

Army Corps of Engineers: Expedited Permitting Process Would Benefit from More Transparency

GAO-25-107637 (Accessible Version)
Q&A Report to Congressional Committees

January 29, 2025

Why This Matters

When nonfederal public entities, such as port authorities or regional water authorities, propose public works projects in federally regulated waters and wetlands, permits may be required from the U.S. Army Corps of Engineers before proceeding. Such public works projects can include transmission lines, road construction, and sewer line construction or maintenance (see fig. 1). Private or public entities that propose to build infrastructure, such as pipelines, in federally regulated waters and wetlands may also require permits from the Corps. In addition, federal statute requires nonfederal public entities and private entities to obtain permits to alter a Corps water resource project.

Figure 1: Examples of Activities in Wetlands with a U.S. Army Corps of Engineers Permit



Access road in a wetland for a transmission line project

Temporary work pad in a wetland for a transmission line project

Transmission line project in wetlands

Source: U.S. Army Corps of Engineers. | GAO-25-107637

Under certain circumstances, the Corps may expedite permit processing for some nonfederal entities. Section 214 of the Water Resources Development Act of 2000 (WRDA 2000), as amended, authorizes the Secretary of the Army to, after providing public notice, accept and expend funds from nonfederal public entities, public utility companies, natural gas companies, railroad carriers, and Indian Tribes to expedite the evaluation of permits for their proposed projects with a public purpose that fall under the jurisdiction of the Department of the Army. Agreements made under this authority are known as section 214 agreements.

In an August 2017 report, we reviewed the Corps' implementation of this authority for public utility companies, natural gas companies, and railroad carriers, as required by WRDA 2000, as amended. America's Water Infrastructure Act of 2018 includes a provision for us to conduct a follow-up

study.¹ This report addresses key aspects of the Corps' use of its section 214 expedited permit processing authority for these entities.

Key Takeaways

- From fiscal year 2015 through July 2, 2024, the Corps had entered into 23 section 214 agreements for expedited permit processing with public utility companies, natural gas companies, and railroad carriers. The Corps has issued over 3,600 permits using funds from these agreements.
- In 2018, the Corps issued updated implementation guidance for the statutory requirements to ensure that permit evaluations using section 214 agreement funding use the same procedures for decisions as other permits, are impartial, and do not adversely affect the timeline for evaluation of permits for entities that do not have section 214 agreements.
- The Corps has made information about its section 214 implementation publicly available on Corps websites, as required by statute. However, the Corps' searchable online database does not distinguish between all permits issued using funds from section 214 agreements and funding from other similar agreements, as required.
- The Corps has not made all active section 214 agreements to accept funds and section 214 annual reports each available on a single public website, as required by section 214 of WRDA 2000, as amended.
- We recommend that the Corps modify its database to distinguish permits issued using section 214 agreement funding from other permits and to make all active agreements and annual reports each available on a single website. Doing so will enhance transparency and ensure required information is more readily available.

Background

The Corps, a component of the Department of Defense that has military and civilian responsibilities, is one of the world's largest public engineering, design, and construction management agencies. The Corps' Civil Works program comprises water resource development activities, including flood risk management, navigation, recreation, and infrastructure and environmental stewardship. The Corps' Civil Works program, which is headed by the Assistant Secretary of the Army for Civil Works, is organized into three tiers: headquarters; eight divisions; and 38 districts (see app. II).

Under the Corps' Civil Works mission, its Regulatory Program is responsible for issuing three types of permits for certain activities in federally regulated waters, such as many natural gas pipelines that cross these waters. Its Section 408 Program is responsible for issuing permits—also known as section 408 permissions to distinguish them from the permits issued by the Regulatory Program—to modify a Corps water resource project. Section 214 agreements can include expediting evaluation of one or more of these four permit types (see table 1).

Table 1: Types of Permits Issued by U.S. Army Corps of Engineers

Permit type	Description
Section 404 of the Clean Water Act ^a	Required for discharge of dredge or fill material into waters of the United States.

Permit type	Description
Section 10 of the Rivers and Harbors Act (March 3, 1899) ^b	Required for construction of any structure in or over any navigable water of the United States, excavating from or depositing materials in such waters, or any other work affecting the course, location, condition, or capacity of those waters.
Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 ^c	Required for transportation and dumping of dredge material into ocean waters.
Section 14 of the Rivers and Harbors Act (March 3, 1899) ^d (commonly referred to as section 408 permission)	Required to make use of, build upon, alter, deface, destroy, move, injure, obstruct, or in any other manner impair the usefulness of a Corps public work.

Source: GAO review of federal laws. | GAO-25-107637

^a33 U.S.C. § 1344.

^b33 U.S.C. § 403.

^c33 U.S.C. § 1413.

^d33 U.S.C. § 408.

The Corps has largely delegated to its districts the authority to issue permit decisions and section 408 permissions, while division offices and headquarters conduct policy oversight. To accept funds under section 214, a Corps district enters into a legal agreement with a funding entity that specifies the duration of the arrangement, the amount of funds to be received, and how the funds are to be used. The Corps most recently updated its guidance for establishing, managing, and overseeing section 214 agreements for its Regulatory Program in a January 2018 memorandum and for its Section 408 Program in a September 2018 Engineer Circular.

Under section 404 of the Clean Water Act, the Corps may require permittees to compensate (i.e., offset) the unavoidable adverse impacts that their project will have on aquatic resources, such as wetlands and streams. Permittees can use mitigation banks and in-lieu fee programs to meet any such permit requirement.² Mitigation banks and in-lieu fee programs are created through agreements with the Corps and generate “credits” by conducting work to improve or preserve ecological functions of aquatic resources on land that section 404 permittees can use or purchase to fulfill permit requirements to compensate for impacts.

In addition to section 214 of WRDA 2000, as amended, the Corps can enter into agreements with public entities to accept funds to expedite permit evaluations in certain circumstances pursuant to other statutes.³ We refer to these agreements under these authorities as other similar agreements.

How many section 214 agreements are there?

The Corps had entered into 23 section 214 agreements with public utility companies, natural gas companies, and railroad carriers, according to Corps documents, as of July 2, 2024.⁴ Of the agreements, 19 were with public utilities, one with a natural gas company, one with a public utility and natural gas company, and two with railroad carriers (see app. III).⁵ One of the agreements has expired.

How many permits and permissions have been issued or approved using these agreements?

The Corps issued over 3,600 permits and approved six section 408 permissions for public utilities, natural gas companies, and railroad carriers using section 214

agreement funding from fiscal year 2017 through July 2, 2024, according to Corps officials and agency documents.

How many mitigation bank instruments has the Corps approved using section 214 agreements?

The Corps has not approved any mitigation bank instruments using section 214 agreement funding from public utilities, natural gas companies, or railroad carriers, and did not have any pending reviews, as of July 2024, according to Corps officials.⁶ However, Corps officials said all of the section 214 agreements are broad enough to include evaluation of mitigation bank instruments if the entities want to sponsor one as long as they do not intend to sell credits to other section 404 permittees.⁷

How does the Corps ensure its use of section 214 authority meets applicable federal law?

The Corps' 2018 implementation guidance directed its district offices and divisions to help ensure they meet all applicable federal laws and regulations when issuing permits under section 214 agreements.⁸

Permit evaluations under section 214 agreements follow the same procedures for permit decisions as would otherwise be required for evaluation of permits issued without such agreement, as required by law. These procedures are documented in the Regulatory Program's permit decision documents and an Engineer Circular for the Section 408 Program. The permit decision document templates for obtaining section 404, section 10, and section 103 permits include requirements for following applicable laws.⁹ In addition, a September 2018 Engineer Circular directs all Section 408 decision-makers to ensure accountability and consistency with federal law and policy.

Once the Corps receives a permit application, the permit review process begins. This process, which is the same regardless of whether there is a section 214 agreement, is governed by federal regulations and headquarters guidance documents.¹⁰

How does the Corps ensure impartiality when using its section 214 authority?

In 2018, the Corps updated two guidance documents for district offices and divisions for ensuring impartiality when processing permit applications, as required by WRDA 2000, as amended.¹¹ Specifically, section 214 of WRDA 2000, as amended, requires the Secretary of the Army to ensure that use of funds provided under section 214 agreements will not impact impartial decision-making with respect to permits, either substantively or procedurally.¹² In addition, it requires that the evaluation of permits under section 214 agreements be reviewed by the District Commander or designee, or the Commander of the Corps Division if the initial permit evaluation is conducted by the District Commander.¹³ This requirement is included in section 214 agreements, which specify that funding provided under the agreement cannot be used for the review and approval of permit evaluations by the official at least one level above the decision-maker.¹⁴

According to Corps guidance for the Regulatory program, the agency maintains impartiality in decision-making by requiring the following for reviews expedited by the contribution of funds under section 214:

- The review must comply with all applicable laws and regulations:
- Final permit decisions and associated decision documents must be reviewed and approved in writing by a responsible official at least one level above the person who has been delegated signature authority for the type of permit decision being made;
- Instruments for mitigation banks or in-lieu-fee programs must be signed by the head of the district's Regulatory Program, or a higher-level position that is not funded by a funding agreement;
- Where contributed funds are used to complete the determinations, preliminary and approved jurisdictional determinations must have documentation that a nonfunded regulator conducted a review of the determination¹⁵; and
- Funds from agreements cannot be used for the Corps' enforcement activities.

In addition, the Corps' Civil Works headquarters Regulatory Program provides its districts with public notice templates that include information on procedures to ensure impartial decision-making, according to agency officials. According to Corps guidance for the Section 408 Program, to ensure impartiality in decision-making, the funds cannot be used by the final decision-maker for his or her review, recommendations, or decision concerning a Section 408 request.

Furthermore, the Corps' 2018 Regulatory Program implementation guidance directs personnel to complete annual training on the implementation guidance if they work wholly or partially under a funding agreement.¹⁶

How does the Corps ensure that using section 214 funding does not affect timelines for other entities' permits?

The Corps has taken steps to ensure, to the maximum extent possible, that permit evaluations under section 214 agreements do not adversely affect timelines for permit evaluation for other entities, as required by section 214 of WRDA 2000, as amended.¹⁷ Specifically, Corps has issued guidance and tracks information on time frames from districts.

The Corps' 2018 implementation guidance for the Regulatory Program states that the district or Division Commander will determine, in consultation with district counsel offices, if the acceptance and expenditure of funds is appropriate considering the requirement that it not adversely affect review time frames for the general public. For section 214 agreements that include the review of multiple permit applications, the guidance directs districts to annually report to the Regulatory headquarters and the Transportation Program Manager on the time frames by permit type for the funding entity as compared to other applicants within the same district.

According to this guidance, activities conducted in accordance with a section 214 agreement must expedite the permit review process. In addition, the guidance states that the expedited review cannot result in an adverse effect on the time frames for review of other applications within the same district, when considered collectively. Furthermore, according to the Corps Section 408 Program guidance, all requesters of section 408 reviews will receive a fair and timely review of their

section 408 request regardless of whether they have contributed funds to the Corps for the evaluation.

According to the Corps' 2018 implementation guidance for the Regulatory Program and the Section 408 Program guidance, expediting the review process could include (1) generally shorter review times as compared to typical review times prior to the agreement, (2) facilitation of a smoother review process through improved coordination and communication, or (3) the development or use of programmatic agreements or standard operating procedures.

In addition, Corps officials told us that they track the time frames of each permit evaluation that uses section 214 funds and can compare these timelines to the program's goals. For example, the Corps tracks the average number of days in review from the day a complete permit application was received for permit actions reviewed under section 214 agreements. Furthermore, according to these officials, the Corps can compare time frames under section 214 agreements to the time frames for processing all other permit actions that the Corps issues, per fiscal year. According to the Corps fiscal year 2022 annual report to Congress, approximately 7 percent of all completed fiscal year 2022 permit actions were evaluated using section 214 funding agreements.

According to the Corps Regulatory Program's fiscal year 2022 annual report to Congress, there are cases in which Corps staff review permit applications for entities with section 214 agreements at the same time as permit applications for entities without section 214 agreements.¹⁸ The report states that these staff are "able to provide a focused review for the funding entity without slowing review times for other applicants that do not have funding agreements." The report does not provide further information on the rationale for this statement.

Does the Corps make certain section 214 information publicly available, as required by statute?

The Corps makes certain information about its section 214 agreements publicly available on its websites, as required by statute, but does not distinguish all final permit decisions issued using section 214 agreement funding. It also does not make all active section 214 agreements and section 214 annual reports each available on a single website, as required by statute.¹⁹ Specifically, the Corps' Regulatory Program and the Corps' Section 408 Program both have section 214 websites that include certain information, as required by statute. In addition, the Corps has a separate website that provides an online searchable database for Corps permits and permissions, as table 2 shows.

Table 2: Extent to Which the U.S. Army Corps of Engineers Makes Information on Section 214 of the Water Resource Development Act of 2000, as Amended, Publicly Available as Required by Statute

Statutory requirement to make information publicly available on the internet	Information Corps makes public	Our assessment
All active agreements to accept funds under section 214 available on a single public Internet site ^a	<ul style="list-style-type: none"> Copies of 21 of the 23 active section 214 agreements with public utility companies, natural gas companies, and railroad carriers are posted on the Regulatory Program section 214 webpage because they are for permit evaluations and two of the 23 agreements are only posted on the Section 408 Program section 214 webpage because they are for section 408 permission evaluations.^b 	Requirement partially met because the agency has made most, but not all, of the active agreements publicly available on a single website.
The standard decision document for evaluating all permits using funds accepted under section 214 ^c	<ul style="list-style-type: none"> Copies of standard decision template documents for evaluating section 404, section 10, and section 103 permits are on the Regulatory Program section 214 webpage. Guidance specifying what is to be included in the summary of findings—which documents section 408 decisions, review findings, and the basis for the final decision for each section 408 request—is on the Section 408 Program section 214 webpage. 	Requirement met.
All final permit decisions made with section 214 agreement funding in a common format and manner that distinguishes those final permit decisions from other final actions ^d	<ul style="list-style-type: none"> Information about permits issued and section 408 permissions granted using section 214 agreement funding are in a searchable permit database, which is a common format and accessible from both section 214 webpages.^e The database distinguishes between section 408 permissions granted using section 214 agreement funding and other permission decisions, according to Corps officials. However, the database does not distinguish the Regulatory Program’s final permit decisions made with section 214 agreement funding from final permit decisions made with other similar agreement funding. 	Requirement partially met because the final permit decisions are available in a common format but are not distinguished from other final permit decisions.
All annual reports on the implementation of section 214 submitted to relevant congressional committees on a single publicly accessible Internet site ^f	<ul style="list-style-type: none"> Annual reports from fiscal year 2015 through fiscal year 2022 regarding permits issued using section 214 agreement funding are posted to the Regulatory Program’s section 214 webpage. Annual reports from fiscal year 2015 through fiscal year 2022 regarding permissions granted using section 214 agreement funding are posted to the Section 408 Program section 214 webpage. 	Requirement partially met because the agency has made all of the annual reports publicly available on the internet, but not together on a single website.

Source: GAO analysis of 33 U.S.C. § 2352(d), (e)(2)(B) and U.S. Army Corps of Engineers information. | GAO-25-107637

^a33 U.S.C. § 2352(d)(3). We did not determine whether the Corps' section 214 agreements with nonfederal public entities are on the websites since those agreements are outside the scope of this review.

^bIn October 2024, the Corps launched a separate webpage that includes all of the section 214 agreements with public utility companies, natural gas companies, and railroad carriers for section 408 permissions.

^c33 U.S.C. § 2352(d)(2)(B).

^d33 U.S.C. § 2352(d)(1).

^eArmy Corps of Engineers, "USACE Jurisdictional Determinations and Permit Decisions", accessed on August 21, 2024, <https://permits.ops.usace.army.mil/orm-public>. This is a searchable database of certain permits the Corps has issued. Users can find information specific to permits under section 214, 139(j), and 307 agreements, such as the Corps district, project name, applicant, location, permit type, and date issued.

^f33 U.S.C. § 2352(e)(2)(B). Section 214 of WRDA 2000, as amended, requires the Secretary of the Army to prepare an annual report on the implementation of section 214 and submit it to the Senate Committee on Environment and Public Works and the House Committee on Transportation and Infrastructure. 33 U.S.C. § 2352(e)(1), (2)(A).

The Corps has met the statutory requirement to make the standard decision document for evaluating all permits using funds accepted under section 214 agreements publicly available on the internet. However, the Corps has partially met the statutory requirements to:

- **Provide agreements on a single website.** All active section 214 agreements with public utilities, natural gas companies, and railroad carriers are not available on a single website. Section 214 agreements for evaluation of permits are posted on the Corps' Regulatory Program's section 214 webpage and section 214 agreements for section 408 permissions are posted on the Section 408 Program's section 214 webpage. Some section 214 agreements that include both permit evaluation and section 408 permissions are posted on both webpages.²⁰

Section 214 of WRDA 2000, as amended, requires that all active section 214 agreements to accept funds be available on a single public Internet site. According to Corps officials, section 214 agreements are available on different sites because the Corps believed it was complying by consolidating this information from multiple district websites to the two respective headquarters program webpages. Furthermore, according to these officials, the Corps determined that hosting the agreements that are applicable to the Regulatory Program separately from those applicable to the 408 Program would be more transparent and less confusing for the public.

- **Distinguish final permit decisions.** The Corps database distinguishes between section 408 permission decisions made with section 214 agreement funding and other permission decisions, according to Corps officials. However, the database does not distinguish the Regulatory Program's final permit decisions made with section 214 agreement funding from final permit decisions made with other similar agreement funding.

Section 214 of WRDA 2000, as amended, requires the Corps to make all final permit decisions made with section 214 agreement funding publicly available in a manner that distinguishes those final permit decisions from other final actions.²¹ According to Corps officials, the Corps does not distinguish between these permits because section 214 is similar to the authorities for other agreements.²²

- **Provide annual reports on a single website.** The Corps Regulatory and Section 408 Programs write and submit to congressional committees separate annual reports on their implementation of section 214 of WRDA

2000, as amended, which are posted on their respective section 214 webpages.²³

Section 214 of WRDA 2000, as amended, requires the Corps to make the statutorily required annual report on implementation of section 214 available on a single publicly accessible Internet site. According to Corps officials, they believe they have complied with this requirement by posting the annual reports on each program's section 214 webpage within the Corps' headquarters website. These officials said there are separate webpages because the programs are managed by different offices, and they believe that posting the reports completed by the separate programs on their respective program webpages provides greater transparency and clarity for the public.

Unlike the requirements to make the standard decision document and final permit decisions publicly available, all active section 214 agreements and section 214 annual reports are each required by statute to be available on a single website. The Corps believes it has complied with these requirements by having two separate pages of the Corps headquarters website with information about that program's section 214 implementation. However, neither of these webpages indicates there is another Corps program using section 214 authority or that information about the other program can be found on a separate webpage. Moreover, visiting both program section 214 webpages is necessary to access all of the active section 214 agreements and section 214 annual reports.

By (1) making all active section 214 agreements to accept funds on a single website, (2) updating its permit database to distinguish permit decisions made with section 214 agreement funding from permit decisions made with other similar agreement funding, and (3) making section 214 annual reports available on a single website, the Corps would enhance the transparency of its section 214 activities and ensure that relevant, required information is publicly available on a single website.

How does the Corps provide the required public notice that it is entering into a section 214 agreement?

The Corps provides public notice for entering into section 214 agreements by posting this information on the websites maintained by each of the Corps' districts and through electronic mailing lists, according to Corps officials.²⁴ Specifically, Corps districts provide public notice before entering into section 214 agreements and after the agreements are executed. Corps officials said that each district office notifies the public of each new section 214 agreement by posting this information on its website. This is the same public notice process used for Clean Water Act section 404 standard individual permits and certain other permits issued by the Regulatory Program, according to these officials.

In addition, officials reported that the districts provide notification about new agreements through their public notice electronic mailing lists. Corps officials said that if existing section 214 agreements are extended, they will only provide public notice if there are also substantive changes to the agreement, as directed in the Corps' 2018 Section 214 implementation guidance and 2018 Section 408 Program guidance.

How does the Corps prepare its required section 214 annual reports?

The Corps' Regulatory Program's section 214 implementation guidance directs Corps districts with active section 214 agreements to report annually to headquarters on their activities under the agreements. For example, the Corps districts are to report how the funding agreement has been used to expedite the permit process and how training requirements have been met, along with a list of funds accepted and permits reviewed and approved under the funding agreement. Using this information from the districts, the Corps' annual reports to congressional committees include a list of active section 214 agreements with funds accepted and expended, size and type of resources impacted, and a list of final permit decisions.

In addition, the Corps Section 408 Program implementation guidance directs Section 408 Program coordinators to update headquarters annually, including a list of all active agreements, the date the agreement was executed, whether a section 214 or another similar authority was used, an accounting of the total funds accepted and expended per funding agreement, and a list of section 408 decisions issued under each funding agreement.

Conclusions

The Corps has issued thousands of permits using section 214 agreement funding from public utility companies, natural gas companies, and railroad carriers for expedited permit processing. The Corps makes some information about these section 214 agreements publicly available on its websites, as required by section 214 of WRDA 2000, as amended. However, the Corps' searchable permit database does not, as required, distinguish between permit decisions made with section 214 agreement funding and permit decisions made with other similar agreement funding. The Corps also has not made all active section 214 agreements to accept funds and the section 214 annual reports each available on a single website, as required.

By updating its database to distinguish the permits issued using section 214 agreement funding from others and providing all active section 214 agreements and section 214 annual reports on a single website, the Corps would enhance the transparency of its section 214 activities and ensure that it is fully meeting the statutory requirements for making information publicly available.

Recommendations for Executive Action

We are making the following three recommendations to the Department of Defense:

The Assistant Secretary of the Army for Civil Works should ensure that the Chief of Engineers and Commanding General of the U.S. Army Corps of Engineers update the Corps' Jurisdictional Determinations and Permit Decisions website to distinguish between permits issued under section 214 agreements and those issued under other similar funding agreements. (Recommendation 1)

The Assistant Secretary of the Army for Civil Works should ensure that the Chief of Engineers and Commanding General of the U.S. Army Corps of Engineers update the Corps' website to ensure that all active section 214 agreements to accept funds are available on a single website. (Recommendation 2)

The Assistant Secretary of the Army for Civil Works should ensure that the Chief of Engineers and Commanding General of the U.S. Army Corps of Engineers

update the Corps' website to ensure that all section 214 annual reports are available on a single website. (Recommendation 3)

Agency Comments and Our Evaluation

We provided a draft of this report to the Department of Defense for review and comment. In its written comments, reproduced in appendix I, the Office of the Assistant Secretary of the Army for Civil Works (OASACW) agreed with one of our recommendations and disagreed with two. OASACW agreed with our recommendation to update the Corps' Jurisdictional Determinations and Permit Decisions website and stated that it would direct the Corps to do so.

OASACW did not agree with our recommendations to ensure all section 214 agreements and annual reports to Congress are each available on a single website, as required. Specifically, OASACW noted a technical disagreement with our interpretation and use of the term website and stated that it believes it has met this requirement. However, OASACW acknowledged that it could increase clarity and visibility by including links to each program's webpage on the other's, which would enable the public to more easily access all of the section 214 agreements and annual reports. OASACW stated that it would direct the Corps to modify its webpages accordingly. We agree and believe this action will substantially meet the intent of our recommendation by improving the overall transparency of the Corps' section 214 activities. OASACW also provided technical comments, which we incorporated as appropriate.

How GAO Did This Study

To determine the number of section 214 agreements the Corps entered into with public utility companies, natural gas companies, and railroad carriers as well as the number of permits issued and section 408 permissions granted using funding from these agreements, we reviewed documentation from the Corps, interviewed Corps officials, and reviewed the Corps' section 214 websites as of November 2024. We verified the section 214 agreements the Corps identified as being with public utilities, natural gas companies, and railroad carriers by comparing them to the section 214 agreements posted on the Corps' websites.

To determine the number of section 214 agreements that allow for the expedited processing of mitigation banks, we reviewed the 23 section 214 agreements with public utility companies, natural gas companies, and railroad carriers and interviewed agency officials.

To determine the processes the Corps uses to ensure that permit evaluations under section 214 agreements followed all applicable laws, were impartial, and do not adversely affect the timeline for evaluation of other permits from entities that do not have section 214 agreements, we reviewed the Corps implementation guidance, its fiscal year 2015 through fiscal year 2022 annual reports to relevant congressional committees, and its permit decision document templates, and interviewed agency officials.

To determine what information the Corps makes publicly available regarding its implementation of section 214, the public notice it provides, and the information reported to relevant congressional committees, we reviewed the Corps section 214 websites, its annual reports to relevant congressional committees, its online database for Corps permits, and district websites and an email list notifying the public of agreements and permits issued in those districts. We also interviewed agency officials.

We conducted this performance audit from June 2024 to January 2025 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

List of Addressees

The Honorable Shelley Moore Capito
Chairman
The Honorable Sheldon Whitehouse
Ranking Member
Committee on Environment and Public Works
United States Senate

The Honorable Sam Graves
Chairman
The Honorable Rick Larsen
Ranking Member
Committee on Transportation and Infrastructure
House of Representatives

We are sending copies of this report to the appropriate congressional committees, the Secretary of Defense, the Assistant Secretary of the Army for Civil Works, the Chief of Engineers and Commanding General of the U.S. Army Corps of Engineers, and other interested parties. In addition, the report will be available at no charge on the GAO website at <https://www.gao.gov>.

GAO Contact Information

For more information, contact: Cardell Johnson, Director, Natural Resources and Environment, JohnsonCD1@gao.gov, (202) 512-3841.

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Appendix I: Comments from the Army Corps of Engineers



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108

December 17, 2024

Mr. Cardell Johnson
Director, Natural Resources and Environment
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Johnson:

The Office of the Assistant Secretary of the Army for Civil Works (OASACW) received GAO Draft Report, GAO-25-107637, "Army Corps of Engineers: Expedited Permitting Process Would Benefit from More Transparency," dated 25 November 2024, and appreciates the opportunity to review. The Draft Report provides three recommendations to the Department of Defense. The OASACW concurs with the first recommendation but does not concur with the second or third recommendations. Enclosed you will find our comments on the Draft Report as well as our technical comments.

The OASACW values the GAO staff's professionalism, collaboration, and insights demonstrated during this audit. Thank you again for the opportunity to comment. My point of contact is Heather Theel, Primary Action Officer, at 601-618-4195.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jaime A. Pinkham", is located below the "Sincerely," text.

Jaime A. Pinkham
Acting Assistant Secretary of the Army
(Civil Works)

2 Encls
1. Comments on Draft Report
2. Technical Comments

ENCLOSURE 1

**GAO Draft Report Dated November 25, 2024
GAO-25-107637 (GAO CODE 107637)**

**“ARMY CORPS OF ENGINEERS: EXPEDITED PERMITTING PROCESS WOULD
BENEFIT FROM MORE TRANSPARENCY”**

**US ARMY CIVIL WORKS COMMENTS
TO THE GAO RECOMMENDATIONS**

RECOMMENDATION 1: The Assistant Secretary of the Army for Civil Works should ensure that the Chief of Engineers and the Commanding General of the U.S. Army Corps of Engineers update its Corps Jurisdictional Determinations and Permit Decisions website to distinguish between permits issued under section 214 agreements and those issued under transportation funding agreements.

ARMY CW RESPONSE: Army CW concurs with comment to this recommendation. Specifically, Army CW will direct the U.S. Army Corps of Engineers (Corps) to update its Jurisdictional Determinations and Permit Decisions webpage to distinguish between Regulatory Program permit decisions evaluated with section 214 funding, 23 U.S.C. 139(j) funding, and 49 U.S.C. 307 funding. This change will result in the specific contributed funds authority used for each permit evaluation being identified, which we believe is the intent of the recommendation.

As discussed below in our technical comments, we do not recommend referring to funding agreements citing the section 139(j) or section 307 authorities as “transportation funding agreements” because we also have several funding agreements under the section 214 authority that pertain to the expedited review of permit applications for transportation projects. Additionally, as acknowledged in Table 2 of the GAO’s report, the Corps has recently updated the Corps Jurisdictional Determinations and Permit Decisions webpage to identify which Section 408 permissions were evaluated using a contributed funds authority and identifying whether section 214, section 139(j), or section 1156(a)(2) of WRDA 2016 was the authority used to evaluate each permission.

RECOMMENDATION 2: The Assistant Secretary of the Army for Civil Works should ensure that the Chief of Engineers and the Commanding General of the U.S. Army Corps of Engineers update its website to ensure that all active section 214 agreements to accept funds are available on a single website.

ARMY CW RESPONSE: Army CW does not concur with the interpretation of terminology upon which this recommendation is premised. Army CW believes that all active section 214 agreements are already available on a single site. However, Army CW agrees that greater clarity and visibility can be accomplished with links between the two pages.

The statute provides that the Corps “shall make all active agreements to accept funds under this section available on a single public Internet site.” In the context of the internet, the term “site” is generally used to refer to an entity’s web presence under a specific base URL/domain name (e.g., www.usace.army.mil) including all webpages under that base URL. This is in contrast to a webpage, which is unique and has its own unique URL. A site typically contains many different web pages. Currently all active agreements are available on the same site, that being www.usace.army.mil. Before this provision was enacted, the agreements were available on each of the respective district’s websites. The districts each have different domain names (www.xxx.usace.army.mil – where “xxx” is the district’s 3-letter code). Thus, each district would be considered to have a different website. By moving the 214 agreements from the district sites to the headquarters site, we have unified them on a single website.

The Regulatory Program’s section 214 webpage and the 408 Program’s section 214 webpage are housed within their respective program’s webpages, which are listed together on the Corps’ Civil Works main page (under www.usace.army.mil/missions/civil-works). We believe that hosting the agreements that are relevant to the Regulatory Program on a different page than those relevant to the 408 Program provides greater clarity to the public.

However, Army CW will direct the Corps to modify each page to include a link to the other program’s 214 agreements page to enhance the public’s ease of access for all agreements.

RECOMMENDATION 3: The Assistant Secretary of the Army for Civil Works should ensure that the Chief of Engineers and the Commanding General of the U.S. Army Corps of Engineers update its website to ensure that all section 214 annual reports are available on a single website.

ARMY CW RESPONSE: Army CW does not concur with the interpretation of terminology upon which this recommendation is premised. Army CW believes that all active section 214 agreements are already available on a single site. However, Army CW agrees that greater clarity and visibility can be accomplished with links between the two pages.

The statute provides that the Corps should “make each report . . . available on a single publicly available Internet site.” In the context of the internet, the term “site” is generally used to refer to an entity’s web presence under a specific base URL/domain name (e.g., www.usace.army.mil) including all webpages under that base URL. This is in contrast to a webpage, which is unique and has its own unique URL. A site typically contains many different web pages. Currently all reports are available on the same site, that being www.usace.army.mil.

The Regulatory Program’s section 214 webpage and the 408 Program’s section 214 webpage are housed within their respective program’s webpages, which are listed together on the Corps’ Civil Works main page (under www.usace.army.mil/missions/civil-works). We believe that hosting the reports of the Regulatory Program on a different page than the reports of the 408 Program provides greater clarity to the public.

However, Army CW will direct the Corps to modify each page to include a link to the other program’s page that hosts the reports to enhance the public’s ease of access.

Accessible Text for Appendix I: Comments from the Army Corps of Engineers

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108

December 17, 2024

Mr. Cardell Johnson
Director, Natural Resources and Environment
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Johnson:

The Office of the Assistant Secretary of the Army for Civil Works (OASACW) received GAO Draft Report, GAO-25-107637, "Army Corps of Engineers: Expedited Permitting Process Would Benefit from More Transparency," dated 25 November 2024, and appreciates the opportunity to review. The Draft Report provides three recommendations to the Department of Defense. The OASACW concurs with the first recommendation but does not concur with the second or third recommendations. Enclosed you will find our comments on the Draft Report as well as our technical comments.

The OASACW values the GAO staff's professionalism, collaboration, and insights demonstrated during this audit. Thank you again for the opportunity to comment. My point of contact is Heather Theel, Primary Action Officer, at 601-618-4195.

Sincerely,

Jaime A. Pinkham
Acting Assistant Secretary of the Army
(Civil Works)

2 Encls

1. Comments on Draft Report
2. Technical Comments

ENCLOSURE 1

GAO Draft Report Dated November 25, 2024 GAO-25-107637 (GAO CODE 107637)

"ARMY CORPS OF ENGINEERS: EXPEDITED PERMITTING PROCESS WOULD BENEFIT FROM MORE TRANSPARENCY"

US ARMY CIVIL WORKS COMMENTS TO THE GAO RECOMMENDATIONS

RECOMMENDATION 1: The Assistant Secretary of the Army for Civil Works should ensure that the Chief of Engineers and the Commanding General of the

U.S. Army Corps of Engineers update its Corps Jurisdictional Determinations and Permit Decisions website to distinguish between permits issued under section 214 agreements and those issued under transportation funding agreements.

ARMY CW RESPONSE: Army CW concurs with comment to this recommendation. Specifically, Army CW will direct the U.S. Army Corps of Engineers (Corps) to update its Jurisdictional Determinations and Permit Decisions webpage to distinguish between Regulatory Program permit decisions evaluated with section 214 funding, 23 U.S.C. 139(j) funding, and 49 U.S.C. 307 funding. This change will result in the specific contributed funds authority used for each permit evaluation being identified, which we believe is the intent of the recommendation.

As discussed below in our technical comments, we do not recommend referring to funding agreements citing the section 139(j) or section 307 authorities as “transportation funding agreements” because we also have several funding agreements under the section 214 authority that pertain to the expedited review of permit applications for transportation projects. Additionally, as acknowledged in Table 2 of the GAO’s report, the Corps has recently updated the Corps Jurisdictional Determinations and Permit Decisions webpage to identify which Section 408 permissions were evaluated using a contributed funds authority and identifying whether section 214, section 139(j), or section 1156(a)(2) of WRDA 2016 was the authority used to evaluate each permission.

RECOMMENDATION 2: The Assistant Secretary of the Army for Civil Works should ensure that the Chief of Engineers and the Commanding General of the U.S. Army Corps of Engineers update its website to ensure that all active section 214 agreements to accepts funds are available on a single website.

ARMY CW RESPONSE: Army CW does not concur with the interpretation of terminology upon which this recommendation is premised. Army CW believes that all active section 214 agreements are already available on a single site. However, Army CW agrees that greater clarity and visibility can be accomplished with links between the two pages.

The statute provides that the Corps “shall make all active agreements to accept funds under this section available on a single public Internet site.” In the context of the internet, the term “site” is generally used to refer to an entity’s web presence under a specific base URL/domain name (e.g., www.usace.army.mil) including all webpages under that base URL. This is in contrast to a webpage, which is unique and has its own unique URL. A site typically contains many different web pages. Currently all active agreements are available on the same site, that being www.usace.army.mil. Before this provision was enacted, the agreements were available on each of the respective district’s websites. The districts each have different domain names (www.xxx.usace.army.mil – where “xxx” is the district’s 3-letter code). Thus, each district would be considered to have a different website. By moving the 214 agreements from the district sites to the headquarters site, we have unified them on a single website.

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However, Army CW will direct the Corps to modify each page to include a link to the other program's 214 agreements page to enhance the public's ease of access for all agreements.

RECOMMENDATION 3: The Assistant Secretary of the Army for Civil Works should ensure that the Chief of Engineers and the Commanding General of the U.S. Army Corps of Engineers update its website to ensure that all section 214 annual reports are available on a single website.

ARMY CW RESPONSE: Army CW does not concur with the interpretation of terminology upon which this recommendation is premised. Army CW believes that all active section 214 agreements are already available on a single site. However, Army CW agrees that greater clarity and visibility can be accomplished with links between the two pages.

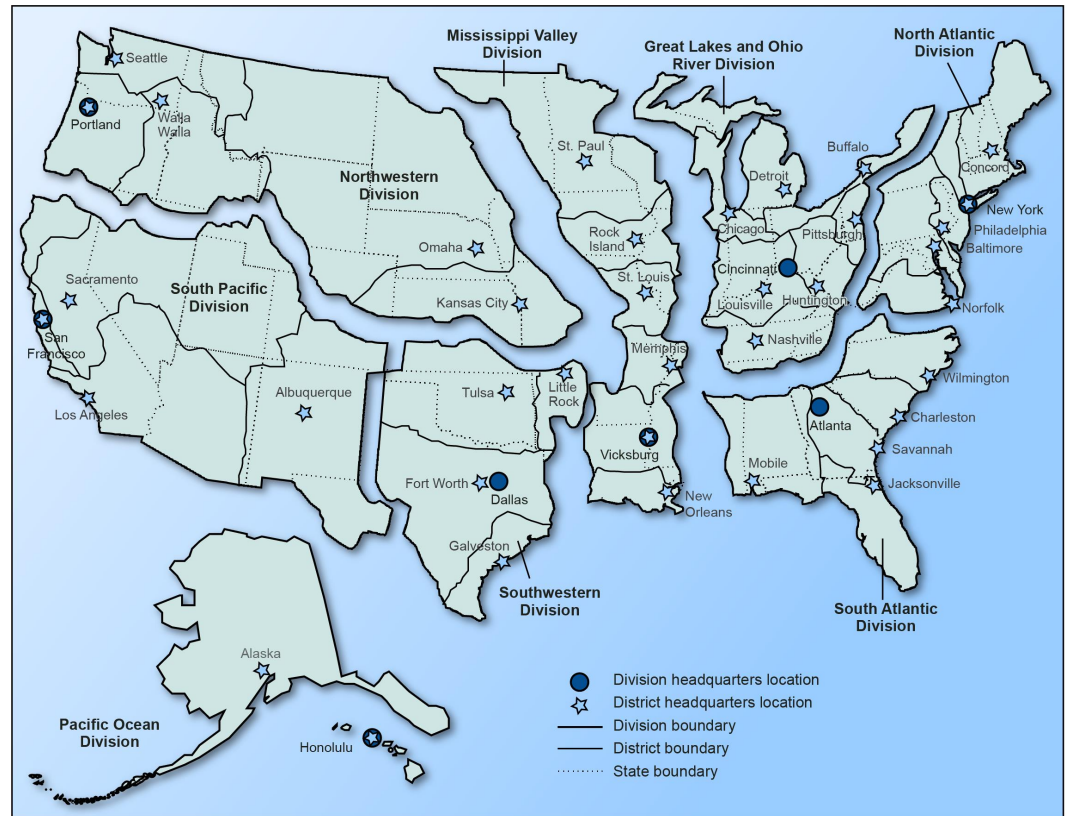
The statute provides that the Corps should "make each report . . . available on a single publicly available Internet site." In the context of the internet, the term "site" is generally used to refer to an entity's web presence under a specific base URL/domain name (e.g., www.usace.army.mil) including all webpages under that base URL. This is in contrast to a webpage, which is unique and has its own unique URL. A site typically contains many different web pages. Currently all reports are available on the same site, that being www.usace.army.mil.

The Regulatory Program's section 214 webpage and the 408 Program's section 214 webpage are housed within their respective program's webpages, which are listed together on the Corps' Civil Works main page (under www.usace.army.mil/missions/civil-works). We believe that hosting the reports of the Regulatory Program on a different page than the reports of the 408 Program provides greater clarity to the public.

However, Army CW will direct the Corps to modify each page to include a link to the other program's page that hosts the reports to enhance the public's ease of access.

Appendix II: Locations of U.S. Army Corps of Engineers' Civil Works Divisions and Districts

Figure 2: Locations of U.S. Army Corps of Engineers' Civil Works Divisions and Districts



Sources: GAO representation of U.S. Army Corps of Engineers data; Map Resources (map). | GAO-25-107637

Appendix III: Corps Section 214 Agreements with Natural Gas Companies, Public Utility Companies, and Railroad Carriers

Table 3: U.S. Army Corps of Engineers Section 214 Agreements with Natural Gas Companies, Public Utility Companies, and Railroad Carriers, as of July 2, 2024^a

Entity name	Corps districts	Fiscal year initial agreement executed	Current agreement expiration date
Public utilities: National Grid	Buffalo	2023	8/30/2028
Public utilities: Commonwealth Edison Company	Chicago	2020	7/1/2029
Public utilities: Entergy Texas, Inc.	Galveston	2020	6/10/2028
Public utilities: Southern California Edison	Los Angeles, Sacramento	2017	12/31/2031
Public utilities: Southern California Edison ^p	Los Angeles	2019	9/30/2025
Public utilities: Eversource Energy ^c	New England	2023	7/21/2028
Public utilities: National Grid	New England	2017	6/1/2025
Public utilities: Revolution Wind, LLC	New England	2023	1/26/2028
Public utilities: Rhode Island Energy	New England	2023	3/17/2028
Public utilities: Entergy, Incorporated	New Orleans	2022	None
Public utilities: Sunrise Wind	New York	2023	3/15/2028
Public utilities: Dominion Energy Virginia	Norfolk	2022	9/30/2027
Public utilities: Pacific Gas and Electric	Los Angeles, Sacramento, San Francisco	2017	9/30/2034
Public utilities: Pacific Gas and Electric ^b	Sacramento	2021	9/14/2031
Public utilities: Florida Power and Light Company	Jacksonville	2018	6/30/2029
Public utilities: American Transmission Company, LLC, and WEC Energy Group	Saint Paul	2018	9/30/2027
Public utilities: Great River Energy and Minnesota Power	Saint Paul	2023	None
Public utilities: Georgia Power Company	Savannah	2022	8/19/2027
Public utilities: Entergy, Incorporated	Vicksburg	2020	7/22/2028
Natural gas companies: Alaska Gasline Development Corporation	Alaska	2015	3/15/2018

Entity name	Corps districts	Fiscal year initial agreement executed	Current agreement expiration date
Public utility and natural gas companies: Northern Indiana Public Service Company ^d	Chicago	2018	6/10/2029
Railroad carriers: Union Pacific Railroad ^c	Albuquerque, Los Angeles, Sacramento, San Francisco	2023	None
Railroad carriers: BNSF Railway Company	Seattle	2021	None

Source: GAO analysis of U.S. Army Corps of Engineers data. | GAO-25-107637

^aUnless otherwise noted, agreements are for the Corps' Regulatory Program.

^bThis agreement is for the Section 408 Program.

^cThis agreement is for both the Regulatory Program and Section 408 Program.

^dThis agreement was originally just for the Regulatory Program, but an amendment to the agreement in 2024 added the Section 408 Program.

Endnotes

¹Pub. L. No. 115-270, tit. I, § 1145(2), 132 Stat. 3765, 3785 (codified at 33 U.S.C. § 2352(a)(4)). Section 1133(3) of the Thomas R. Carper Water Resources Development Act of 2024 repealed this provision on January 4, 2025. Pub. L. No. 118-272, div. A, tit. I, § 1133(3), 138 Stat. 2992.

²Under section 404 permits, discharges of dredge or fill material must generally avoid and minimize adverse impacts to wetlands, streams, and other aquatic resources to the extent practicable. For unavoidable adverse impacts, compensatory mitigation may be required to replace the loss of wetland or aquatic resource functions to the extent practicable, generally in the same watershed. Compensatory mitigation refers to the restoration, establishment, enhancement, or—in certain circumstances—preservation of wetlands, streams, and other aquatic resources for the purpose of offsetting unavoidable adverse impacts that remain after achieving all appropriate and practicable avoidance and minimization.

³Specifically, the Corps can accept funding from public entities under agreements pursuant to 23 U.S.C. § 139(j) and 49 U.S.C. § 307. These two statutes allow public entities that receive certain financial assistance from the Department of Transportation to provide funds to federal agencies to support activities that directly and meaningfully contribute to expediting and improving permitting and review processes.

⁴A public utility company is any company that owns or operates facilities used for (1) the generation, transmission, or distribution of electric energy for sale; and (2) distribution at retail (other than the distribution only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power. 33 U.S.C. § 2352(a)(1)(B). A natural gas company is a person engaged in the transportation of natural gas in (1) interstate commerce or the sale of such gas in interstate commerce for resale and (2) intrastate commerce. 33 U.S.C. § 2352(a)(1)(A). A railroad carrier is generally a person providing railroad transportation. 33 U.S.C. § 2352(a)(1)(C).

⁵The section 214 agreements specify whether the party is a public utility company, natural gas company, or railroad carrier.

⁶The Water Resources Development Act of 2022 amended section 214 of WRDA 2000 to authorize agreements to expedite the evaluation of mitigation bank instruments sponsored by nonfederal entities, public utilities, natural gas companies, and railroad carriers if necessary to expedite evaluation of a permit. Pub. L. No. 117-263, div. H, tit. LXXXI, § 8135(2), 136 Stat. 2395, 3722 (codified at 33 U.S.C. § 2352(a)(2)(B)).

⁷Corps officials also told us that the agency has always interpreted section 214 of WRDA 2000 as amended, as authorizing expedited evaluation of mitigation bank instruments as well as in-lieu fee program instruments if they are (1) sponsored by the party to the section 214 agreement and (2) used only to meet that party's compensatory mitigation requirements. Mitigation banks and in-lieu fee programs differ in their administration. Mitigation banks are typically private, for-profit entities—but may be established by public organizations like state agencies. In contrast, in-lieu fee programs are often administered by governmental entities (such as state agencies) or nonprofit natural resource management entities. Mitigation banks secure the land and conduct work to improve or preserve ecological functions of aquatic resources there before generating "credits" that section 404 permittees can purchase to fulfill their permit's compensatory mitigation requirements. In-lieu fee program administrators sell credits to section 404 permittees to meet their compensatory mitigation requirements. At a later date, after collecting sufficient funds from multiple permittees, the administrators use them to create, restore, improve, or preserve wetlands, streams, or other aquatic resources.

⁸U.S. Army Corps of Engineers, *Implementation Guidance for Section 1125 of the Water Resources Development Act of 2016 - Use of Funding Agreements within the Regulatory Program. Memorandum for Commanding General of the U.S. Army Corps of Engineers* (January 19, 2018); and *Water Resource Policies and Authorities: Policy and Procedural Guidance for Processing Requests to Alter US Army Corps of Engineers Civil Works Projects Pursuant to 33 USC 408, Engineer Circular 1165-2-220* (September 10, 2018).

⁹The laws discussed in the template include the National Environmental Policy Act of 1969, as amended; Endangered Species Act of 1973, as amended; section 106 of the National Historic Preservation Act of 1966, as amended; and the essential fish habitat provisions of the Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended. Section 214 of WRDA 2000, as amended, also requires the Corps to use a standard decision document for evaluating all permits using funds accepted under section 214 agreements. 33 U.S.C. § 2352(d)(2)(A).

¹⁰According to Corps officials, these Corps headquarters' guidance documents include, but are not limited to, the Regulatory Program's July 2009 Standard Operating Procedure and Regulatory Guidance Letters.

¹¹Army Corps of Engineers, *Implementation Guidance for Section 1125 of the Water Resources Development Act of 2016*; and *Water Resource Policies and Authorities*.

¹²33 U.S.C. § 2352(b)(1).

¹³33 U.S.C. § 2352(b)(2)(A). According to Corps officials, District Commanders are the top position in a district and have the authority to make permit decisions in the Corps Regulatory Program. However, District Commanders have delegated most permit decision making authority to the district Regulatory Chief, who is the head of the district's Regulatory Program, and to district Regulatory Program staff. The Division Commander is the top position in each of the Corps' eight divisions.

¹⁴33 U.S.C. § 2352(c).

¹⁵Jurisdictional determinations are a two-step process: (1) identifying and locating aquatic resources on a property and (2) determining whether those resources are regulated under Clean Water Act section 404, Rivers and Harbors Act section 10, or both.

¹⁶Army Corps of Engineers, *Implementation Guidance for Section 1125 of the Water Resources Development Act of 2016*.

¹⁷To the maximum extent practicable, the Secretary of the Army must ensure that expediting permit evaluations under section 214 agreements does not adversely affect the timeline for evaluation of other permits. 33 U.S.C. § 2352(a)(3).

¹⁸Army Corps of Engineers, *Corps Regulatory Program's Fiscal Year 2022 Annual Report for Section 1006(2)(e) of WRRDA 2014*, accessed November 25, 2024, <https://usace.contentdm.oclc.org/utiils/getfile/collection/p16021coll5/id/37460>.

¹⁹33 U.S.C. § 2352(d), (e)(2)(B).

²⁰In addition, since the agreements are listed by state, agreements that were entered into with districts from different states are listed multiple times.

²¹33 U.S.C. § 2352(d)(1).

²²However, agreements authorized by 23 U.S.C. § 139(j) or 49 U.S.C. § 307 are only with public entities; public utilities, natural gas companies, and railroad carriers are not eligible to enter into these agreements. According to Corps officials, the Corps has funding agreements with 12 non-federal public entities that cite both section 214 and section 139(j) or section 307. In addition, Corps officials said the agency has 3 funding agreements that only cite section 139(j).

²³Section 214 of WRDA 2000, as amended, requires the Secretary of the Army to prepare an annual report on the implementation of section 214 and submit it to the Senate Committee on Environment and Public Works and the House Committee on Transportation and Infrastructure. 33 U.S.C. § 2352(e)(1), (2)(A).

²⁴Public notice of section 214 agreements is required by statute. 33 U.S.C. § 2352(a)(2)(A).