

574A



**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

FROM: TLMA - Transportation Department


SUBMITTAL DATE:
November 20, 2012

SUBJECT: Water Resources Development Act Section 214
Memorandum of Agreement

RECOMMENDED MOTION: That the Board of Supervisors:

1. Re-Approve the attached Memorandum of Agreement between the County Flood Control and Water Conservation District, the County of Riverside, and the U.S. Army Corps of Engineers, Los Angeles District; and
2. Authorize the Chairman of the Board to execute the same.

BACKGROUND: The Transportation Department (Department) in consultation with the County Flood Control and Water Conservation District (District) identified priority projects that will



 Juan C. Perez
 Director of Transportation and Land Management

RW; fs
(Continued On Attached Page)

FINANCIAL DATA	Current F.Y. Total Cost:	\$40,000	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$0	Budget Adjustment:	No
	Annual Net County Cost:	\$0	For Fiscal Year:	2012/13 thru 2015/16

SOURCE OF FUNDS: Highway Users Tax or Regular Gas Tax (100%)	Positions To Be Deleted Per A-30	<input type="checkbox"/>
There are no General Funds used in this project.	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE
 BY: 
 Tina Grande

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL

BY:  MARSHAL VICTOR DATE: 11/23/12

Departmental Concurrence

Dep't Recomm.: Consent Policy

Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref.

District: All

Agenda Number:

3.56

The Honorable Board of Supervisors
RE: Water Resources Development Act Section 214
Memorandum of Agreement
November 20, 2012
Page 2 of 2

require coordination and approval from the U.S. Army Corps of Engineers (ACOE).

In an effort to respond in a timely manner to meet the public needs through delivery of priority transportation projects the Department and the District plan to enter into the Memorandum of Agreement (MOA) with the ACOE. The MOA sets forth the terms and conditions for ACOE to expedite the evaluation of Section 404 permits of the Clean Water Act for the Department and District's designated priority projects.

Entering into the MOA will afford the Department the ability to respond in a time efficient manner to public demands on our road system.

Please note that the MOA referenced above was previously approved by the Board of Supervisors on June 21, 2012 and the District Board on July 3, 2012. The Department is recommending that the Board of Supervisors once again take action on the above referenced MOA as the ACOE did not execute the originally approved MOA and revised the document to include Federal fiscal year budget designations.

County Counsel has approved the revised MOA as to its legal form. A companion item appears on the Flood Control and Water Conservation District Board's agenda this same date.

1 **MEMORANDUM OF AGREEMENT BETWEEN**
2 **THE RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION**
3 **DISTRICT AND THE COUNTY OF RIVERSIDE AND**
4 **THE U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT**

5 THIS MEMORANDUM OF AGREEMENT (hereinafter the "MOA") is entered into by the
6 Riverside County Flood Control and Water Conservation District (hereinafter the
7 "DISTRICT"), the County of Riverside (hereinafter the "COUNTY") and the Los Angeles
8 District of the United States Army Corps of Engineers (hereinafter the "CORPS"), collectively
9 referred to as the "Parties."

10 **RECITALS**

11 WHEREAS, CORPS has regulatory jurisdiction over certain activities occurring in
12 waters of the United States, including wetlands pursuant to section 404 of the Clean Water Act
13 (CWA) of 1972, as amended; and

14 WHEREAS, section 214 of the Federal Water Resources Development Act of 2000,
15 Public Law 106-541 ("WRDA 2000") as amended by Public Law 111-315, authorizes the
16 Secretary of the Army, after public notice, to accept and expend funds contributed by a non-
17 Federal public entity to expedite the evaluation of a permit of that entity related to a project or
18 activity for a public purpose under the jurisdiction of the Department of the Army; and

19 WHEREAS, the Secretary of the Army has delegated the responsibility of carrying out
20 section 214 of the WRDA 2000 to the Chief of Engineers and his delegated representatives;
21 and

22 WHEREAS, the Chief of Engineers, by memorandum dated March 29, 2004, as
23 modified October 1, 2008, has authorized the District and Division Engineers of CORPS to
24 accept and expend funds contributed by non-Federal entities subject to certain limitations; and
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1 WHEREAS, CORPS has indicated it is not able, without additional resources, to
2 expedite the evaluation of permits of DISTRICT and COUNTY related to projects for a public
3 purpose; and

4 WHEREAS, DISTRICT and COUNTY believe it is in the best interests of the taxpayers
5 of Riverside County to provide funds to CORPS pursuant to this MOA to expedite CORPS
6 environmental review under section 404 of CWA for DISTRICT and COUNTY designated
7 priority projects as more fully described in this MOA; and

8 WHEREAS, CORPS issued an initial Public Notice dated August 19, 2011, regarding
9 its intent to accept and expend funds contributed by DISTRICT; and

10 WHEREAS, in a memorandum dated June 1, 2012, CORPS determined that
11 expenditure of funds received from DISTRICT and COUNTY is appropriate, and an
12 informational public notice dated July 3, 2012, regarding the decision has been issued; and

13 WHEREAS, it is understood and acknowledged by all Parties that the CORPS' review
14 of DISTRICT and COUNTY's permit applications for DISTRICT and COUNTY-designated
15 priority projects will be completely impartial and in accordance with all applicable Federal
16 laws and regulations; and

17 WHEREAS, this MOA is intended to: (1) enable the Parties to fully consider, address,
18 and protect environmental resources early in the development of proposed actions; (2) avoid
19 conflicts late in project development through close coordination during early planning and
20 development stages; (3) provide sufficient information to the CORPS for timely analysis of
21 project effects and to assist DISTRICT and COUNTY in developing appropriate mitigation
22 measures; (4) maximize the effective use of limited CORPS Regulatory Division personnel by
23 focusing attention on projects that would most affect aquatic resources; (5) provide a
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1 mechanism for expediting project coordination when necessary; and (6) provide procedures for
2 resolving disputes in this resource partnering effort.

3 WHEREAS, it is understood and acknowledged by all Parties that DISTRICT and
4 COUNTY will enter into a separate cost share agreement for the purposes of funding this
5 MOA.

6 NOW, THEREFORE, the Parties agree as follows:

7 **AGREEMENT**

8 **Article I. - PURPOSE AND AUTHORITIES**

9
10 A. This MOA is entered into by the Parties for the purpose of establishing a mutual
11 framework governing the respective responsibilities of the Parties for the acceptance and
12 expenditure of funds contributed by DISTRICT and COUNTY to provide expedited permit
13 evaluation-related services for DISTRICT and COUNTY-designated priority projects under the
14 jurisdiction of CORPS. This MOA is not intended as the exclusive means of obtaining review
15 of projects proposed by DISTRICT and COUNTY. This MOA is a vehicle by which
16 DISTRICT and COUNTY will obtain expedited permit evaluation-related services outside of
17 the ordinary CORPS review process.
18

19 B. CORPS enters into this MOA pursuant to its authority under section 214 of the
20 WRDA 2000, as amended.

21 C. DISTRICT enters into this MOA pursuant to its authority under Chapter 1122,
22 Statutes of 1945, Act 6642 of the State Legislature.

23 D. COUNTY enters into this MOA pursuant to its authority under sections 23003,
24 23004 and 23005 of the California Government Code.
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1 Article II. - SCOPE OF WORK

2 A. DISTRICT will provide funds to CORPS to expedite permit evaluation related
3 services for DISTRICT and COUNTY-designated priority projects under the jurisdiction of
4 CORPS. The CORPS' Regulatory Program is funded as a Congressionally appropriated line
5 item in the annual Federal budget. DISTRICT will provide the CORPS with funds in
6 accordance with the provisions of section 214 of WRDA 2000, as amended.

7 B. CORPS will provide staffing resources exclusively dedicated to expediting
8 permit evaluation-related services, as described below, for DISTRICT and COUNTY-
9 designated priority projects and/or other programmatic efforts to support efficient decision-
10 making related to DISTRICT and COUNTY CWA section 404 permitting needs.

11 C. CORPS will establish a separate internal financial account to track receipt and
12 expenditure of the funds associated with its review of permit applications submitted by
13 DISTRICT and COUNTY. CORPS Regulatory personnel will charge their time and expenses
14 against the account when they perform work to either expedite resolution of permit requests
15 designated by DISTRICT and COUNTY as a priority or undertake other programmatic efforts
16 to support efficient decision making related to DISTRICT and COUNTY's permitting needs.
17 CORPS Regulatory personnel will focus on the work as prioritized by DISTRICT and
18 COUNTY, and if the projects designated by DISTRICT and COUNTY as priorities are
19 insufficient to keep CORPS personnel busy, CORPS personnel will then work on other
20 programmatic efforts for DISTRICT and COUNTY.
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24 D. Funds contributed by DISTRICT hereunder will be expended by CORPS to
25 defray the costs of Regulatory Division personnel (including salary, associated benefits,
26 overhead and travel expenses) and other costs in order to expedite the evaluation of priority
27 permit applications designated by DISTRICT and COUNTY. Such activities will include, but
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1 not be limited to, the following: jurisdictional determinations; site visits; travel; federal register
2 and public notice preparation; preparation of correspondence; public interest review;
3 consultations under Section 106 of the National Historic Preservation Act and Section 7 of the
4 Endangered Species Act; preparation and review of environmental documentation; and
5 meetings with DISTRICT, COUNTY, and resource agencies.

6 E. CORPS may expend funds provided by DISTRICT to hire contractors to
7 perform select duties, including but not limited to site visits; preparing and providing technical
8 materials, including environmental documentation; GIS-related services; and meeting
9 coordination for the purpose of augmenting the resources available to CORPS for expediting
10 priority projects and activities designated by DISTRICT and COUNTY. If such expenditures,
11 when combined with the costs of the Regulatory Division personnel specified in Article II.D,
12 require funding in excess of the amount available under this MOA, then said contractors shall
13 not be hired by CORPS until and unless additional funds are provided by the DISTRICT, and
14 the Parties execute a written amendment to this MOA.
15

16 F. CORPS will *not* expend funds provided by DISTRICT for costs associated with
17 the review of Regulatory Project Managers' work by supervisors or other persons or elements
18 of CORPS in the decision-making chain of command. However, if a supervisor is performing
19 staff work and not supervisory, decision-making oversight, funds may be used. CORPS will
20 *not* expend funds provided by DISTRICT to defray the costs of activities related to CORPS'
21 enforcement functions, but *may* use the funds to defray costs of activities related to compliance
22 functions.
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24 G. If the funds provided by DISTRICT are expended and not replenished, any
25 remaining priority permit applications will be handled like those of any permit applicant.
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1 Article III. - INTERAGENCY COMMUNICATIONS

2 To provide for consistent and effective communication between the Parties, each party will
3 appoint a Principal Representative to serve as its central point of contact on matters relating to
4 this MOA. Additional representatives may also be appointed to serve as points of contact on
5 specific actions or issues. For the purposes of this MOA, DISTRICT and COUNTY'S
6 Principal Representative will be Stuart McKibbin, Chief, Regulatory Division for DISTRICT
7 and CORPS' Principal Representative will be Therese Bradford, Chief, South Coast Branch,
8 Carlsbad Field Office. Either Principal Representative may be changed upon written
9 notification to the other Parties.
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11 Article IV. - RESPONSIBILITIES OF THE PARTIES

12 A. DISTRICT, on behalf of itself and the COUNTY, will provide adequate
13 resources to fund additional CORPS Regulatory personnel for the purpose of timely review of
14 designated priority projects and other identified activities. To facilitate CORPS' review and
15 activities, DISTRICT and COUNTY will:
16

17 1. Provide adequate information regarding projects and other specific
18 activities to initiate permit evaluation. Information required for CORPS to deem a permit
19 application complete thereby allowing initiation of the permit review process can be found in
20 CORPS regulations at 33 C.F.R. §§ 325.1(d), 325.3(a), and in General Condition 31 of the
21 Nationwide Permit Program. Upon request, DISTRICT and COUNTY shall provide
22 supplemental information necessary to complete the permit application. Additional
23 information [33 CFR Part 325.1(e)] required to complete the permit evaluation process may
24 exceed what is needed to initiate the process. On a case-by-case basis, if requested by CORPS,
25 DISTRICT and COUNTY shall provide such additional information in a timely manner so as to
26 ensure CORPS can effectively accomplish the required review.
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1 2. Make a reasonable effort to provide CORPS with information on other
2 projects with DISTRICT and COUNTY involvement to enable CORPS to most efficiently
3 apply available staff resources and plan for workload cycles.

4 3. In consultation with CORPS, schedule CORPS involvement in the
5 priority projects identified by DISTRICT and COUNTY. The list of initial priority projects is
6 shown on **Appendix A**. The list may be changed by mutual agreement of the Principal
7 Representatives of each party without requiring an amendment to this MOA. Such changes
8 shall be submitted to CORPS' Principal Representative in writing, including email, and will be
9 effective upon receipt thereof.
10

11 4. To the best of their ability, ensure the participation of all essential
12 personnel during the permit evaluation process.

13 5. Work closely with CORPS to adjust DISTRICT and COUNTY priorities
14 and schedules in order to make optimal use of available Regulatory Division staff resources.
15 While DISTRICT and COUNTY will make every effort not to overlap project schedules,
16 occasional overlaps may occur and DISTRICT and COUNTY Principal Representative will
17 work with CORPS to prioritize such overlaps.
18

19 6. Provide funding pursuant to the terms of this MOA.

20 B. CORPS shall supplement or reassign its existing Regulatory Division personnel,
21 which currently reviews DISTRICT and COUNTY projects on a routine basis, with qualified
22 personnel within projected funding levels provided by DISTRICT and COUNTY. CORPS
23 shall use the funds provided to defray the costs of salaries and associated benefits and to
24 reimburse travel expenses in order to:
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26 1. Expedite review of DISTRICT and COUNTY priority projects in
27 accordance with the purpose, terms, and conditions of this MOA or any amendments thereto.
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1 CORPS shall not redirect resources from, or otherwise postpone, other projects submitted by
2 DISTRICT and COUNTY through the standard CORPS review process.

3 2. Upon submittal of new permit applications and following any meetings
4 and discussions to clarify the scope of anticipated permit application review processes, CORPS
5 staff will provide DISTRICT and COUNTY with an estimated schedule to complete the permit
6 evaluation process for each application submitted. DISTRICT and COUNTY shall be able to
7 comment on these schedules and adjust priorities per Appendix A, or provide additional
8 resources per Article V.E.

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10 3. Consult with DISTRICT and COUNTY regarding an adjustment of
11 priorities or establishment of relative priorities if the current and/or projected workload of
12 priority projects and activities exceeds CORPS' ability to provide the services specified in this
13 MOA.

14 4. Provide DISTRICT and COUNTY a brief quarterly summary report of
15 progress made under this MOA. Progress will be itemized for each permit application review
16 completed during the quarter and for each permit application pending at the end of the quarter.
17 This report will describe achievements, including any improvements CORPS has documented
18 in coordinating and improving the efficiency of environmental reviews, and will summarize
19 expenditures to date. The CORPS shall provide a project cost accounting. The report also will
20 identify any recommendations for improving consultation and coordination among the Parties
21 to this MOA and will provide an estimate of costs expected for the ensuing quarter. The report
22 shall not be in excess of five (5) pages.

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25 5. Designate a Regulatory Project Manager who will make his or her best
26 efforts to attend periodic meetings with DISTRICT and COUNTY.

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1 Article V. - FUNDING

2 A. Within 30 days of execution of this MOA, DISTRICT, on behalf of itself and
3 COUNTY, shall pay the anticipated costs expected to be incurred through September 30, 2012,
4 at the level specified in CORPS' budget estimate, which is included as **Appendix B** to this
5 MOA and incorporated herein by reference.

6 B. No later than July 1 of each year that this MOA remains in effect, the CORPS
7 will provide DISTRICT with an anticipated cost invoice ("Invoice") that provides an updated
8 budget estimate of costs for the next Federal fiscal year, including any proposed changes in the
9 level of staffing. Revisions agreed to by the Parties will be incorporated into a revised budget
10 estimate. Invoices shall be submitted by CORPS to:

11
12 Stuart McKibbin
13 Chief, Regulatory Division
14 Riverside County Flood Control and Water Conservation District
15 1995 Market Street
16 Riverside, CA 92501

17 C. Prior to CORPS incurring any expenditure to expedite permit evaluation-related
18 activities as specified in this MOA, DISTRICT will make an annual lump sum payment to
19 CORPS. Upon receipt of CORPS' invoice(s) and in accordance with normal DISTRICT
20 payment procedures, DISTRICT will make an annual lump sum payment, in advance, of the
21 total amount specified in the invoice(s).

22 D. Expediting of permit evaluation related activities as specified in this MOA will
23 be undertaken by the CORPS only after funds have been transferred to CORPS. Payments by
24 DISTRICT are to be made to:

25 U.S. Army Corps of Engineers, Los Angeles District
26 Finance and Accounting Office
27 P.O. Box 532711
28 Los Angeles, CA 90053-2325
Attn: Carlos M. Tabares

1 E. If CORPS' actual costs for providing the agreed upon level of service will
2 exceed the amount of funds available, CORPS will promptly notify DISTRICT of the
3 incremental amount of funds needed to defray the costs. DISTRICT will either increase the
4 funding amount or agree to a reduced level of service.

5 F. CORPS will carry over any unobligated funds from year to year, or will refund
6 such unobligated funds if this MOA is terminated or expires.

7 Article VI. - APPLICABLE LAWS

8 The applicable statutes, regulations, policies, directives, and procedures of the United States
9 will govern this MOA and all documents and actions pursuant to it. Unless otherwise required
10 by law, all expediting of permit applications undertaken by CORPS will be governed by
11 CORPS regulations, policies and procedures.

12 Article VII. - DISPUTE RESOLUTION

13 In the event of a dispute, the Parties agree to use their best efforts to resolve the dispute in an
14 informal fashion through consultation and communication, or other forms of non-binding
15 alternative dispute resolution mutually acceptable to the Parties. The Parties agree that, in the
16 event such measures fail to resolve the dispute, they shall proceed in accordance with
17 applicable Federal law.

18 Article VIII. - PUBLIC INFORMATION

19 Justification and explanation of DISTRICT and COUNTY programs or projects before other
20 agencies, departments and offices will not be the responsibility of the CORPS. CORPS may
21 provide, upon request from DISTRICT and COUNTY, any assistance necessary to support
22 justification or explanations of activities conducted under this MOA. In general, CORPS is
23 responsible only for public information regarding CORPS regulatory activities.

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1 Article IX. - AMENDMENT, MODIFICATION, AND TERMINATION

2 A. This MOA may be modified or amended only by written, mutual agreement of
3 the Parties.

4 B. Any Party reserves the right to terminate its participation in this MOA without
5 cause upon thirty (30) days' written notice to the other Parties. In the event of termination,
6 DISTRICT and COUNTY will continue to be responsible for all costs incurred by CORPS in
7 performing expedited environmental permit review services up to the time of notice and for the
8 costs of closing out or transferring any ongoing contracts in support of the provision of services
9 by CORPS under this MOA. If either DISTRICT or COUNTY elect to terminate this MOA
10 and the other entity wishes to continue, this MOA must be modified or amended to reflect that
11 change.
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13 C. Within ninety (90) calendar days of termination of this MOA, or the expiration
14 of this MOA, CORPS shall provide DISTRICT and COUNTY with a final statement of
15 expenditures. Within sixty (60) calendar days after submittal of CORPS' final statement of
16 expenditures, CORPS, subject to compliance with the Anti-Deficiency Act (31 U.S.C. 1341 et.
17 seq.), shall directly remit to DISTRICT the unexpended balance of the advance payments, if
18 any. Funds may be provided to DISTRICT either by check or electronic funds transfer.
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20 Article X. - MISCELLANEOUS

21 A. This MOA will not affect any pre-existing or independent relationships or
22 obligations between the Parties.
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24 B. Under the provisions of section 214 of WRDA 2000 as extended, no funds may
25 be accepted or expended by CORPS pursuant to this MOA after December 31, 2016. However,
26 if prior to this date, this statutory authority is extended, then provisions of this MOA shall
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1 remain in force until the earlier of the sun setting of section 214 of WRDA 2000, as further
2 extended, or until the expiration date as provided in this MOA.

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

6 D. CORPS' participation in this MOA does not imply endorsement of DISTRICT
7 and COUNTY projects nor does it diminish, modify, or otherwise affect CORPS statutory or
8 regulatory authorities.

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

13
14 Article XI. - EFFECTIVE DATE AND DURATION

15 This MOA will become effective on the date of signature by the last Party. This MOA shall
16 remain in force until whichever of these events occurs first: 1) December 31, 2016 or 2) MOA
17 is terminated pursuant to Article IX.B.

18 [REMAINDER LEFT INTENTIONALLY BLANK]
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RECOMMENDED FOR APPROVAL:

COUNTY OF RIVERSIDE

By 
JUAN C. PEREZ, Director
Transportation and Land Management

By _____
JOHN TAVAGLIONE, Chairman
County of Riverside Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By  6/21/12
MARSHA L. VICTOR
Principal Deputy County Counsel

By _____
Deputy

Date _____
(SEAL)

CLC:blj
6/6/2012

APPROVED AS TO FORM:

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By: _____
Counsel

Date: _____

U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT

By: _____
R. MARK TOY
Colonel, U.S. Army Corps of Engineers
Commander and District Engineer

Date: _____

CLC:blj
6/6/2012

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Appendix A: DISTRICT and COUNTY Priority Projects

The list of priority projects under this MOA includes the following:

1. Arroyo del Toro Channel, near Lake Elsinore
2. Cherly Creek Levee, Palm Springs
3. Eagle Canyon Dam and Line 41, Cathedral City
4. Little Lake MDP, Line B, Hemet
5. Clinton Keith Extension, I-215 to SR 79
6. Scott Road/I-215 Interchange, Haun to Antelope
7. Cajalco Road Widening, Temescal Canyon Road to I-215
8. I-10 Bypass Hathaway to Apache Trail, Newport Road to I-215, Interchange Haun to Antelope Road
9. Gilman Springs Road, 500' NW of Eucalyptus Road to 8430' SW of Alessandro Road
10. San Jacinto River Levee, Stage 4
11. San Jacinto MDP, Line C
12. Development of mitigation mechanisms for streamlined permitting

1 Appendix B: CORPS' Budget Estimate

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TASK	TIME	RATE	COST
Pre-application Meetings	60 days	\$1,097	\$ 65,820
Project Review and Analysis	100 days	\$1,097	\$109,700
Monitoring and Compliance	30 Days	\$1,097	\$ 32,910
Subtotal Personnel Costs			\$175,520
Direct Costs:			
Travel, Training and Supplies			\$ 24,480
Subtotal Direct Costs:			\$ 24,480
Total:			\$200,000