To: Michael.G.Nepstad@usace.army.mil[]
Cc: []
Bcc: []
From: CN=Erin Foresman/OU=R9/O=USEPA/C=US
Sent: Tue 7/26/2011 3:15:25 PM
Subject: Re: Draft Basic and Overall Purpose Statement (UNCLASSIFIED)
DWR_Proposed_BASIC&OVERALL_purpose.pdf
2011_1_20 F to B P&N EPA Agreement.pdf
Final Checkpoint A agree SPK-2009-1482.doc
http://www.epa.gov/region9/water/watershed/sfbay-delta/index.html

Mike,

Thanks for providing your ideas about the BDCP CWA basic and overall project purpose statements after our meeting last week with DWR. I know you are away this week (hope you are enjoying our nation's capital city) but I am hoping you can respond to email when outside the leadership meeting. Last week, on Friday, I updated Karen Schwinn and Tom Hagler at EPA with respect to our CWA Section 404 meeting on BDCP with DWR (July 20).

Karen and Tom and I discussed some concerns about the basic and overall project purpose statement proposed by DWR's legal consultant that are similar to the conversation I had with you about a BDCP basic and overall project purpose statement and "master 404(b)(1) alternatives analysis" that Marc Ebbin mentioned. I listed the issues we discussed below. It would be great if we could discuss (by email or phone?) this week while you are in DC or next week when you are back and identify some next steps for this series of meetings with DWR.

Our primary concern about the DWR proposed July 20 BDCP basic and overall project purpose statements is that they don't seem to be useful from a legal or practical point of view for a half a dozen reasons.

1. The basic and overall project purpose statements are used in the CWA section 404 process at the project level with very detailed information. Distinguishing between basic and overall project purposes at the programmatic level for multiple projects may not useful because BDCP includes programmatic information on many projects and DWR aims to produce project level information only for the Delta Conveyance Project.
2. The basic project purpose statement is used to determine whether or not an individual project is water dependent. Water dependency and the presumption of practicable alternatives located outside waters of the US will vary for each individual BDCP project that needs a CWA Section 404 permit making it impossible to make an accurate statement about about water dependency for all of the projects in the BDCP.
3. The overall project purpose statement is used for for evaluating alternatives and identifying the least environmentally damaging practicable alternative (LEDPA) with very detailed project level information. We will not have project-level, detailed information for most of the BDCP project elements.
4. The Corps doesn't write CWA Section 404 permits for plans but for specific projects having detailed information about estimated impacts to waters of the US.
5. The proposed basic and overall project purposes for BDCP (attached) are not that different from one another; they both say the CWA basic and overall project purpose for BDCP is to implement the BDCP.
6. This step is not necessary as EPA and the Corps have indicated we are comfortable with the NEPA purpose and need statement for the overall BDCP that was drafted by BOR. And I looked at past programmatic NEPA-404 purpose and need check points and

The draft NEPA-CWA-RHA MOU we are working on completing with DWR and the lead federal agencies provides a checkpoint for Purpose & Need and Basic and Overall Purpose Statements. Maybe we need to adjust the draft MOU language to reflect a checkpoint for agreement on NEPA purpose & need for

programmatic BDCP elements and NEPA purpose & need and CWA overall project purpose statement for project level BDCP elements. This is consistent with what EPA and Corps did with California High Speed Rail (HSR) project at the programmatic and project-level stages (see attached letters). Note that at the HSR project-level, we concurred on overall project purpose; there was not a statement of concurrence (or nonconcurrence) on basic project purpose. The draft MOU also includes a LEDPA checkpoint for BDCP elements at the programmatic and project level. We will address this checkpoint consistent with level of detailed information we receive (programmatic v. project specific) regarding the BDCP, Delta Conveyance Project, and the LEDPA. This checkpoint gets to the idea of a "master 404(b)(1) alternatives analysis" but it will be as specific or broad as information provided to us. Hopefully that will address Marc Ebbin's point.

We think the most useful next step, in the spirit of coordination and anticipating signature of the MOU, is to make progress on the purpose and need checkpoint. Instead of proposing another BDCP-wide basic and overall project purpose statement, what do you think of asking DWR to provide a
project description for the Delta Conveyance Project to the Corps. The Corps could then draft the basic and overal project purpose for the Delta Conveyance Project, discuss it with EPA, provide it to DWR & discuss, and then discuss it in the larger MOU signatory group. If the NEPA-CWA-RHA MOU is signed by all the agencies, we would anticipate the purpose and need checkpoint process to include DWR sharing the BDCP NEPA purpose and need statement to cover programmatic BDCP elements and a CWA overall project purpose statement for the Delta Conveyance Project (written by the Corps but already discussed with DWR) with the lead and federal cooperating agencies and following the steps in the MOU (distribute info, call a checkpoint meeting, request written concurrence).

I think the table you put together is a good way of showing DWR how the Corps will make decisions on basic and overall project purpose based on project description information it has. If a column is added for project description, then DWR can easily look at it and see the connection between their project description and the basic and overall project purpose once the table is filled out. We could maybe ask DWR to fill in as many project descriptions as they have already completed for BDCP elements and then you and your staff can propose basic and overall project purpose statements. This probably isn't necessary for the purpose and need check-point process but may be a good way of tracking BDCP elements and progress.

Obviously lots to discuss. I'm generally at my desk until 2:00 PM T - Friday and Tom Hagler is mostly in this week if you want to discuss sooner than later. I'm also checking on the Placer Parkway project purpose concurrence letter (programmatic) and the Lincoln Bypass (project level) NEPA-CWA 404 project purpose concurrence letter to see what we did in those integration agreements.

In the meantime, I'm going to pull together NEPA-CWA 404 letters from HSR programmatic, Placer Parkway programmatic, and at least one example of project level so we have something to compare things too. Oh, yeah, I found HSR project level P & N concurrence for the segment from Bakersfield to Fresno. That one is recent and helpful; it is the one I mentioned above.

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-----"Nepstad, Michael G SPK" <Michael.G.Nepstad@usace.army.mil> wrote: -----
To: Erin Foresman/R9/USEPA/US@EPA
From: "Nepstad, Michael G SPK" <Michael.G.Nepstad@usace.army.mil>
Date: 07/21/2011 03:14PM
Subject: Draft Basic and Overall Purpose Statement (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Erin,

Attached are three different Basic and Overall Purpose Statements, and yes, this killed my whole day.

The one from 2010 was the one I was planning to use in my decision document without telling anyone back in the day before the Basic and Overall Purpose statement got into the MOU.

The excel one was my preference this afternoon, but as I thought about it more, I grew worried that it would be wordsmithed forever and that it would be a battle to keep some from attempting to make the overall purposes so narrow that any alternative would be precluded.

My new favorite is the one called NEPA based. It's the purpose statement we just agreed to with a teeny basic purpose statement. I think that could cover us for the BDCP program.

Let me know what you guys think.

Classification: UNCLASSIFIED
Caveats: NONE

[attachment "Draft Basic and Overall Purpose_BDCP_Program and Projects_21 July 2011.xlsx" removed by Erin Foresman/R9/USEPA/US]
[attachment "Draft Basic and Overall Purpose_NEPA Based_21 July 2011.docx" removed by Erin Foresman/R9/USEPA/US]
[attachment "BDCP_Draft_Purpose_Statement_Mike_February 2010.doc" removed by Erin Foresman/R9/USEPA/US]