justify and support their decisions,
- provide training to district officials to ensure that they are aware of the requirements that apply to permits processed under the section 214 authority, and
- develop an effective oversight approach that will ensure that the districts are following all the appropriate requirements when evaluating projects under the section 214 authority.

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## Agency Comments and Our Evaluation

We provided a draft of this report to the Secretary of the Department of Defense for review and comment. The Department of Defense generally concurred with the report's recommendations and described actions that it is implementing to address them. In its written comments, the department stated that by December 2007 the Corps plans to issue revised guidance for the districts to follow when using section 214 funds that clarifies, among other things, the types of permit decisions that require higher level review and what documents must be reviewed and signed by an official senior to the decision maker. The department also indicated that the Corps is developing a national template that standardizes the documentation required to support standard permit decisions and will develop similar documentation requirements for projects approved with nationwide permits. In addition, the department noted that project managers that evaluate permit applications using section 214 funds and their management will be required to attend annual briefings on Corps guidance for implementing section 214 and that the Corps will conduct

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annual reviews that will focus on the districts' compliance with the guidance and documentation protocols. The Department of Defense's written comments are presented in appendix III.

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As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution for 30 days from the report date. At that time, we will send copies of this report to the Secretary of Defense; the Secretary of the Army; the Chief of Engineers and Commander, U.S. Army Corps of Engineers; and interested congressional committees. We will also make copies available to others upon request. In addition, the report will also be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-3841 or [mittala@gao.gov](mailto:mittala@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix IV.

Sincerely yours,



Anu K. Mittal  
Director, Natural Resources and Environment

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# Appendix I: Objectives, Scope, and Methodology

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In 2000, the Congress, through section 214 of the Water Resources and Development Act, authorized the Secretary of the Army, after providing public notice, to accept and expend funds from nonfederal public entities to expedite the evaluation of permit applications that fall under the jurisdiction of the Department of the Army. The act also requires the Secretary to ensure that the funds accepted will not impact impartial decision making with respect to permit approvals. This responsibility has been delegated by the Department of the Army to the Corps of Engineers (Corps). In this context, we were asked to review the (1) extent to which Corps districts have entered into agreements with nonfederal public entities to receive section 214 funds since 2001 and how many permit applications the Corps has evaluated using these funds, (2) amount of section 214 funds the Corps has received and how it has used these funds, (3) extent to which permit processing times have changed since the Corps began using section 214 funds, (4) extent to which the Corps districts have followed the basic permit review processes when evaluating applications using section 214 funds, and (5) extent to which the districts have met the additional requirements for ensuring that permit decisions made using the section 214 funds are impartial and transparent.

To determine the extent to which Corps districts entered into section 214 agreements with nonfederal public entities, we contacted each of the 38 Corps districts responsible for issuing regulatory permits under section 404 of the Clean Water Act to identify those districts that had entered into such agreements since the authority was available. We visited each of the four districts that had entered into such agreements and evaluated the permit applications that had been processed under these agreements as of August 2006. These districts were Jacksonville, Fla.; Los Angeles and Sacramento, Calif.; and Seattle, Wash. At each district, we reviewed the legal agreements between the Corps and nonfederal entities to identify the entities that had entered into such agreements and the date the agreements went into effect. To determine how many permit applications the districts evaluated using section 214 funds, we obtained and reviewed the Corps' files for all but one of the permit applications that the districts evaluated using section 214 funds. We did not review one of the applications because the Seattle District was unable to locate the file. Table 8 shows the number of permit files we reviewed at each of the four districts. We used a data collection instrument (DCI) to extract key pieces of information from each permit file, including the name of the applicant, the type of project seeking approval, and the type of permit the Corps used to authorize the proposed project. An independent analyst verified the accuracy of the data we entered for each permit file. We also interviewed Corps officials in each of the four districts, as well as representatives from

at least one of the nonfederal entities participating in the section 214 program in each district, to gain their perspectives on the benefits and any challenges of implementing the section 214 authority.

**Table 8: Permit Files Reviewed by GAO at the Four Corps Districts That Used Section 214 Funds to Evaluate Permit Applications Between December 2001 and August 2006**

Corps district	Number of files reviewed
Jacksonville	12
Los Angeles	14
Sacramento	31
Seattle	129
<b>Total</b>	<b>186</b>

Source: GAO analysis of Corps permit files.

To determine whether the use of the section 214 authority may expand in the future, we surveyed the 34 districts that had not used section 214 funds to evaluate permit applications to determine their reasons for not doing so and their plans, if any, for using such funds in the future; 28 districts (82 percent) responded to our survey. The practical difficulties of conducting any survey may introduce errors, commonly referred to as nonsampling errors. For example, differences in how a particular question is interpreted can introduce unwanted variability into the survey results. To minimize nonsampling error, an independent survey specialist reviewed the survey for clarity and independence before we sent it out. We also pretested the survey with Corps officials in two districts. During these pretests, we asked each official to complete the survey as they would when they received it. We then solicited feedback to ensure that the questions were clear and unambiguous and that the survey was independent and unbiased. Based on pretest feedback, we made changes to the survey, as appropriate.

To determine the amount of section 214 funding the Corps has received and how it has used these funds, we obtained and analyzed financial data covering fiscal years 2001 through 2006 from each of the four participating districts. The data, which came from the Corps of Engineers' Financial Management System (CEFMS), specify the amounts of section 214 funding the districts had received since the program began and the major categories of expenditures. District officials told us the number of full-time-equivalent staff the districts procured using these funds. A full-time-equivalent staff generally consists of one or more employed individuals

who collectively complete 2,080 work hours in a given year. Therefore, either one full-time employee, or two half-time employees, equal one full-time equivalent staff. We reviewed the financial data related to the receipt and expenditure of section 214 funds and determined they were sufficiently reliable for our purposes. We did not, however, audit the Corps' financial statements to verify that the Corps expended funds as recorded in the CEFMS reports.

To determine the extent to which permit processing times have changed since the Corps began using section 214 funds, we obtained permit processing data from three of the four participating districts: Los Angeles, Sacramento, and Seattle. The data in these districts, which came from the Corps' Regulatory Analysis and Management System database, were sufficiently reliable for our purposes. We did not analyze processing times in the Jacksonville District because officials in this district told us their processing time data were not reliable for permits issued in 2002 and 2003.<sup>1</sup> The processing time data that we used from the three districts that had reliable data included permits that each district issued in the 3 years prior to the district's first use of section 214 funds to the time of our review. We calculated median permit processing times before and after the districts began using section 214 funds. We chose the median over the mean because the median is more resistant to the effects of outliers; for example, a few permits that took a relatively longer amount of time to process will impact the mean more than the median. We assigned a permit to the before or after category by comparing the date a Corps district issued a permit with the date it first began using the section 214 authority—permits that a district issued after it began using the authority were assigned to the after category. We also analyzed an alternative approach: assigning before or after based on the date that the Corps began processing the permit. However, we determined this method made the post-section 214 processing times appear artificially low because it excluded permits that were still ongoing at the time of our review. Therefore, we did not present the results from this alternative analysis in the report.

Our results show the processing time for nationwide permits, which constituted 82 percent of the total number of permits the districts

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<sup>1</sup>The district participated in a pilot project for a new database during those years and, according to district officials, project managers were unable to enter processing time data during that time.

processed using section 214 funds. We did not analyze processing times for other types of permits (e.g., standard or letters of permission) since the Corps had not processed enough of permits of these types for us to calculate accurate processing times under the section 214 authority. We defined processing times to be the number of days between when the Corps first received a permit application and when it issued a final permit. This definition is different from the Corps' because the Corps defines processing time as the number of days between when it receives a complete application and when it issues a permit. We chose a definition that would allow us to maximize our chances of observing the effects of the section 214 program.

To determine the extent to which the Corps followed the existing permit review processes, we first identified key steps for processing permits. Specifically, we identified six key steps for standard permits and two key steps for nationwide permits. We selected these steps because the districts must complete each one before issuing a permit and, for the standard permits, the Corps identified the steps as important "safeguards" for ensuring objectivity in its permit decisions. We did not include some steps that the Corps identified as "safeguards" because (1) the districts do not have to complete these steps for every permit application or (2) the steps are outside of the districts' responsibility, e.g., the Environmental Protection Agency can, at its discretion, review and revoke the Corps' permit decisions. In each district, we reviewed all but two of the files for projects the Corps authorized using nationwide and standard permits. We did not review one file because the Corps processed the permit application under emergency procedures, which are substantially different from the regular review procedures. We did not review the other file because the Seattle district was unable to locate the file. Table 9 shows the number of permit files reviewed for adherence to existing Corps review processes. Table 10 presents a complete list of the information we collected with our DCI. We did not review the files for other types of permits that the Corps may also use—letters of permission and regional general permits—because they undergo different review procedures and constituted less than 5 percent of permits evaluated using section 214 funds. During our file reviews, we used our DCI to record whether the permit file contained evidence that the district followed each of the key steps in the permit review process. We also reviewed the files for evidence that the Corps met the two additional requirements to ensure that decisions for permits processed with section 214 funds were made impartially and were transparent—that is, that the permit decision received higher level review and was posted to the Corps district's Web site. An independent analyst verified the accuracy of the data entered for each permit file.

**Table 9: Number of Permit Files GAO Reviewed for Evidence of Adherence to the Corps' Permit Review Processes and the Two Additional Requirements for Permit Applications Evaluated Using Section 214 Funds**

Corps district	Number of files reviewed
Jacksonville	12
Los Angeles	11
Sacramento	31
Seattle	124
<b>Total</b>	<b>178</b>

Source: GAO analysis of Corps permit files.

**Table 10: Information GAO Extracted from Section 214 Permit Files**

Type of permit files	Information collected
All files	<ul style="list-style-type: none"> <li>Name of applicant</li> <li>Name of nonfederal entity under whose agreement the permit application received expedited review</li> <li>Corps district that processed the application</li> <li>Type of project described in the permit application</li> <li>Date permit was issued</li> <li>Type of permit issued</li> </ul>
Files for projects authorized using nationwide or standard permits	<ul style="list-style-type: none"> <li>Whether the signatures on the final permit indicate that the permit was reviewed by a Corps official senior to the decision maker</li> <li>Whether the permit decision was posted on the Corps district's Web site</li> </ul>
Only files for projects authorized using nationwide permits	<ul style="list-style-type: none"> <li>Whether there was evidence that the Corps followed each of two steps we identified as key to the review process for nationwide permits, and, if so, the type of evidence</li> </ul>
Only files for projects authorized using standard permits	<ul style="list-style-type: none"> <li>Whether there was evidence that the Corps followed each of six steps we identified as key to the review process for standard permits, and, if so, the type of evidence</li> </ul>

Source: GAO.

We performed our work between April 2006 and April 2007 in accordance with generally accepted government auditing standards.



# Appendix II: Results of GAO's Review of Corps Permit Files for Districts That Used Section 214 Authority Between 2001 and 2006

This appendix presents the results of our file review at the four Corps districts—Jacksonville, Fla.; Los Angeles and Sacramento, Calif.; and Seattle, Wash.—that used section 214 funds to evaluate permit applications between December 2001 and August 2006. The results of our review for permit applications approved using standard permits are presented in table 11. The Los Angeles District is not included in table 11 because it had not used section 214 funds to evaluate any standard permit applications at the time of our review. Results of our review for permit applications approved using nationwide permits are presented in table 12.

**Table 11: Results of GAO's Review of the Districts' Adherence to Six Key Steps in the Permit Review Process When Using Section 214 Funds to Evaluate Standard Permit Applications**

Key step in the standard permit review process	Number of permit files with evidence that the district followed the key step in the standard permit review process		
	Jacksonville	Sacramento	Seattle
Ensured the project would not harm threatened or endangered species	2	2	22
Analyzed whether alternative project designs that would have fewer impacts to aquatic resources were feasible	2	2	20 <sup>a</sup>
Ensured the project would not violate state water quality standards	2	2	22
Evaluated the project's likely impacts to historic properties	2	2	22
Analyzed impacts to a range of other factors, from recreation to energy needs	2	2	22
Demonstrated that the benefits of the proposed project outweigh its detriments (when applicable <sup>b</sup> ) and that the project was not contrary to the public interest	2	0	22
Number of permit files reviewed	2	2	22

Source: GAO analysis of Corps permit files.

<sup>a</sup>This analysis of alternative project designs was not relevant for two permit files. Specifically, this analysis is only required for permits issued under authority of section 404 of the Clean Water Act. Two permit files were issued under authority of section 10 of the Rivers and Harbors Act and did not require such an analysis.

**Appendix II: Results of GAO's Review of Corps Permit Files for Districts That Used Section 214 Authority Between 2001 and 2006**

<sup>b</sup>An analysis showing that a project's benefits outweighs its detriments is only relevant if the Corps has concluded that the project will have some detrimental effects. Twenty-four of the twenty-six Corps permit files avoided the need for such balancing by arguing that the project would only have positive or minimal effects after considering mitigation that the applicant proposed to compensate for impacts that would otherwise be detrimental.

**Table 12: Results of GAO's Review of the Districts' Adherence to Two Key Steps in the Permit Review Process when Using Section 214 Funds to Evaluate Nationwide Permit Applications**

Key step in the nationwide permit review process	Number of permit files with evidence that the districts followed the key step in the nationwide permit review process			
	Jacksonville	Los Angeles	Sacramento	Seattle
Evaluated proposed project to ensure it met terms of the nationwide permit(s) used to authorize the project <sup>a</sup>	10	0	1	81
Ensured the project would not harm threatened or endangered species <sup>a</sup>	9	10	20	98
Number of permit files reviewed	10	11	29	102

Source: GAO analysis of Corps permit files.

<sup>a</sup>Lack of evidence is not proof that the Corps failed to follow this step in the permit review process. Neither federal regulations nor Corps headquarters' guidance requires districts to document their adherence to these steps. The districts may have followed the steps without documenting that they did so.

# Appendix III: Comments from the Department of Defense



DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
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MAY 08 2007

Ms. Anu Mittal  
Director  
Natural Resource and Environment  
U.S. Government Accountability Office  
441 G Street, N.W.  
Washington, D.C. 20548-1000

Dear Ms. Mittal:

This is the Department of Defense (DoD) response to the proposed GAO Report, GAO-07-478, "WATERS AND WETLANDS: Corps of Engineers Needs to Ensure That Permit Decisions Made Using funds From Nonfederal Public Entities Are Transparent and Impartial," dated April 25, 2007 (GAO Code 360692).

We generally concur with your recommendations and offer an update on our efforts to address them, all of which were well underway before receiving the draft report. The following four items are the actions we are currently implementing:

- 1) Revision of the guidance memorandum to Corps Districts entitled, "Regulatory Program Funds Contributed by Non-Federal Public Entities" to clarify several items. These items include:
  - a) Types of authorizations/verifications that require higher level review
  - b) Which documents must be reviewed/signed by the individual completing the higher level review
  - c) What constitutes higher level review
  - d) Which permit decisions must be posted on District web pages and for how long
  - e) Content and format of District and Division annual reports to CECW-OR

The Corps expects the revised guidance to be signed prior to December 2007.

- 2) A national template is under development to standardize the documentation required to support standard permit decisions. It is anticipated that this template will be released for implementation by the field by June 2007. In addition, a work group is being formed to develop a checklist of decision points that must be included in project files for general/nationwide permits to support general/nationwide permit verifications. It is expected that the work group will have the checklist finalized for distribution to the field by November 2007.


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3) To address training needs, a session is planned at the National Regulatory Conference in August 2007 at which the revised guidance, discussed above, will be discussed with Corps regulators. In addition, District project managers and their management (those required to complete higher level reviews) accepting funds from a non-Federal public entity utilizing a section 214 agreement will be required to receive an annual briefing on the current guidance from Corps Headquarters (or designee).

4) These annual training sessions will be planned to coincide with annual process and oversight reviews, also conducted by Corps Headquarters (or designee), which will focus on ensuring District compliance with Headquarters implementation guidance and documentation protocols. It will also provide a direct opportunity for Districts and Headquarters to further refine process improvements to increase efficiency while ensuring maximum transparency and impartiality.

In short, we believe the Corps is implementing a number of actions to address the recommendations in the GAO report and would be more than happy to meet with you to discuss details.

Yours very truly,

  
John Paul Woodley, Jr.  
Assistant Secretary of the Army  
(Civil Works)

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# Appendix IV: GAO Contact and Staff Acknowledgments

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## GAO Contact

Anu K. Mittal, (202) 512-3841, or [mittala@gao.gov](mailto:mittala@gao.gov)

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## Staff Acknowledgments

In addition to the individual named above, Sherry McDonald, Assistant Director, and Greg Peterson made key contributions to this report. Nancy Crothers, Melinda Cordero, Brian Chung, Jonathan Dent, Doreen Feldman, Diana Goody, Janet Frisch, Laura Kisner, Amanda Randolph, and Rebecca Shea also made important contributions to this report.

We also wish to give special tribute to our dear friend and colleague, Curtis Groves, who died many years too soon after a long battle with multiple myeloma near the conclusion of our work.

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