

Delta LTMS

Permitting Technical Work Group Meeting

Department of Water Resources*
1416 9th Street, Room 1603
Sacramento, CA

Monday, June 23, 2008
9:30 am - 2:30 pm

Meeting Minutes

Meeting Attendees:

Tom Sheeler – Port of Sacramento
Christine Boudreau - DCS
Brooke Schlenker – USACE Sac
Bill Darsie – KSN Inc.
Jessica Burton Evans-USACE SF
Cory Koger – USACE Sac
Amy Simpson - DWR
Meegan Nagy – USACE Sac

Roberta Goulart – Contra Costa County
Bill Brostoff – USACE SF
Phil Giovaninni – CV Regional Water Board
Gilbert Cosio – MBK Engineers
Bob Yeadon - DWR
Ellen Johnck – Bay Planning Coalition
Cal Fong – Representing Port of Stockton
Darryl Foreman – Land Planning + Entitlements

Introductions and Announcements

- Bill – Kate, Al and Fari are not able to be there for the meeting so Bill will be chairing the day's events.
- Bill - Reminder that one week from today is the public scoping meeting for Sacramento DWSC meeting. Location will be West Sacramento City Hall. A copy of the announcement is located on the website under the "News and Events" tab.
- Ellen – There was a markup of the Energy and Water budget this week for funding. They have requested \$2 million for the LTMS project – no final word yet.

Central Valley Water Board Comments on DDRMT MOU

- Ellen – Before getting started, Ellen questioned what the process was for moving forward? In other words, what do we expect to come out of this meeting today?
- Phil – He would like to see us define the problem statement better and then come up with a group with responsibilities that meet that need.
- Bill Darsie – His opinion was that the two main issues were to prevent staff turnover for dredging representatives at the agencies and preserve institutional knowledge in the group.
- Phil/Bill – Add to that the need to get resource agencies to the table and to assist with funding.

- Phil – The CV Water Board management staff (as well as he and Victor) reviewed the MOU and made their comments on the Draft MOU (see attached). The main concern was the issue of legal jurisdiction. More specifically, how will conflicts be resolved in a consensus manner within the DMMO group? The draft MOU discusses redundancy and efficiency as the primary concern; however, they do not feel that those are the true issues. They were also concerned about the use of Water Board resources as they have a certain amount of time for review of materials and adding required “DMMO” meetings may delay RWQCB responses. Phil’s perception is that the real issue is the uncertainty regarding disposal options, testing methods, etc. – all items that the LTMS project is working to define. He felt that focusing our attention on the development of general orders for dredging could provide some immediate relief. As such, the Water Board would like to focus on that approach and delay the decision to form a DMMO type agency group until we are sure that it is really needed. Phil then provided an example of draft GO from a few years back that the group could use as a starting point for discussion. *(The example GO is now posted on the project website under meeting handouts for the June 23rd meeting).*
- Steve – Offered that there might be a middle ground here by re-working the MOU so that it looks more like the Southern California CSTF Advisory Committee rather than the SF Bay DMMO. In SoCal, the CSTF Advisory Committee is called when a new project is proposed to serve as a consultation meeting with all the agency representatives in the same room. The discussion includes project background, existing site data, proposed project, disposal/reuse options, planned characterization activities, potential concerns, and schedule. The agency representatives then get a chance to provide early input and, in doing so, hopefully streamline the process by providing the proponent with upfront clarity regarding potential concerns. Formal decisions are rarely made at the meetings and the proponent must still work with each agency for approval, but they do use a JPA for consistency and are able to gather valuable input early in the process.
- Phil’s recommendations for moving forward
 - Have regularly scheduled meetings (quarterly/semi-annually/annually etc. as appropriate) and let proponents meet the schedule
 - Use this process to develop GO’s to help streamline the process
 - Change the direction of the group to that of information sharing and dialog and remove decision making and authorizing (similar to CSTF process).
 - Defer official formation until we have a chance to go through it in a pilot status under the LTMS before creating a new one, and get a better idea of the role of a possible DMMO as a result of that effort.
 - Work with proponents to make sure that this format works for them.
- Ellen – We should email the Management Committee (MC) to update them on the process.
- Roberta – We should update them at least quarterly to get them re-engaged.
- Darryl – with regards to schedule – keep in mind dredging windows and mobilization requirements to prevent clumping of projects at certain meetings.

Action Items: LTMS members, and especially project proponents, will articulate in writing what they identify from their perspective as problems to be addressed. This will be used to revise the MOU to add a more focused problem statement, adjust the goals to be more information sharing and less on decisions, and highlight the development of regional general orders as a primary objective of the group. Make it a pilot first and then consider something more formal in the future.

Discussion of Dredging General Orders

- Phil started off with a brief discussion about what general orders (GO) are and how they are used in the region? They can be used to reduce the timeline for permitting by streamlining the process to occur in a few weeks as opposed to months for a typical individual permit process. GO's can be applicable for specific types of dredging operations that are similar which can have an added benefit of conserving staff time for other priority projects.
- Phil presented an example GO that had been started several years ago, but never adopted, and detailed the criteria (volume, duration, etc) that they had been considering at the time for a maintenance dredging GO.
- Phil then posted on the board the following example criteria required for consideration in developing GO's:
 - Volume
 - Area/Size (placement/dredging)
 - Placement/Reuse – Where? How?
 - Maintenance/New Work
 - CEQA need?
 - Constituents
 - Criteria
 - Background
 - Monitoring
 - Reporting
 - Mix Zones
 - Region
- The group then assembled a list of the typical dredging projects occurring within the Delta:
 - Federal Maintenance
 - Channel Maintenance
 - Marina Maintenance
 - South Delta Barrier (Salt Water Intrusion)
 - Dredging for levee material
 - Dredging for water intakes (mitigation/water supply)
 - Dredging for flood conveyance
 - Emergency dredging

- Stockpiling dredged material for emergency response
- New work (deepening) dredging projects
 - Large federal
 - Non-federal
- Habitat creation
 - Landside habitat
 - Aquatic habitat
- Remediation/clean-up

Potential projects for general orders in Delta - The group prepared a list of regional project examples that might be candidates for a new GO.

1. Maintenance (i.e., dredged previously)
 - a. Channel
 - b. Marina
2. Reuse of material that has already been dredged
 - a. Stockpile for emergency levee repair
 - b. Habitat creation
 - c. Levee material/levee maintenance
3. Related activities (typically not a candidate for a GO, just 401 certification for extraneous construction activities)
 - a. Pile driving
 - b. Riprap placement
 - c. Boat ramps
 - d. Docks
4. Emergency Dredging (imminent threat but no declared emergency)
 - a. Phil will research to see if it already exists.

From this discussion, the group decided to use the example provided from Phil and begin the development of a new GO for maintenance dredging of marinas and channels within the Delta region, as defined by the same boundaries selected for the LTMS project (CV Water Board jurisdictional area). The specific details of the new proposed GO are listed on the attached note pad summary.

Action Items: Steve will place a copy of the Draft GO from the Phil on the LTMS website as a template for reference and discussion and notify all the attendees when and where it is available for download. The meeting attendees will each review the content and provide comments back to Steve or Phil on items that might be helpful for characterizing alternatives and general suggestions on what details to add to develop the draft GO into the suggested version for the group.

- ii. Clamshell vs. hydraulic
- iii. Onsite vs. offsite
- iv. Pre-specified sites?
- v. Option
 - 1. Upland containment (including backside of levee with containment berm)
 - 2. Will need characterization certification for each new placement site
 - 3. OR designated placement site (once they exist)
- d. Placement Criteria/Background
 - i. Applicant must provide background data for proposed placement site
 - ii. Can be existing data or new data
 - iii. Levees = special case; use “like to like”
 - 1. Sediment on island the same under channel
 - iv. Use bulk analysis of soil at placement
 - v. Surface/ground water: promulgated criteria
 - vi. Sediment/soil testing (like to like)
 - vii. Background levels (inert in place)
- 4. Region (everything within CV Region with the exception of DWSC, per existing draft)
 - a. Focus on region with greatest need
 - b. Use Delta LTMS Study Area
 - c. Apply to placement/revise within Delta
- 5. Criteria
 - a. Focus on example GO provided by Phil
- 6. Monitoring
 - a. See example GO from Phil to determine adequacy

SIDE BAR – In addition to discussion for criteria for a maintenance GO, questions below were identified as necessary to begin parallel consideration of a general order to provide emergency stockpiles of dredged material for future levee breaks.

Stockpiles (alternative TWG with Sacramento DWSC and San Francisco Bay to Stockton DWSC)

- How many?
- Strategic locations TBD
- How much?
- Need proposed volumes for stockpile
- What quality of material is needed for levee repair? (will structure placement criteria for dredge material placement)

To: Steve Cappellino
Anchor Environmental CA L.P.
28202 Cabot Road, Suite 425
Laguna Niguel, CA 92677

COMMENTS ON DRAFT MEMORANDUM OF UNDERSTANDING FOR THE CREATION AND FUNCTION OF A DELTA DREDGING AND REUSE MANAGEMENT TEAM (DDRMT).

On 14 May 2008 the Delta Long Term Management Strategy (LTMS) working group met to discuss a proposal for the formation of a Delta Dredging and Reuse Management Team (DDRMT). The functions of this team were described in a draft memorandum of understanding (MOU) to be reviewed by the agencies listed as participants in the proposed DDRMT. As requested, the Central Valley Regional Water Quality Control Board staff (Regional Water Board) has reviewed the draft MOU and submits the following comments.

Background

The MOU establishes a process for Federal and State agencies with different regulatory authority to provide review, comment and concurrence on all dredging permits in the Delta. The MOU describes a process whereby representatives of four advisory agencies, seven regulatory and resources agencies, applicants, and interested members of the public, would meet on an “as needed” basis to evaluate sampling and analysis plans, sampling results, permit applications and U. S. Army Corps of Engineers (Corps) project proposals.

The proposed DDRMT would be responsible for developing joint recommendations on “sampling and analysis plans”, “placement options”, “suitability determinations for placement and reuse”, and “approval, conditioning or denial of permits (including placement/reuse locations, timing, and other permit conditions)”.

The proposed DDRMT would consist of a host agency and member agencies which agree to meet and respond as described below:

- *The member agencies will respond to applicants, the public or each other within two days for telephone inquiries and within one week of receipt for written requests..*
- *The host agency will schedule meetings for all applicant requests no more than three weeks after receipt of the request. All DDRMT meetings must be noticed at least two weeks prior to the meeting.*
- *The host agency will distribute applicant submittals to Regulatory and Resource Agencies within three days of their receipt.*

- *The host agency will distribute meeting minutes to Regulatory and Resource Agencies within five working days of their receipt.*
- *Member agencies will provide comments on meeting minutes to the host agency within two working days of their receipt and the host agency will post minutes on the Delta LTMS website no more than ten working days after the meeting.*

The member agencies in the proposed DDMRT agree to development of consensus recommendations on all actions before the group, and to a dispute resolution procedure when consensus cannot be reached.

If consensus on DDMRT recommendations cannot be reached by members of the Team, the host agency will convene a meeting or conference call with the Management Committee. The host agency will prepare a synopsis of the issue in dispute and provide it to the Management Committee at least a week in advance of the scheduled meeting/conference call. The Management Committee will then attempt to resolve the issue, but if unable to do so, will elevate it to the Executive Committee. The Management Committee may also remand the issue to the DDMRT for further evaluation and review.

The goals of the DDMRT as stated in the MOU are to reduce “redundancy and unnecessary delays in the permit processing”, and to increase “coordination among agency staffs”.

Comments from the Regional Water Board

Problem Statement: The Regional Board supports any goal of improving the permitting process. However, the purpose of the DDMRT is stated to address assumed permitting problems with “redundancy” and “unnecessary delay”, without sufficient analysis and evaluation as to what specific problem(s) actually exist, and a corresponding evaluation of the range of possible solutions. The goals that the proposed DDMRT are meant to address are presented without a problem statement supported by an analysis of the specific problems, and without consideration of any alternatives.

Aside from the Regional Water Board, no other government agency except the State Water Board and the USEPA, has water quality regulatory authority. We are not aware of any instances where either of these agencies took redundant regulatory actions on dredging permits.

If there is a perception of “redundancy”, “unnecessary delays”, and lack of “coordination”, in the permitting process, these issues should first be documented and investigated, and the nature and causes of these problems determined. At that point, the utility of particular solutions, such as the formation of a DDMRT or other solutions can be objectively examined.

Use of Resources: The Regional Water Board is committed to working diligently to continually streamline our permitting process with the resources available. The proposal, as written, would require extra staff resources and not provide any speedier approvals.

The inclusion of representatives of seven regulatory agencies, four advisory agencies, project applicants and members of the public at all DDRMT meetings may allow a greater breadth of examination, scrutiny and input into each dredging project, however this structure does not appear to address a “redundancy” problem, nor will it likely streamline the permitting process or eliminate presumed “unnecessary delays”, as the jurisdiction of each agency will remain unchanged. Rather, the requirement of the attendance of multiple agency representatives may likely prove to be unwieldy, and the three week lead time for scheduling meetings may simply add to the time required to act on the application.

If the goal is to provide more scrutiny from various agencies of each dredging project, this proposed DDRMT structure may well serve that purpose, however this is likely to be gained at the expense of time and efficiency.

Legal Jurisdiction: The Regional Water Board cannot legally delegate permitting authority to other agencies or groups. Even though the Disclaimer states that the MOU does not take any legal authority from any agency, both the review and dispute resolution processes require agencies with different, and sometimes conflicting mandates, to reach consensus on all agreements. For example, the Corp of Engineers, which, in general, is a proponent of dredging, would necessarily be part of the dispute resolution related to water quality, a Regional Water Board mandate. This multi-agency dispute process may result in an extended, rather than a streamlined, project review and approval process. The necessity of involving multiple agencies, rather than the applicant directly demonstrating compliance with water quality laws to the Regional Water Board, is inherently more time consuming. It is not the function of the Regional Water Board to review decisions made by other agencies, but rather to implement the legal water quality mandates that arise from the decisions of these other agencies.

The jurisdiction and legal authorities of the various agencies involved are often quite distinct. In the Delta, upland placement and reuse is authorized under State laws. Waste Discharge Requirements for upland placement are most expeditiously regulated under General Orders. Those General Orders specifically mandate compliance to defined criteria for dredge material characteristics, monitoring, reporting and reuse. It is not clear what the role of a DDRMT would be for dredging projects regulated under such orders.

Recommendations

The Regional Water Board is not opposed to the formation of a group or team that can assist in the goals of protecting water quality while efficiently permitting environmentally sound projects. However, for the reasons described above, we do not recommend approval of the MOU, as currently written.

Our experience has shown that the major constraints to permitting of dredging and reuse of dredged material in the Delta are uncertainty and lack of knowledge of dredging applicants of the permitting process, environmental sampling and long-term planning. The Regional Water Board has attempted to address these issues by 1) providing guidance documents to dredging applicants, and 2) proposing General Orders for certain classes of dredging and reuse, which would both clarify and streamline the permitting process.

The Regional Water Board proposes that any consideration of formation of a DDRMT be deferred until a more specific analysis of the actual problems and issues is undertaken. The two goals stated (“reducing redundancy and unnecessary delays” and “increasing coordination”) do not appear to be based on a well formulated problem statement, and the structure of the DDRMT does not necessarily appear to be the optimum process for addressing these goals.

Perhaps a better function of a DDRMT organization would be for input into the creation of particular General Orders and General Permits rather than the consideration, review, approval, denial etc. of each individual dredging project’s action.

The Regional Water Board will continue to commit staff to work cooperatively with all dredging project proponents, with State and Federal agencies, and with the Delta LTMS on water quality issues related to dredging and dredged material reuse to expedite appropriate and economically valuable dredging projects in the Delta.