

**Coos Bay Channel Modification Section 204/408 Report and EIS
Change from WRDA Section 203 to Section 204**

March 4, 2015

The following timeline demonstrates how the Oregon International Port of Coos Bay (OIPCB) Coos Bay Channel Modification Project has changed from a Water Resources Development Act of 1986 (WRDA) Section 203 integrated Feasibility Study/Environmental Impact Statement (FS/EIS) to a WRDA Section 204/408 Report and Environmental Impact Statement (EIS).

- 2006 – APM Terminals North America (APMT) identified a location on the North Spit for development of a new container terminal. APMT signed an option agreement with OIPCB and invested in a preliminary terminal design and studies of the Coos Bay Federal Navigation Channel.
- 2007 – OIPCB notified the Assistant Secretary of the Army, Civil Works that they would conduct a FS/EIS for the Project under the authority of WRDA, Section 203. He confirmed.
- 2007 to 2009 – OIPCB contracted a consultant team (David Evans and Associates, Inc., Moffatt & Nichol, BST Associates, Archaeological Investigations Northwest, GRI, Cogan Owens Cogan, Integrated Water Solutions) to develop the FS/EIS. The consultant team conducted preliminary feasibility studies focusing on modifying the navigation channel to serve large deep-draft container ships.
- 2009 to 2012 – OIPCB and its consultant team broadened the FS/EIS focus to capture the full range of commodity opportunities available to OIPCB. A preliminary screening of commodity opportunities, alternative plan formulation, and detailed technical studies were then developed.
- 2012 to 2013 – The FS/EIS consultant team refined alternative plans and detailed technical studies based on updates to OIPCB opportunities and the WRDA Section 203 FS/EIS process.
- 2013 – The following occurred:
 - The OIPCB learned that the U.S. Army Corps of Engineers only considered existing terminals (or those that would be under construction) in the WRDA Section 203 FS/EIS process. They had previously been led to believe that the Corps accepted letters of interest from potential future terminal developers. This change significantly limited the terminals and commodities that could be included in the FS/EIS.
 - The OIPCB learned that the U.S. Army Corps of Engineers required that HarborSym, an economics model, be included in the FS/EIS. This model must be run by the Corps but coordinated by an expert who understands the model well.
 - Because the existing economic consultant on the project was not familiar with HarborSym, they were replaced with a new consultant – David Miller and Associates (DMA). DMA is a nationally recognized expert in coordinating WRDA projects with the Corps, so the OIPCB hired them to replace Integrated Water Solutions as well.
- 2014 – On February 10, 2014, the OIPCB sent a letter to Assistant Secretary of the Army, Civil Works Darcy informing her that they were changing from WRDA Section 203 to Section 204 to accomplish the project most expeditiously. She confirmed receipt of this letter on March 24, 2014. After changing to the Section 204 process, OIPCB coordinated with the Corps to establish that a separate EIS and a combined Section 204/408 Report would be developed, satisfying requirements of WRDA and Section 14 of the Rivers and Harbors Appropriation Act 33 U.S.C. 408.

Coos Bay Channel Modification Section 204/408 Report and EIS

WRDA Section 204 Milestones and Funding Timeline

March 5, 2015

CORPS TENTATIVELY SELECTED PLAN (TSP) MILESTONE (JULY 31, 2015)

- Ensures U.S. Army Corps of Engineers concurrence on the preferred alternative, alternatives evaluation, and all engineering, economic, and environmental studies conducted on the full range of alternatives. These will be presented in a TSP Report.
- Following the TSP Milestone, the following tasks will be accomplished:
 - 65% Design
 - Draft and Final Environmental Impact Statement to satisfy requirements of the National Environmental Policy Act
 - Permit Applications
 - Draft Section 204/408 Report to fulfill requirements of Section 204 of the Water Resources Development Act 1986 (WRDA) and Section 14 of the Rivers and Harbors Appropriation Act, 33 U.S.C. 408 (Section 408)
- \$10 million will be required to complete this phase.

DRAFT RECORD OF DECISION (JULY 19, 2017)

- A draft Record of Decision (ROD) will mark the end of the National Environmental Policy Act process for the project. It will be prepared by the U.S. Army Corps of Engineers following the Final Environmental Impact Statement. The Final ROD will be issued in January 2019 by the Director of Civil Works.
- Following the draft ROD, the following tasks will be accomplished:
 - Draft Section 204/408 Report Corps review
 - Final design
 - Section 408 approval by the Director of Civil Works
 - Clean Water Act Section 404 and Rivers and Harbors Appropriations Act Section 10 permits issuance
 - Section 204(f) approval and agreement
- \$5 million will be required to complete this phase, after which, construction will begin.

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General Information Handout

March 13, 2015

Water Resources Development Act of 1986 (WRDA), Section 203

- Section 203 states (in part) that “A non-Federal interest may on its own undertake a feasibility study of a proposed harbor or inland harbor project and submit it to the Secretary [of the Army].”
- When the Assistant Secretary of the Army (Civil Works) (ASA[CW]) reviews a feasibility study and recommends the project to Congress, and it is subsequently authorized in a Federal law, the project then becomes subject to the Federal cost sharing structure presented below in Table 1.

Table 1. Federal Cost Sharing Structure for WRDA Section 203 Projects

Project Phase	% Non-Federal Interest
Feasibility Study	100% upfront, 50% credited against later planning/engineering/design & construction phases
Planning/Engineering/Design	Same as construction phase cost sharing
Construction	35% - 60% 35% (25% +10%, if ≤ 45 ft) 60% (50%+10%, for any portion > 45 ft)
Operation & Maintenance	Current cost sharing: 0% ≤ 45 ft, 50% > 45 ft

- Requires Federal appropriation for funding

WRDA Section 204

- Construction of projects by non-Federal interests
- Contains multiple provisions addressing the different phases of the civil works project development process
- **Section 204(b)** allows non-Federal interests to fund the U.S. Army Corps of Engineers (USACE) to conduct engineering and design studies on projects to be implemented by the non-Federal interest.
- **Section 204(d)** allows the non-Federal interest to carry out the construction of navigation improvements if they fulfill all applicable regulatory and statutory requirements, including those of the National Environmental Policy Act.

- The TSP Report will be a portion of the future Section 204(f)/408 Report.

USACE Agency Technical Review (ATR)

- ATR will be conducted for the Section 204(f)/408 Report.
- USACE is the only agency involved in this review process.
- The ATR team assesses whether the analyses are technically correct and comply with published USACE guidance.
- For the Channel Modification Project, the following reviews will occur during ATR:
 - ♦ The Deep Draft Navigation Center of Expertise in Mobile, Alabama will review the Economics analyses.
 - ♦ The Civil Works Cost Engineering Center of Expertise in Walla Walla, Washington will review the cost estimates.
 - ♦ The Engineer Research and Development Center in Vicksburg, Mississippi will review certain components of the engineering modeling.
 - ♦ The Portland District will review the remaining engineering components and the environmental analyses.

Clean Water Act (CWA), Section 404

- Applies to “waters of the United States.” The Corps’ administrative definition of “waters of the United States” extends to all waters, including lakes, streams, mudflats, wetlands, and sloughs, and “the use, degradation, or destruction of which” could affect interstate or foreign commerce. This definition includes wetlands adjacent to these waters.
- Establishes a program to regulate the discharge of dredged or fill material into waters of the United States, including wetlands.
- Requires a Section 404 permit before dredged or fill material may be discharged into waters of the U.S.
- EPA retains oversight authority regarding the Corps’ decision to issue a permit.
- Under Section 404(b)(1) of CWA, Guidelines specifying the following four conditions are used for evaluating and selecting a proposed aquatic disposal site:
 1. There must be no other practicable alternatives available that would have less adverse impacts on the aquatic environment.
 2. The disposal must not result in violations of applicable state water quality standards, toxic effluent standards, marine sanctuary requirements, or requirements of the Endangered Species Act
 3. The disposal must not cause or contribute to significant degradation of the waters of the United States.
 4. The permit applicant must show that all appropriate and practicable steps have been taken to minimize potential adverse impacts of the discharge on the aquatic environment.

- An EIS includes (Part 1502 of the CEQ regulations):
 - ♦ The purpose of and need for the action
 - ♦ Alternatives
 - ♦ The affected environment
 - ♦ The environmental consequences of the proposed action
- For the Channel Modification project, one EIS will be developed to meet the needs of three Records of Decision

Record of Decision (ROD)

- Draft versus Final
 - ♦ Draft remains internal to the project
 - ♦ Final is publically published
- Informs the public of the lead Federal agency's decision, the agency's rationale for it, and any mitigation measures the agency will carry out
- A ROD documents the lead Federal agency's decision on a project. In the case of Channel Modification Project, three RODs will be developed, documenting the Corps' decisions to:
 1. Approve a modified navigation channel (Director of Civil Works);
 2. Assume operation and maintenance of the modified channel (ASA[CW]); and
 3. Issue Section 404 and Section 10 permits for the project (Portland District Engineer).
- A final ROD occurs at the time of the lead agency's decision.
- The ROD shall:
 - a) State what the decision was.
 - b) Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision.
 - c) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation.