To: Tom Hagler/R9/USEPA/US@EPA[]
From: "Robershotte, Paul J SPD"
Sent: Wed 8/3/2011 7:07:52 PM
Subject: Re: BDCP MOU - Update and question

Tom
Thanks for this. I am traveling 3 of next 5 days and largely out of the loop. I apologize for all the recent help we are getting from the Corps. I will be back in the office Mon and would like to talk to you and Nepstad before I talk to Annette or others.
Paul

Message sent via my BlackBerry Wireless Device

From: Tom Hagler [mailto:Hagler.Tom@epamail.epa.gov]
Sent: Wednesday, August 03, 2011 11:49 AM
To: Robershotte, Paul J SPD
Subject: BDCP MOU - Update and question

Paul -

I had a long talk with Michelle Morrow, DWR counsel, about their markup of the BDCP MOU. I will be shortly be sending out to the larger group a new version based on her comments, and will be flagging basically two areas where we seem to have a disagreement on the scope/nature of the MOU.

In this email, however, which I am sending to you only, I am attaching some comments on the MOU from Tanis T. Some of her observations are just that. Some of these questions/comments would require someone drafting proposed language.

I actually feel a bit awkward picking and chosing which of Tanis T.'s comments to incorporate, so Karen suggested I send this to you and let you decide what I should do with these Corps comments. Also, FYI, your Division counsel had a couple of comments, one of which I flag in the big document to come, and the other I didn't understand. We can work on those once we get the DWR comments addressed.

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----- Forwarded by Tom Hagler/R9/USEPA/US on 08/03/2011 11:42 AM -----

From: "Nepstad, Michael G SPK" <Michael.G.Nepstad@usace.army.mil>
To: Tom Hagler/R9/USEPA/US@EPA
Date: 07/18/2011 11:09 AM
Subject: FW: BDCP MOU (UNCLASSIFIED)

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Classification: UNCLASSIFIED
Caveats: NONE

Here's come comments and suggestions from Tanis Toland of SPK planning on the MOU

-----Original Message-----
From: Toland, Tanis J SPK
Sent: Monday, July 18, 2011 9:03 AM
To: Nepstad, Michael G SPK
Subject: BDCP MOU

Good Morning, Mike.

Some comments/thoughts on the preliminary draft MOU for your use, if appropriate.

* I am still hearing chatter that the Fed and State agencies are not on the same page regarding schedule and what will be specifically vs programmatically covered in the BDCP/EIS/EIR

* Is it set that the State and Federal Water Contractors are not going to be applicants? They have been funding most of the BDCP effort so far so it seems odd that they don't have an overt role. Who will the applicants be for USACE 404/10/408? It is inferred but not stated. In the table on Page 8, row 3, 4 states, "Lead Agencies identify preliminary analysis of impacts of the project(s) seeking USACE permits." This reads as though the "projects" themselves would be seeking the permits.

* BOR's role still seems fuzzy. "...if feasible, the BDCP will be used as the basis for ESA compliance by Reclamation..."

* Page 3, 3rd paragraph. Helpful discussion of decisions that need to be made and by whom. No identification of who is going to decide to submit permit applications.

* Page 3, last paragraph. So the Lead Agencies are in agreement that USACE and EPA will be able to look at everything? It is not clear to me if USACE and EPA will be able to read the working draft of Chapter 2, for example, or if they will only be allowed access to summary documents that are to encapsulate the content of specific parts of the EIS/EIR.

* Pages 3 & 4. It sounds firm that the only project specific information that will be included in the EIS/EIR will be for conveyance elements and that the Fremont Weir and Yolo Bypass will not be included at a project specific level. Is this accurate? Has DWR bought in? There will need to be mitigation for the conveyance elements and their operation. Are the Lead Agencies still thinking that operational adaptive management is a conservation measure of such significance that it will off-set any impacts to listed species from construction and operation of the conveyance elements? What about NMFS' recent comment about the link between conveyance elements

and YB?

* Page 5, #2. A cooperatively developed staff document sounds good, and the template should help facilitate it. Given the track record and current discussions, do you think this is realistic?

* Page 5, last bullet. Do we know what is included in "New Conveyance Projects"?

* Checkpoints should help guide and provide more disciplined upward reporting.

* Page 7, (c). "Draft Mitigation Plan" is mentioned here and elsewhere. Would it make sense to tie this to the requirement that it supports? Is the DMP related to all of 404/10/408 or only one of them?

* Page 10, #9. "The Lead Agencies will convene a "checkpoint meeting" when they determine it is appropriate and necessary to confirm a checkpoint position." I trust that the USACE team will continue to proactively coach the Lead Agencies, as appropriate.

* Elevation - mid and senior. DOI has seemed anxious to elevate quickly to DC. I wonder if they will be comfortable keeping decisions at the region. If the region can't resolve this would then go to "executives" in DC?

* Page 12, b and c. Good clarity about USACE decisions regarding adopting the EIS/EIR.

* Page 13, #1. "The mid-level elevation may be used any time ...ALL the Signatory Agencies agree it would be effective." Not sure "all" is correct. For example, there are several places in the MOU when the Lead Agencies can elevate.

* Page 14, Section VI, #1. Do the Lead Agencies understand who pays if the USACE needs additional information and analysis or a supplemental or new EIS/EIR?

* Page 17. Be sure that the USACE signature block is correct. The signatories seem to vary between "mid-level" and "senior-level" as discussed in the elevation process. Seems like there should be consistency and it should probably be the senior-level (SPD for USACE)

* Figure A-1 Sample Briefing Paper. Would be helpful to have both the description and an example.

Tanis

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