

**Memorandum of Understanding Between the
United States Environmental Protection Agency and
the Department of the Army**

*Regarding Implementation of Certain Provisions of the
Water Infrastructure Finance and Innovation Act of 2014*

Purpose

This Memorandum of Understanding establishes a framework within which the United States Environmental Protection Agency (USEPA) and the United States Army Corps of Engineers (USACE) (together, the Parties) intend to work together to implement certain provisions of the Water Infrastructure Financing and Innovation Act of 2014 (WIFIA). This MOU is established under authority of Section 102(2)(G) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(G).

Background

The Water Resources Reform and Development Act of 2014, P.L. 113-121 (WRRDA) was signed into law on June 10, 2014. Subtitle C of Title V of WRRDA 2014 contains WIFIA. WIFIA provides authority to the USEPA and to the USACE to provide financial assistance in the form of secured loans or loan guarantees for a variety of water infrastructure projects. Separate appropriations are authorized for the USEPA and for the USACE.

Section 5023(b)(2) of WIFIA assigns authority to the USEPA to provide financial assistance to carry out the following eligible project types:

- Activities eligible under section 603(c) of the Federal Water Pollution Control Act, notwithstanding the public ownership requirement under paragraph (1) of that subsection.
- Activities described in section 1452(a)(2) of the Safe Drinking Water Act.
- A project for enhanced energy efficiency in the operation of a Public Water System or Publicly Owned Treatment Works.
- A project for repair, rehabilitation, or replacement of a treatment works, Community Water System, or aging water distribution or waste collection facility.
- A brackish or sea water desalination project, a managed aquifer recharge project, or a water recycling project, and
- A combination of projects eligible under section 603(c) of the Federal Water Pollution Control Act or section 1452(a)(2) of the Safe Drinking Water Act for which a State infrastructure financing authority submits a single application.

Section 5023(b)(1) of WIFIA assigns authority to the USACE to provide financial assistance to carry out the following eligible project types:

- Any project for flood damage reduction,
- Hurricane and storm damage reduction,
- Environmental restoration,

- Coastal or inland harbor navigation improvement, or
- Inland and intracoastal waterways navigation improvement that the Secretary determines is technically sound, economically justified, and environmentally acceptable, including projects to-
 - Reduce flood damage,
 - Restore aquatic ecosystems,
 - Improve the inland and intracoastal waterways navigation system of the United States, or
 - Improve navigation of a coastal or inland harbor of the United States, including channel deepening and construction of associated general navigation features.

Section 5023(b)(3) of WIFIA provides authority to USEPA or USACE, as applicable, to provide financial assistance to carry out the following eligible project types:

- Acquisition of real property or an interest in real property-
 - If acquisition is integral to an otherwise eligible project; or
 - Pursuant to an existing plan would mitigate environmental impacts of water resources infrastructure projects that are otherwise eligible, or
- A combination of projects secured by a common security pledge, each of which is otherwise eligible, for which a single application is submitted.

Section 5027 of WIFIA provides that an eligible activity with respect to an eligible project includes the cost of:

- Development-phase activities, including planning, feasibility analysis (including any related analysis necessary to carry out an eligible project), revenue forecasting, environmental review, permitting, preliminary engineering and design work, and other preconstruction activities;
- Construction, reconstruction, rehabilitation, and replacement activities;
- Acquisition of real property or an interest in real property (including water rights, land relating to the project, and improvements to land),
- Environmental mitigation (including acquisitions pursuant to section 5026(7) of WIFIA)
- Construction contingencies
- Acquisition of equipment, and
- Capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction.

Both agencies are required to establish application requirements; determine project and obligor creditworthiness; and establish project selection criteria for their respective programs. Section 5028 of WIFIA delineates the relevant factors which must be taken into account in determining creditworthiness and the criteria which shall be included in project selection criteria.

The agencies intend to work together to implement WIFIA, to the extent practicable, in a consistent, efficient and effective manner, and will seek opportunities to consolidate

development efforts, contract support, program structures and entities, guidance and execution.

Actions

The USEPA and USACE intend to work together, to the extent practicable, so that WIFIA is implemented efficiently within and across the agencies. Toward that end, the agencies expect to explore coordinated development or joint implementation of program elements to the extent practicable within the context of WIFIA.

This MOU is a voluntary agreement that expresses the good-faith intentions of the Parties, is not intended to be legally binding, does not create any contractual obligations, and is not enforceable by any party. This MOU does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this agreement, against USACE or USEPA, their officers or employees, or any other person. This MOU does not apply to any person outside of USACE and USEPA.

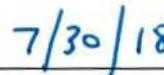
This MOU is to take effect upon the signature of both Parties and remain in effect for a period of 5 years. This MOU may be extended or modified, at any time through the mutual written consent of the Parties. Additionally, a party may terminate its participation in this MOU at any time by providing written notice to the other party, at least 30 days in advance of the desired termination date.

All commitments made by USEPA and USACE in this MOU are subject to the availability of appropriated funds and budget priorities. Nothing in this MOU obligates USEPA or USACE to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations. Any transaction involving transfers of funds between the Parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.

United States Environmental Protection Agency

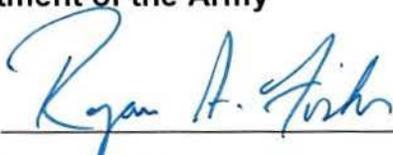


David P. Ross
Assistant Administrator for Water



Date

Department of the Army



Ryan A. Fisher
Principal Deputy Assistant Secretary of the Army (Civil Works)



Date