

DELTA LTMS INTERAGENCY WORK GROUP TELECONFERENCE

Monday, January 25, 2010
10:30 a.m. – 11:30 a.m.

MEETING NOTES

Meeting Attendees:

Christine Boudreau – Boudreau Associates

Susan Ma – USACE SPN

Bill Brostoff – USACE SPN

Jack Malone – Anchor QEA, L.P.

Dennis Clark – USACE SPK

Brooke Schlenker – USACE SPK

Kate Dadey – USACE SPK

Brian Ross – USEPA

Phil Giovannini – CVRWQCB

DRAFT DDRMT MOU

- Bill initiated discussion of the draft DDRMT MOU by pointing out the importance of a host agency in getting the DDRMT moving forward. He also suggested that Brian and Kate are the best suited IWG members to direct the DDRMT formation discussions by virtue of their regulatory roles and experience.
- Phil observed that the current MOU envisions applicants submitting the JPA to each of the individual agencies rather than to a central host agency. He also said that he had invited the Bethel Island Project team to provide a pre-project briefing and consultation with the LTMS, which was a productive effort. This pre-project coordination is common and beneficial, and projects which come before the individual agencies, in the pre-project state, can and should be invited to participate in the DDRMT process, especially when there is a clear benefit in interagency coordination.
- Brian asked the other regulators whether they think it might be worthwhile to suggest to project proponents in the pre-application stage to attend a DDRMT meeting to brief the group on their potential project and solicit general guidance. Phil said that he provides pre-application guidance frequently to individual project proponents, which includes recommendations to participate or provide briefings to the LTMS..

- Brian then asked what sort of projects should be brought to the DDRMT when project proponents might not understand the regulatory landscape and thus be unable to accurately determine the regulatory complexity of a given project. Phil stated that there are many projects that are not complex, and Brian suggested that it would be worthwhile to provide some guidance on what factors would make a project complex, like reuse of sediment for aquatic wetland creation or placement of dredged material in a new, unpermitted placement site. Phil stated that in many cases sediment is placed on the back of levees for maintenance and these are not “permitted” sites but the activity is often minor and authorized through permits like General Orders and Nationwide Permits. Brian and Kate concurred that perhaps activities authorized through general permits would not be considered complex enough to warrant inclusion in the DDRMT process unless desired by the applicant.
- Phil said that the most important question is what benefit the DDRMT will provide to project proponents. Deciding how to provide the benefits will drive the structure of the DDRMT. He gave examples of anticipated benefits including interagency coordination to resolve potential conflicts, streamlined permit processing, and efficient access to guidance from regulators. Brian concurred with Phil’s ideas and clarified that we don’t want to make simple projects more complicated than necessary by including them in the DDRMT process. Phil added that he doesn’t think we need to make the requirements for projects to be appropriate for DDRMT review too specific because as long as there is a perceived benefit to project proponents, they will voluntarily participate.
- Brian said that he still thinks that a procedure needs to be developed to organize meetings and perhaps Anchor QEA could help facilitate the meetings and agency coordination.
- Jack stated that Anchor QEA could facilitate meeting coordination but would not want to be the “middleman” between project proponents and agencies. He also stated that in his opinion without a host agency, the DDRMT would not be viable in the long-term.
- Phil concurred and stated that a crucial point is to establish agency roles and job descriptions. He said that there should be a clear understanding of the responsibilities of each member agency and representative, and procedures in place to ensure committed participation, and responsibility for specific actions required under the terms of the MOU.
- Brian suggested that as an interim measure, Anchor QEA could be helpful for coordinating meetings without being involved in decisions. He also re-emphasized that agency commitment to participate actively in the DDRMT is crucial. He suggested that in the initial phase, perhaps the best method would be one in which the applicants

would request inclusion in a DDRMT meeting, and once such a request is received, meetings would have to be conducted in a timely manner.

- Phil suggested establishing regular recurring meeting dates and times so that DDRMT members and project proponents' participation would be facilitated because the meeting schedule would be known in advance. If no business was required at an individual meeting date, the scheduled meeting would simply be canceled. Brian provided an example from the L.A. DMMT in which they have a recurring monthly meeting date and have been successful in having at least one project to discuss every month. He also stated that we still need to be sure that all necessary project documents be provided in advance (2 weeks prior to meeting date) so that there will be time for DDRMT members to review the documents and to ensure that the scheduled meetings may be held or cancelled in a timely manner to avoid creating scheduling conflicts for DDRMT members.
- Phil stated that the SF DMMO has both an MOU and Operating Principles and that for the DDRMT we need to develop the Operating Principles and procedures in order to resolve specific roles and responsibilities, as well as specifying specific deliverables and/or actions that would be undertaken by the member agency representatives in consideration of the proponent's applications.
- Phil and Brian discussed whether written comments from each agency should be submitted prior to each DDRMT meeting and Brian pointed out that often through the DMMO meeting process itself initial agency comments are modified or eliminated and the consensus from the DMMO agencies is what is passed on to the applicant. Kate concurred with Brian's statements. Phil added that in order for project proponents to participate they need to be able to come away from the meeting with something tangible. Phil asked if consensus notes from the agencies have been sufficiently helpful to the project proponents participating in the SF DMMO. Brian stated that in the SF DMMO the group provides notes at the end of the meeting documenting the decisions, but not detailed meeting minutes. The DMMO found that these notes are useful to the applicant and the agencies as the project moves forward and a record of recommendations is required. Kate added that the notes serve as a group memory in that case.
- Brian and Phil discussed the development of operating principles for the DDRMT using the SF DMMO as an example. Phil suggested that the DDRMT MOU should be broad in scope as a general agreement while the operating principles document should contain specific procedures and responsibilities that can be modified as the DDRMT is implemented and lessons are learned.

- Brian suggested that on page 4 of the existing MOU a new paragraph about processes could be added in which the roles of each agency are explained in terms of their regulatory purview.
- There was general discussion of the structure of the operating principles versus the MOU for both the S.F. Bay DMMO and the Delta DDRMT. There was consensus that for the DDRMT it is fine to abbreviate the MOU to fit the needs of the Delta and not include detailed operating principles, which could be articulated in a separate operating principles document.
- Brian suggested that Anchor QEA might be amenable to drafting operating principles for the IWG to review and Jack asked for clarification about the operating principles document. He also added that Anchor QEA would not be comfortable taking notes at DDRMT meetings and translating the thoughts of the DDRMT members to the project proponents.
- Brian agreed that it would not be appropriate for Anchor QEA to take notes at DDRMT meetings and suggested that the agencies could take notes on a rotating basis in the absence of a host agency and Anchor QEA could facilitate transmitting them. Phil concurred and said that he wants to be sure that the project proponents walk away from the meeting with a clear understanding of the DDRMT member agencies' positions and recommendations. He also added that the agencies must commit to send staff to the meetings who are authorized to make decisions and recommendations related to the topics being discussed, and be knowledgeable about the subject matter. For that to occur, the operating principles should contain the specific areas/issues upon which the members of the DDRMT will act, and the nature and procedure of authorization/concurrence that will be required from each agency representative on those specific issues in order to move the process along. Phil also said that the participation of project proponents in this DDRMT will depend upon there being a clear understanding and perceived benefit of what the agency representatives are able to do at the DDRMT meetings.
- Brian stated that there would still always be the requirements of the final permits and approvals from individual regulatory agencies, so consensus recommendations from the DDRMT would not diminish the authority of any of the member agencies. The consensus recommendations from the DDRMT would have introductory boilerplate language based on the type of projects and documents being discussed that would make it clear to the project proponents that the individual agencies retained all of their authority.

- Jack agreed to speak to Bill about Anchor QEA preparing a draft of the DDRMT operating principles document for review and comment by the IWG. This approach would have the benefit of not giving the impression that any particular agency is attempting to influence the format of the DDRMT operating principles.

DELTA LTMS BUDGET

- Brian stated that the SF Bay LTMS had approved a plan to transfer funds to the Delta LTMS in an effort to keep the LTMS program moving forward this fiscal year. The funding would not be sufficient to conduct studies, but would allow Delta LTMS meetings to continue.

ACTION ITEMS

1. Anchor QEA will draft DDRMT operating principles for IWG review using the operating principles from the S.F. Bay DMMO as an example.