



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105
9/23/2009

Dr. Josephine R. Axt
Chief, Planning Division
U.S. Army Corps of Engineers
Los Angeles District
P.O. 532711
Los Angeles, CA 90053-2325

Subject: Los Angeles Regional Dredge Material Management Framework (DMMF)
Programmatic Environmental Impact Statement (PEIS) Public Draft (CEQ#
20090038)

Dear Dr. Axt:

The U.S. Environmental Protection Agency (EPA) has reviewed the subject document, as well as your letter dated August 24, 2009. Our comments are made pursuant to the National Environmental Policy Act (NEPA) Council on Environmental Quality (CEQ) regulations at 40 CFR Parts 1500-1508, EPA's NEPA review authority under Section 309 of the Clean Air Act, the Federal Guidelines promulgated at 40 CFR Part 230 under Section 404(b)(1) of the Clean Water Act (CWA), and the regulations promulgated at 40 CFR Part 225-227 under the Marine Protection, research, and Sanctuaries Act (MPRSA).

EPA discussed several of our initial concerns with USACE during an interagency meeting on August 22, 2009. Following this, USACE changed the document title to "Framework" rather than a Plan, and clarified that the DMMF/PEIS would be "implemented to meet objectives of the Los Angeles Regional Contaminated Sediment Task Force's Long-Term Management Strategy" (USACE letter to Interested Parties, dated August 24, 2009, regarding the Draft DMMF/PEIS).

EPA supports the USACE approach to use a tiering NEPA process to better inform planning and implementation of proposed actions in the project area. Despite this, we continue to have concerns about the sufficiency of the Draft DMMF/PEIS, particularly to inform future project-level decision-making as a document to tier off of. The document provides conflicting information regarding the purpose for the proposed action. We understand from discussions with USACE that the intent in preparing this programmatic document was to provide a general evaluation framework and that "*(the DMMF/PEIS) does not promote any specific plan or alternative*" (p. ES-1). Therefore, all future actions that fall within the scope of this programmatic EIS will require additional NEPA analysis. We have rated the document as *Environmental Concerns – Insufficient Information (EC-2)*, see the enclosed Summary of Ratings Definition.

EPA previously highlighted to USACE that documents that are this general in nature, with no decision to be made by the federal agency, are often not filed with EPA as Environmental Impact Statements, but are completed as internal planning documents to guide future actions. Recommendations for what additional information would be needed in order for this document to better inform future decision-making, and specifically, to provide a basis for tiering, are included in the enclosed comments.

Through the enclosed comments, EPA also provides comments regarding the need for a more robust alternatives analysis, reasonable sediment management options, dredging methods and sediment management, clear purpose and need, relationship to other plans, and additional scoping and coordination.

We appreciate the opportunity to review this Draft DMMF/PEIS. When the Final DMMF/PEIS is published, please send two (2) hard copies to the address above (mail codes: CED-2 and WTR-8). If you have any questions, please contact me at (415) 972-3521, or the lead NEPA reviewer for this project, Tom Kelly, or the Associate Review for our Wetlands Regulatory Office, Brian Ross. Tom can be reached at (415) 972-3852 or kelly.thomasp@epa.gov and Brian can be reached at (415) 972-3475 or ross.brian@epa.gov.

Sincerely,

/s/

Connell Dunning for
Kathleen M. Goforth, Manager
Environmental Review Office
Communities and Ecosystems Division

Enclosures:

Detailed Comments
Summary of Rating Definitions

cc: George Domurat, U.S. Army Corps of Engineers
Bryant.Chesney, National Oceanic and Atmospheric Administration
Ken Corey, US Fish and Wildlife Service
Jack Gregg, California Coastal Commission
Becky Ota, California Department of Fish and Game
Michael Lyons, Los Angeles Regional Water Quality Control Board
Mark Gold, Heal the Bay
Dr. Ralph Appy, Port of Los Angeles
Matt Arms, Port of Long Beach

**EPA DETAILED COMMENTS RE: LOS ANGELES REGIONAL DREDGE MATERIALS
MANAGEMENT FRAMEWORK, DRAFT PROGRAMMATIC ENVIRONMENTAL IMPACT
STATEMENT (DMMF/PEIS): LOS ANGELES COUNTY CA, SEPTEMBER, 23, 2009**

**Use of the DMMF/PEIS as a Document for Future Tiering and Need for Alternative
Analysis**

USACE envisions using the programmatic evaluations in the DMMF to streamline future project-specific analyses. However, the analyses presented will only be useful in streamlining future project-specific analyses to the extent that the information presented is robust enough, and comprehensive enough, to inform and serve as the basis for future decision-making. Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (40 CFR Part 1508.28).

With that in mind, it appears that USACE has determined that at this time, there are no issues that are “ripe” for decision-making. Page ES-1 states that “(the DMMF/PEIS) does not promote any specific plan or alternative”. Furthermore, this DMMF/PEIS could only serve as the sole basis for future decisions if the following apply:

- range of alternatives/scenarios is not inappropriately constrained,
- comparison of alternatives/scenarios addresses all issues/considerations relevant to the future project,
- the future projects closely resemble the alternatives/scenarios in all aspects, including sediment quality, and
- the conditions, including the availability of alternatives/scenarios, will not have not changed compared to those assumed in the Draft DMMF/PEIS.

Even if the future project seems to be quite similar to the DMMF/PEIS scenarios generally discussed within the document, there will still need to be additional analysis to fully support future project evaluations. This is due to the lack of specificity with which environmental data was presented within the Draft DMMF/PEIS. For example, the following analyses will be required at a project-level:

- *Sediment quality and characterization (p. 64)*. The data presented appears to be primarily from the 1998 USACE study used for the CSTF database and a number of errors and omissions occur in the tables. The data presented is insufficient to characterize sediment, so future projects will require project-specific sediment testing
- *Sediment significance criteria (p. 150-152)*. As presented, these are too general to adequately assess impacts to water quality, hazardous materials, marine transportation and air quality. EPA recommends that USACE refer to the recent China Shipping EIS for examples of thresholds.
- *Direct and indirect impacts (Sections 7-9)*. The Draft DMMF/PEIS provides only a cursory review of the environmental impacts of the various management actions without detail of direct or indirect impacts. Project specific information may be needed for mitigation, best management practices, environmental justice, and air quality.

In addition, the alternatives listed in Table 2-1 are a range of management options that can be combined for use on an individual project and are not actually different alternatives. Similarly, the scenarios listed in Table 3-1 are not alternatives to each other, but are representative types of projects (new work, channel maintenance, and berth maintenance) that often can be expected to have similar considerations for dredging, management of the dredged material, as well as similar environmental impacts. Project-specific evaluations would be better supported if different management options were more thoroughly evaluated and compared.

Recommendation:

If it is USACE intent to the use analysis presented in the DMMF/PEIS as the sole information source to direct future actions (choosing between a suite of alternatives, for example), then the Final DMMF/PEIS should include a considerably more detailed impact analysis of alternatives/scenarios. Furthermore, to meet the future requirements of Clean Water Act (CWA) Section 404(b)1 requirements and Marine Protection, Research, and Sanctuaries Act (MPRSA) for activities in the project area, the information as presented in the Draft DMMF/PEIS is not sufficient.

Alternatively, if USACE intends for this DMMF/PEIS to be a framework to guide future actions and to provide some, but not all, detailed analysis important for future decision-making, USACE should supplement the Final DMMP/PEIS with additional detailed analysis. This will consist of subsequent NEPA documentation that refer to the DMMF/PEIS as a guidance document only, rather than as a source of detailed environmental analysis that can support decisionmaking.

EPA encourages USACE to work with EPA and other members of the Contaminated Sediments Task Force (CSTF) in finalizing the DMMF/PEIS.

Premature Elimination of Practicable Sediment Management Options

Under some alternatives, sediment management options are programmatically listed as infeasible, and therefore eliminated from evaluation. However, the supporting information for determining the infeasibility of eliminated alternatives is not provided. For example, it is unclear why the alternatives of upland landfill, submerged Confined Aquatic Disposal, and any treatment options are programmatically eliminated for new-work projects. These are the very projects for which any necessary management option may be practicable, in part because they are funded differently than maintenance dredging projects. The elimination of these management options seems to be based on an assumption that new-work projects always dredge only clean native sediment; however, dredging only clean native sediment is not always the case. Consequently, a future decision for any new-work project will still require an analysis of alternatives that this Draft DMMF/PEIS has identified for elimination, particularly if they include any contaminated sediment.

In addition, the Draft DMMF/PEIS assumes that beach nourishment, nearshore beach nourishment, and shallow water habitat development would never be considered for berth maintenance projects. However, if berths have sand to dredge, future analysis will need to

include an analysis of beach nourishment. Similarly, sand separation is listed as infeasible under any scenario where hydraulic dredging is to be performed. Hydraulic dredging can be coupled with sand separation, as shown by recent California projects including the USACE's 2008/9 Marina del Rey Sand Separation project.

Given the above concerns, EPA disagrees with the statement (p. ES-2, ES-12 and 30) "*future projects... can rely on this document to select a range of alternatives and to support their corresponding project-specific evaluations.*" A more detailed evaluation of management alternatives in CWA and MPRSA regulated dredging projects will be required to support decision-making.

Recommendation:

If it is USACE intent for this DMMF/PEIS to serve as the sole basis for future decision-making regarding the requirements of CWA and MPRSA, the Final DMMF/PEIS should include an evaluation of all potentially feasible management options under each scenario presented. USACE is encouraged to work with EPA and other members of the CSTF in finalizing the DMMF/PEIS.

Alternatively, USACE should commit to supplementing the Final DMMP/PEIS with additional detail in project-specific NEPA analyses.

Dredging Method Selection

Regarding dredging methods and sediment management, the approach used in the Draft DMMF/PEIS discussion and Table 3-1 implies that proposed dredging methods constrain management alternatives (p. 13 - "[T]his discussion and associated table are to be used as a guide for design and assessment projects"). The Draft DMMF/PEIS further states (p. ES-19) that, "*the method of dredging to be used (e.g., mechanical or hydraulic) would be selected first. Next, the environmental issues of concern are selected, as well as specific information about the site conditions.*" The method of dredging should be a secondary decision (under NEPA and 404(b)(1)), especially for contaminated sediments. The primary decision for contaminated sediment is often whether sediment quality, coupled with available management options, may dictate a particular dredging method. Similarly, even with clean sediments, when sensitive resources are present at or near the dredging location or the placement site, minimizing impacts to those resources can dictate the choice of dredging method. Selection of dredging methods first can result in consolidation of too narrow a range of alternatives on a project-specific basis.

Recommendation:

In the Final DMMF/PEIS, USACE should commit to the use of multiple factors in addition to the proposed dredging method when evaluating sediment management options for specific projects.

Clarify Purpose and Need

A clear, consistent statement of Purpose is difficult to find in the Draft DMMF/PEIS. In one location (p. ES-1) the document states: *“This DMMP ... seeks to programmatically map out the range of projects and alternatives in the LA Region and their impacts according to a range of “most likely” project scenarios, and thereby provide a road map for future projects.”* In another, it states *“(t)he primary objective of this PEIS is to identify and evaluate the potential environmental impacts of the proposed DMMP Management Report on a regional basis, and to assist in supporting future decisions regarding dredging and disposal projects in the region.”* This “purpose” wording in the Draft DMMF/PEIS document would seem to be generally consistent with what we understand to be USACE’s real purpose now for the document: as a resource for assisting in the development of project-specific impact evaluations in the future.

As discussed with USACE previously via interagency coordination, development of a regional sediment management plan or strategy can be completed outside of the NEPA process, and finalizing the DMMF as a NEPA document is not necessary in order for it to serve that purpose.

In contrast, the following statement appears in the Draft DMMF/PEIS, and in the USACE letter of August 24, 2009 (re-designating the document as a DMMF): *“(t)he primary purpose of the proposed project is to define a long-term strategy and action plan for the management of clean and contaminated dredged sediments in the Los Angeles Region.”* This different “purpose” language does seem to call for development of a regional strategy and plan, and as such an adequate NEPA document would be needed to evaluate alternative strategies/plans.

Similarly a clear, consistent statement of Need is lacking. In places, an economic need is put forward: *“The PEIS is needed to progress towards a program that will relieve the economic impact of the current dredging process for contaminated sediments, in particular”* (p. ES-2), and *“there is also a need to establish an economic basis and an acceptable cost-benefit ratio for the dredging and disposal of contaminated sediments.”* (p. 5). It is unclear how such “need” statements relate to the purpose of assisting in the development of project-specific impact evaluations in the future. In any event, the Draft DMMF/PEIS does not appear to directly address economics of dredging, as it relates to the practicability of dredged material management alternatives, nor does it discuss dredging project cost-benefit ratios.

Recommendation:

USACE should clarify the purpose and need for the DMMF/PEIS and ensure that the alternatives evaluated relate to the stated purpose and need.

Relationship to Other Documents

The Draft DMMF/PEIS states, *“The Corps has developed a long-term strategy for managing dredged sediments for all harbors within the Region, emphasizing solutions for both clean and contaminated sediments”* (emphasis added). It also says *“(t)he DMMP is comprised of two main components – an overall Management Report and a PEIS.”* However, the document does not contain or reference the Management Report. Similarly the Draft DMMP/PEIS states, “the

DMMP and associated PEIS are the outcome of the feasibility study ..." but does not summarize or properly reference the feasibility study.

Recommendation:

The Final DMMF/PEIS should include a summary discussion of the Management Report and feasibility study (discussed in the Draft DMMF/PEIS) and identify how these documents relate to the DMMF. The Final DMMF/PEIS should include these documents as appendices.

Scoping and Coordination

NEPA requires scoping, an early and open process for determining the scope of issues to be addressed and identifying the significant issues related to a proposed action (40 CFR Part 1501.7). The Draft DMMF/PEIS does not include a record of agency and public comment following the noticing in the Federal Register on February 13, 2003 (Appendix A). Instead, the Draft DMMF/PEIS says that "*Public involvement and interagency coordination for this project is achieved primarily through consultation and coordination with the Los Angeles Regional CSTF members during the group's routine quarterly meetings*", and "*The status and content of the DMMP was discussed at virtually every DMMP meeting between 2002 and 2006*" (Appendix B).

The DMMF/PEIS does not summarize comments or discussion from any of the referenced CSTF meetings. As a participant of the CSTF meetings, EPA notes that the group was informed that USACE was working on a DMMP and that it would guide the management of USACE dredging projects consistent with the CSTF Management Plan that was also being developed at that time. However, EPA staff recall no focused discussion of the content of the DMMP.

Appendix B states "*A public scoping meeting was also held on February 26, 2003,*" yet the Draft DMMF/PEIS contains no record of public and agency comment received during the scoping process and no description of how the proposed framework addresses comments received.

Furthermore, because the document has changed to a "framework" rather than a "plan", EPA is concerned that the public may not recognize this document as that which was previously proposed.

Recommendation:

Include in the Final DMMF/PEIS a summary of all scoping comments received from the CSTF, agencies and the public and how specific concerns were addressed in the document. Identify how USACE plans to inform interested parties that the "framework" replaces the previously proposed "plan". Additionally, EPA encourages USACE to coordinate any future projects related to this DMMP/PEIS with the public and the CSTF.

Other Specific Comments

- *Total maximum daily loads:* The DMMF states, "*The role of total maximum daily loads (TMDLs) in the region to regulate the clean up of contaminated sediments is also a contentious approach*" (p. ES-15). Please clarify the concern about TMDLs, and any impact on this document or future projects that USACE proposes for tiering off of this document.
- *CWA Section 404:* We are concerned that the statement, "*it is possible for alternatives with aquatic resource impacts to be preferable to upland sites*" (p. ES-15) may give future project managers an incorrect impression. Under Section 404 of the CWA, impacts to non-aquatic resources must be severe and immitigable before the impacts may over-ride an otherwise practicable alternative that would have less impact to the aquatic environment.
- *EPA roles:* A number of EPA's roles are missing from Table 1-1 (p. 8), including:
 - designating and managing permanent ocean disposal sites,
 - approving or denying all discharges at ocean disposal sites,
 - enforcement authority over projects using ocean disposal sites,
 - shared EPA/USACE enforcement authority for discharging in waters of the US,
 - independent authority to determine whether sediment testing is adequate, prior to any aquatic discharge (at ocean disposal sites, or in waters of the U.S.)