

Army Corps of Engineers – Federal Energy Regulatory Commission
MOU Workshop ♦ April 7, 2011
Capital Hilton ♦ Washington, DC

Notes

- Opening – Thanks to the sponsors
- The Process
 - Old MOU signed in 80's
 - 2009 Cincinnati Workshop
 - Working on MOU
 - Signed March 21, 2011
- Agenda
 - Welcome
 - MOU Overview
 - What's New – Key Components
 - Thoughts on Future Reclamation/FERC MOU Update
 - How to ensure 408 Approval the first time around
 - Open dialogue, feedback and discussion
- Panelists
 - Kamau Sadiki
 - Mark
 - Ken Lamkin
 - Kerry McMullan
- Key MOU Highlights
 - Major rewrite of 1983 MOU
 - Est. a framework of higher level of coordination/cooperation
 - Not a prescriptive document – the “how to's” will come out of the collaborative process
 - Leaves flexibility for improvement
 - Does not preclude other coordination arrangements
- Managing expectations
 - Potential for schedules to be positively impacted
 - Putting the processes in place that hopefully will impact schedules, but not necessarily guaranteed
 - Do the engineering!
 - Licensees need to do the planning, engineering, “legwork” before approaching the corps
 - Comment from the audience: work early on with the project coordinator and your engineers is helpful
 - Comment from the audience: difference of culture between engineers and Corps engineers: No upside for Corps' engineers to approve anything without being entirely sure it won't impact the federal structure
 - Proposing that guidance needs to be clarified on approval of projects
 - If you're thinking about filing, give DC office a heads up and they will help facilitate the work with the district office
 - No 404 before 408
 - Coordination process will evolve

- Questions for Kamau
 - Conditional approval?
 - It has potential to cause further delays
- Highlights of MOU – Mark from FERC
 - Purpose
 - Coordinate reg review process
 - Establishes framework for early corps participation in commission licensing process
 - Ensure timely review and action on non-federal hydropower development
 - Statutory Overview
 - National Environmental Policy Act
 - Rivers and Harbors Act
 - Clean Water Act
 - Marine Protection, Research and Sanctuaries Act
 - Federal Power Act
 - Roles and responsibilities
 - NEPA
 - Est. commissions as lead agency
 - Encourages joint scoping and study planning
 - Encourages joint preparation of environmental documents
 - Questions: Can NEPA from FERC satisfy NEPA from 408?
 - Need separate filing, but may share some documents between the two
 - Rivers + Harbors Act
 - Affirms that the corps section 10 requirements are met through the licensing process
 - Section 4(e) of FPA is the venue for fulfilling this responsibility
 - CWA
 - Coordinates corps section 404 permit review with commission’s license application review
 - Maintains independent decision making authority
 - FERC and Corps will make separate approval decisions
 - Coordination commitments
 - Encourage joint scope of analysis suitable for corps and commission decision making
 - Encourage joint purpose and need statement to fulfill each agencies’ requirements
 - Encourage adoption of joint schedule for decision making
 - Coordinate safety inspections
 - Describes each agency’s role for safety inspections of corps facilities and commission licensed facilities
 - Avoid duplication of effort for inspections
 - Question: will only one of them will show up for inspections?
 - MOU states each agency will be responsible for their independent safety inspections, but they should work to coordinate them

- Probably see more of the FERC inspector, less of the Corps, but Corps reserves the right to do its own inspection
 - Question: Should they be providing report to licensees?
 - In most cases, if you don't get a copy of the report, you'd get an update of what the issue is
 - FERC: if you are the licensee, you are entitled to the documents pertaining to your project
 - Understanding of corps security issues around federal facilities
 - Question: With most manufactures being owned by foreign parent companies, there are issues arising and delays because they aren't able to access the site or documents due to security procedures/concerns.
 - Work together to get clearances upfront
 - Permittee, Applicant and licensee responsibilities
 - Meet with agencies to identify areas of concern
 - Secure available information from Corps to develop a firm project proposal
 - Abide by appropriate security measures for sensitive data.
 - Coordinate any studies with Corps district engineer
 - Integrate non-federal project with Corps EAP
 - Comment: Sometimes Corps EAP is not available to licensee because it's a sensitive document
 - FERC/Corps looking into that
 - Enter into a MOU to protect authorized purposes of Corps facilities
 - Comment: Any thought to standardizing these MOUs to avoid reinventing the wheel each time?
 - Some of it can be template, but may have certain project specific points
 - Over the coming few weeks, FERC will be putting together internal guidance on how to best implement the MOU, they want to hear your comments, questions, suggestions, criticisms on how it should be best implemented and addressed.
 - Contact Mark from FERC
- Reclamation – Kerry
 - Lease of Power Privilege Process
 - Either the LPP or a FERC License on projects where Reclamation has authority to develop power at the project
 - Current interests in 12-15 LPP on Reclamation dams, 20-30 FERC licenses, 2 PS projects
 - Federal register notice will go out saying looking for people to develop
 - About to come out with a FR notice on grandbee (sp?) dam in Colorado
 - Receive proposals; go through them
 - Go through NEPA, design review, O&M with developer
 - Issues LPP contract on how they will work together
 - Working on guidelines for LPP for all Reclamation districts
 - MOU w/FERC
 - Had some recent meetings with FERC to discuss the MOU
 - Both feel like that MOU is good
 - They think they can determine authority of who can develop where upfront
 - Create a pre-agreed list of projects

- Timelines
 - Tighten up timelines to make a quick decision where there are disagreements
 - Working to make a system wide LPP Charge
 - Have developed a methodology in Great Plains region
 - Goal: meet the requirements of the law without discouraging development
 - Let developers know the charges up front
 - Would people be interested in FERC-Lease of Power Privilege Workshop?
 - Possibly as part of the NHA regional meeting in Denver?
 - George Waldow (NHA Regional Meetings Cmte Chair) expressed interest in working with Reclamation to co-locate a meeting with a LPP Workshop.
- ACE – Louisville District – Ken Lamkin, District Hydropower Coordinator
 - Background to keep in mind
 - Cannelton L&D Hydropower
 - 1st 408 review for a hydro project
 - Smithland – 2nd
 - Both are navigation projects only
 - Both had existing FERC Licenses
 - Basis for Sec. 408 Evals
 - Title 33 US Code 408
 - Section 408 clarification guidance, CECW-PB Memorandum Nov. 17, 2008
 - Section 408 submittal guidance
 - The Submittal
 - Cover Memorandum – district prepares
 - Certifications – District prepares
 - DE approval
 - Legal review
 - Program and policy compliance
 - Technical
 - Real estate
 - NEPA compliance
 - Decision document/determination of technical soundness and environmental acceptability – Draft portions by applicant, finalized by district
 - The decision Document
 - Document that the addition of hydro project
 - Will not affect integrity of structure, safety, or Corps mission etc...
 - Shows considerable thought has been given to engineering and environmental affects
 - Show that it meets USACE or other governing criteria
 - Not complicated, but through
 - 12 parts
 - Primary: Part 10 – meat of the document : Technical analysis and adequacy of design
 - What they care about

- Stability
 - Structural integrity
 - Affects on hydrodynamics
 - Impacts on O and M
 - Impacts to other missions
 - Safety
- Temporary (construction) and long term (operations phase)
- Model Early...
 - ID and mitigate changes in hydrodynamics
 - ID effects of scouring sedimentation
- Conclusions
 - DON'T PANIC
 - Document/"Prove" that district and developer have adequately assessed effects
 - N/A can be answer with explanation
 - "Alternatives are under review" MIGHT be an answer if alternatives are explained
 - Contact info for Ken
 - Kenneth.h.lamkin@usace.army.mil
 - 502-315-6458
- Questions
 - Bending the rule curve to allow hydro?
 - Recognize that the reason the dam is there is flood control
 - Can entertain deviation from the rule curves; may require change from congress
 - Concept of non-degradation standard – ex. State wants 5, its 7, you build project now you're at 6.8 then you are in violation of the non-degradation standard
 - The Corps doesn't want to cause degradation to water quality, even if its above state standards
 - When and how, if you honestly think your running into a blockage, do you go about addressing those issues?
 - If you run into blockage at the district level, turn to district commander, follow protocol to division commander, HQ office, Assistant Secretary
 - Can go to Congressional level for inquiries which ACE must respond to