

# Wetland Bank Advisors Group Meeting

## Meeting Minutes

March 28, 2007

Lacey Community Center

10:00 am to 3:00 pm

### ATTENDING ADVISORS:

Bill Leonard

Mike Rundlett

Jennifer Thomas

Carol Smith

Dee Arntz

Gary Cooper

Amy Kurtenbach

Christina Merten

Kim Harper

Gretchen Lux

Wendy Bolender

Gail Terzi (Corps of Engineers), Joan Cabreza (EPA), Jodi Slavik (Building Association) and Doug Peters (CTED) confirmed that they were not able to attend this meeting.

Gretchen: She has an update for the group on the summary of feedback from the previous meetings. **The summaries of advisor group meetings from January, February, and March will be worked on after this meeting and will be handed to Advisor Group as a single packet within approximately a month.**

### Review Agenda

Mike: Would like to request an addition to the agenda concerning the bill that is currently in the legislature. He would also like to see meetings start with an overview of significant program activities since the previous meeting.

Gretchen: Agreed and said she could update the group on the new bank public notice that has gone out and requested that Mike provide the briefing on the legislative activities.

**The group agreed that a review of the banking program activities since the last meeting would be added as a standing agenda item for future meetings.**

Dee: Requested an update on the budget.

Gary: It is in the legislature and has not been cut back to date.

Dee: Is there enough support for the proposed budget? She would like to lend support if needed.

Gary: The budget came out of Senate yesterday, so Ecology's banking group did not have additional information prepared for this meeting.

Gretchen: The June meeting date needs to be re-scheduled due to a large number of advisors that will be absent.

Dee: Sarah would not be available, she'll check her schedule.

Gretchen, Gail, and Carol all have conflicts.

**The group agreed that June 13<sup>th</sup> was a possible date. Ecology will send out e-mail checking availability and would like to have responses of available dates around the 13<sup>th</sup>.**

## **Program Update**

Gretchen: The Corps, EPA, and Ecology have issued a joint public notice announcing a submittal period for new banks. The submittal period is August 13<sup>th</sup> to September 28<sup>th</sup>. The purpose of the lead time is so that applicants can prepare appropriate material. Submittal period is 7-weeks and MBRT will review applications for adequacy. The public notice has minimum criteria listed for submittal. The purpose of the minimum criteria is that the MBRT wanted effective screening tools. Screening proposals is a way to use resources well and not spend time on in-adequate proposals.

Kim: Wanted to let the advisors know that their advice was taken into consideration when writing the minimum criteria.

Gretchen: There is a restriction concerning projects proposed on agricultural lands for this announcement due to pending legislation. This restriction is just for this submittal round and will be re-evaluated for the next round. Also, the joint public notice on the Clark County Mitigation Partners (CCMP) project was issued Friday and is posted to the Ecology website. The comment period for that notice ends on April 23<sup>rd</sup>.

Wendy: A public information meeting is being scheduled for the project on April 17<sup>th</sup> and the agencies may decide to extend the public notice at that time.

Mike: Bill 5145 was created at the request of the agricultural community so that local government would be more involved in the decisions regarding banks. A focus group has been working on alternative language concerning local input. The language involves requiring special conditional use permit language to be developed on state level and locals would be able to adopt the language into their permitting systems concerning sighting, design, etc. The timing of adoption of language by local jurisdictions is the last item the focus group was working on. There wasn't agreement in the group and no legislative sponsor, so there was diverse testimony given at the legislative hearing yesterday, so it's unknown how the legislature will handle the proposed language.

Bill: There were many people that are on the Advisor Group working in the focus group on the language compromise, but there were bankers and agricultural groups that weren't solidly behind the representatives.

Dee: Was the environmental community represented?

Bill: Future wise, Peggy Bill from Cascade Land Conservancy, etc. are on the committee.

Gretchen: Would the proposed bill be retroactive to anything currently in the program?

Mike: It would not be retroactive.

Bill: How is the Advisor Group going to deal with development of language for the restrictions?

Mike: The bill names specific parties to be involved in the language definition.

## **Timelines for Bank Certification**

Handouts were sent to the group prior to meeting: Summary chart of October 2006 comments received by Ecology on timelines and accountability, diagram of the federal proposed timeline, Ecology's summary of the bank processing sequence, and a diagram of the draft state timeline. Gretchen reviewed the handouts with the group.

Federal proposed timeline: Gretchen presented a PowerPoint slide summarizing some of the comments from the Seattle District Corps and Ecology comments concerning the federal timeline. Sequencing of work results in a 6.5 month process. Both agencies felt that it's important to coordinate with state and local jurisdictions, which is not included in federal timeline. Review time for prospectus and MBI are not adequate. Proposed rule doesn't have adequate definition of detail for prospectus submittals and MBI submittals. The proposed rule doesn't address when review can go forward and when it stops. Also for the Seattle District and the State, field visits are necessary for project review. This includes an early site visit as well as on-going site visits and these items are not included in the proposed rule.

Dee: There should be enough detail in submittals so that Ecology is not doing staff work.

Gretchen: Anticipates that that would be required of a submittal.

Jennifer: Bankers were delighted at timelines proposed in federal rule. Nationally, requirements for submittals of a prospectus vary widely. In Washington there are higher requirements for involvement and coordination early on. It's critical to have a timeline for a successful program.

Bill: The Seattle Corps District and Ecology comments are only one side of the equation. The bankers were glad to see timelines and would like to expedite those timelines. He sees the current timelines in Washington and information requirements as unintentionally creating disincentive for people to set up banks in this state. He sees that there are more incentives for concurrent mitigation, which doesn't work nearly as well as banking.

Jennifer: In this state it is taking \$2 million to get from prospectus to MBI. The bankers have incentives for success and need predictability.

Dee: When would projects be vested?

Jennifer: Guesses that vesting would involve JARPA submittal.

Carol: There is a need for the timeline to allow better coordination with agencies. The group has heard that local agency staff find it hard to be involved due to staff shortages. She would suggest that there are grants set up for locals to allow for that participation.

Ecology's proposed timeline: Gretchen: It is based on what we have done in the state to date. Item #1 is the new submittal period and Ecology is working on that process right now. The timeline starts after that selection period. At this time Ecology anticipates that submittals would be annual and that depends on how the program develops.

Jennifer: Asked for clarification on whether the submittal period is for new projects or if those projects that were proposed previously and denied could re-apply.

Gretchen: Any project that hasn't been officially accepted for review at this time will need to submit under the current public notice process.

Jennifer: Asked if the public notice was mailed out to those who had previously proposed projects.

Christina: Hard copies were not specifically mailed to those parties, but that the notice was sent to the Ecology e-mail list servs and posted to the public involvement calendar.

Kim: Hard copies were sent out to all addresses on the Corps' interested parties list.

**Gretchen: Ecology can mail hard copies to those projects that have previously submitted and not accepted.**

Gretchen: Wanted to emphasize that this is a draft of a timeline. Steps 2 and 3 are a result of comments from jurisdictions for early involvement. MBRT is currently working on inviting any of those that may be affected by the bank proposal to the kick-off meeting. This meeting provides the sponsor an opportunity to present on what they are conceptually thinking of doing for the project and provides an opportunity for feedback prior to prospectus. First 30-days is for meeting schedule/sponsor preparation after notification of submittal acceptance. Second 30-days is for the group to coordinate comments. The goal of the kick-off meeting is to get the prospectus closer to a complete submittal on the first draft. The first 60-days may be shortened depending on the sponsor's organization, coordination requirements, and complicated proposals. Submittal of draft prospectus: 30-days for review and comment and coordinate comments with interested jurisdictions. There may be a meeting with sponsor on how comments can be addressed.

Jennifer: Based on her recent experience of being through this process she is asking herself how can we make it more efficient? In comparing the state and federal timelines, #1-3 are the sponsor's job to coordinate in her view. These steps have been difficult because they have been basing information on their previous experience, not on agency guidance. The agencies don't have a decision making process outlined. The sponsors need technical guidance for substantive issues. If the sponsors knew ahead of time what is expected, then submittals would be easier. If there was a checklist for submittals, it may eliminate the word smith-ing process on the prospectus. She thinks that the timelines need to be a lot tighter. The federal process presumes that the sponsor has done their work. She would favor the federal rule because the responsibility needs to be on the sponsor.

Gretchen: We all agree that guidance needs to be developed. One thing to note is that in the federal rule decision maker is only the Corps District Engineer and there is no incorporation of the state as a co-chair. It's different in this state.

Dee: She is hearing that the banker doesn't feel that there is a need to do the public process. She has heard this in particular in Skagit.

Jennifer: That is not what the bankers are saying. For the Skagit project, the sponsor thought they had coordinated the public process and that's one of the problems.

Dee: There needs to be a public role so that folks know that a proposal is official.

Jennifer: The fact that there is money being put into this process by the sponsor should show that it is official.

Dee: There is a feeling that doing something in good faith doesn't work.

Mike: When looking at the federal proposal versus the state, the thing that jumps out is that federal process doesn't go beyond the process for approval of the MBI. It doesn't address the permitting process that is required for bank projects. The Ecology timeline integrates permitting approvals. That in itself needs to be highlighted and looked at individually with respect to the JARPA and associated timelines. What is outside the MBRT control, such as local permits and other permits, are difficult to represent in the timeline. The Ecology timeline gives a start to a realistic timeline incorporating these items.

Dee: She doesn't want public process to hinder overall process, wants to have it help speed up the process.

Jennifer: Her experience so far is that locals extend their timelines to match the State's.

State timeline items #8 and 9: Prospectus public notice. Gretchen: Ecology would be developing our outreach program for each proposal at this time. For CCMP project

Ecology will be hosting a workshop during their prospectus public notice time period. The hatching on the timeline is because typically the public notice is a 30-day process, but have heard that the comment period isn't long enough.

Jennifer: Suggests that the notice should start with 30-days and be extend based on project.

Gretchen: Another option is to keep a 60-day, but start the technical review prior to the end.

Wendy: Comments can be received throughout the process, but the public doesn't know that.

Bill: The sponsors want to know early about large concerns so that proposals can adjust accordingly.

Carol: Some bankers won't be as experienced as WSDOT and Jennifer and will there be guidance out there to eliminate surprises? There needs to be incentive to provide comments soon, so there would be fewer surprises at the end.

Dee: It's hard to get comments together in 30-days. She would also like there to be a closing to the public notice process so that there's a chance to close on-going discussions.

Gary: The prospectus issue is an important thing for Advisor Group to nail down for guidance. The process needs to be easy to get through because it's just a proposal, not a detailed analysis. There's confusion on how much information needs to be included.

Gretchen: The prospectus is the public's best opportunity to get input for technical review considerations. Technical review is generally a smaller group. Do we anticipate public involvement throughout the technical review process? If not, the JARPA review process is the next opportunity and that is generally after design is largely agreed upon.

Bill: He doesn't want to exclude public review, but need to compare to concurrent mitigation process. He doesn't believe that bank sponsors should be held to higher standards and insert significant obstacles that do not apply to concurrent mitigation projects.

Dee: One problem with the public comment period is that some of the public have the technical background and some are more general. The prospectus needs to be detailed enough that the public takes it seriously.

Carol: What are typically hot issues? These items need to be brought up early so they can be addressed.

Jennifer: Hot issues can generally be divided into site specific concerns and programmatic concerns.

Dee: Her concerns are that there is assurance that a project is going to work and it is installed as designed. Need to be sure that happens.

Jennifer: With concurrent mitigation none of those things are guaranteed. There are performance standards and credit releases that provide those assurances for banking.

Bill: Those things are happening in this process.

Dee: She needs to become more familiar with what the current process is and she will talk with Sara to get up to date.

**The group agreed that the contents of the prospectus needs to be discussed further and this should be done at a future meeting.**

State timeline item #10 technical review process: Gretchen: The timeline shows JARPA submittal after design is generally agreed on. This could be earlier depending on the project.

Mike: What is the SEPA process in coordination with JARPA? Does WDFW have any involvement?

Gretchen: Usually local permits are required for projects, so locals generally would be lead for SEPA. She asked if the group felt that trigger is early enough?

Jennifer: For CCMP the County did a programmatic SEPA with prospectus public notice that just went out. The CCMP project will have two SEPAs. Grading application would be the project specific SEPA. Most jurisdictions don't have programmatic requirements.

Wendy: With respect to SEPA, if it is done when doing design review and prior to permit decisions being made, is this tying our hands?

Bill: There needs to be technical guidance on public comment for procedural items versus technical guidance.

Kim asked Bill: Was he proposing guidance like service area and then that goes out for public review? Or does that go out to Advisor Group?

Jennifer: Nationally it's been the case where guidance goes out for public review. Agencies would put guidance out for comment and then enact it.

**The group agreed that there needs to be additional conversation for timelines, SEPA, and general guidance on program structure to define submittals and technical data for predictability.**

Bill: Need to have that guidance for both prospectus as well as technical guidance would allow compression of #9 timeline.

Kim: Perhaps some items need to be shown as a range to allow for flexibility. Ecology timeline # 10 is an iterative process. Timeline may be shortened if the iterations are limited.

Ecology timeline item #13: Gretchen: This item starts once there is agreement between the agencies and the sponsor on technical comments.

Jennifer: What about regulatory reform? How does that relate with the Environmental Impact Statement and the Ecology timeline. She noted that from item #10 to #21 it is a year. She does not believe this fits within GMA reforms. She thinks we can do better. She would like to see the group get to a place where they can agree on technical information.

Gretchen asked Gary for clarification on the regulation reforms act that Jennifer referred to.

Gary: It only applies to local permits. Local jurisdictions have 180 days to process permits. What it results in is that Counties developed complicated time accounting systems. The 180 day requirement only applies to actual processing/review time. The locals created clock stopping procedures. He also clarified that complicated projects would not apply.

Amy: The clock doesn't start until the jurisdiction has a complete application. So applications would be sent back if not complete.

Jennifer: We are trying to get to the definition of what is complete. There are Corps districts that complete this process in 6-9 months. The process needs to be efficient and predictable.

Kim: This federal timeline is a timeline that allows for a non-iterative process. The Corps District Engineer would be taking a hard line decision. There is no room for negotiation. Ecology's timeline allows for iteration and negotiation and exploring of options. She did not know what the consequences of not meeting the proposed federal timeline are. She sees one consequence is that when there's a strict timeline and when it is not met, the trust and ability to be predictable will be eroded. It's important to be realistic if we are going to have timelines.

Bill: Past experience shows that it takes a long time to get an answer in Washington. MBRT sometimes is prepared and sometimes members miss meetings. If people aren't prepared due to tight timelines, he would rather allow the time for proper review of information.

Jennifer: Just because you miss timelines doesn't mean it isn't efficient and predictable. There should be a timeline that you think you can meet from both sides.

Kim: The overwhelming response to the proposed federal timeline is that it isn't realistic and achievable.

Gary: Would like to collapse the state's proposed prospectus timeline so that it is efficient. For JARPA what is complete application? Can we start this earlier? If banks are businesses wouldn't it trigger special use/conditional use permits when they proposed a bank? Does that review process need to be triggered earlier?

Gretchen: The determination of what is commercial versus what is restoration is made on the local level.

Mike: That decision making process is part of the reasoning behind the legislative bill that is under review at this time. Counties are having different interpretations of commercial versus restoration and fitting those under permitted activities. These definitions are not the same from jurisdiction to jurisdiction because there is currently not a state rule or process defining them.

Amy: Regulatory reform consolidates public involvement and review process. This process is not being applied to these projects. The public involvement piece is difficult to integrate on large projects and is something that is needed.

Dee: Who is tracking all these timelines for these projects?

Kim: The sponsor.

Mike: It would be good to have local involvement, but it is difficult to have them involved on these projects due to budgeting. The earlier you can involve the locals and have a communication matrix working into process the better. The sponsor needs to do due diligence as well.

Gary: Where does SEPA fit into this process?

Mike: The sooner SEPA can be triggered the better.

Jennifer: She reminded the group that many jurisdictions are not going to want to create a specific review process for a particular type of project that they have not even seen yet.

Mike: The jurisdictions may want to create a review process based on the amount of acreage that is being proposed for banking projects. That may be a better measuring stick.

## **Public Questions**

No questions.

## LUNCH BREAK

Gretchen: Wanted to clarify for the group that if you look at the Ecology timeline along with the description, you'll see there are a lot of steps aimed at coordination and tying in with other agencies.

### **Public Questions**

How are public comments handled? Are they incorporated into review or are they addressed directly?

Gretchen: The agencies look at the comments carefully to determine if there are things to address in the permitting realm or if there are things that the sponsor has not considered and to see if Ecology can direct the commenter to an appropriate responder.

Bill and Jennifer: Sometimes designs are tweaked or additional monitoring items are added based on comments received. Typically it is providing the commenter with additional information, instead of changing design or monitoring.

Kim: The Corps has a responsibility to see that all comments have been adequately addressed.

### **Overview of Comments Received in October – Accountability**

Gretchen: Reviewed the comments that Ecology received in October 2006: Timelines and predictability, access to MBRT meetings, how MBRT makes decisions, MBRT doesn't consider financial implications of decisions, communications with sponsors. These comments were summarized in the hand-outs that were sent to the group prior to the meeting.

Access to MBRT meetings – Gretchen: This is a comment that has been heard from various parties, they would like to be involved in project related meetings.

Jennifer: What is the national standard for opening project meetings to the public? Her understanding is that MBRT meetings are generally open.

Gretchen: The MBRT has had questions concerning how much outreach should be done for public attendance, posting meeting announcements, allowing when requested, etc? Coordinating the meetings would be an added resource for Ecology.

Jennifer: Quarterly and monthly meetings are held elsewhere with standard schedules and submittal timelines, usually submittals would need to be in two weeks prior to a meeting.

Bill: What is the anticipation of the role of the public in these meetings?

Dee: When WetNet has requested access to MBRT meetings it was responding to the previous way the state banking program was handled when there was no access.

Gretchen: Having monthly or quarterly meetings would not seem to allow for enough project review work time. Perhaps the application review in this state is more detailed than elsewhere in the country.

Jennifer: Suggests that the MBRT meetings be posted to the Ecology website and they should be listed by projects. She commented that in the past it has been difficult to determine when the meetings were held.

Gretchen: Posting the meetings on the website is something we can do in the future.

Christina: In the past Ecology tried to keep the meeting list updated and it has been a resource issue to keep webpage up to date as meeting dates change etc.

**Gretchen agreed that Ecology will work the dates of the project specific MBRT meetings into the webpage.**

Jennifer: Suggests that there needs to be guidance development and incentives for people to pursue banking in this state. Mitigation banking can be a better solution than compensatory mitigation and the incentive seems to get lost in these discussions. This is an opportunity to harness private and public monies to restore wetlands on a landscape scale. For example a disincentive in this state is the extended credit release schedule. Nationally banks have a credit release schedule of 3-5 years. Also, 30% of a banks credits are released at MBI signing nationally. If Ecology is wanting investment in the program there need to be incentives.

**Gretchen: Suggests that the subject of incentives for banking be tabled for the next meeting, it's a larger topic than accountability. The group agreed.**

Dee: How does the post certification process and performance standard writing process work? She would be comfortable with advance release if she had assurance of what happens after post certification.

Gretchen: The state program is just now moving into the post-certification monitoring time with approved banks, so Ecology is working on what happens during this time period.

Construction Oversight Plan: Gretchen handed out the construction oversight plan. She explained that this was created to outline how communications and reporting would happen during construction of a project.

Bill: Will Ecology be accepting comments on this document?

Kim: This is an older version and the process has been used on only one bank and the document was created in cooperation with that bank sponsor and the MBRT does not know where the process is going in the future and if it would be tweaked on a per bank process.

Jennifer: When would this document or tool would be given to a sponsor for their review, because at this time it has come out of the work from only one banker.

Kim: The MBRT is working on that process. The MBRT is looking at whether it would be in the appendices to the MBI or be something post certification.

Gretchen: This is the type of tool we anticipate needing and is meant to eliminate miscommunication.

Jennifer: The bankers would want to have input into this type of tool as early in the process as possible. At this time the tool has been a reactive item to one bank's situation, but no other bankers have tied into the process. She requests that the group finds some way to respect project specific decisions, but allow opportunity for discussions that may affect bankers at large.

Kim: There would need to be some internal work on these tools prior to working on them with bankers.

Mike: Will the Advisor Group have input into a tool like this in the future? If a project gets to a point where it goes to construction, he can't believe there would be a need to have such oversight formalized for the program as a whole. He felt that this oversight tool would make more work for the program that is warranted or needed. He would expect to see periodic updates with a final construction report. If there are changes to the construction it should be the sponsor's responsibility to report.

Jennifer: Changes would be identified in an as-built report. This needs to be a better process that the bankers can feed into.

Gretchen: We are here to listen to the Advisor Group. This oversight plan was not handed out as a technical piece to review, it was meant to be used as a general example for how we can be more accountable.

Jennifer: This is an accountability issue because the MBRT is making policy decisions on a case-by-case basis that has bearing on other bankers with no input.

Kim: The construction oversight plan should not be used as an example of a policy decision because it's being worked on and has not been finalized. We are developing the pieces and as they are worked out, they can be shared with the Advisors Group before a formal guidance document would be issued. It is not being applied broadly.

Dee: There have been studies that show that banks are not constructed as designed and that can be a problem and that is their concern that it is built to design.

Mike: He would like to request that the group be able to formally comment on the oversight plan when it is appropriate.

Bill: He feels this is a tool that is needed and would like opportunity to weigh in on it prior to finalization.

Kim: This was created in an effort to build in accountability from the agencies; especially with respect to construction timelines. The goal is not to be police or create additional work, but to set communication timelines.

Gretchen: The MBRT needs to understand how communications are going to work with the sponsor before construction starts.

Bill: Is this oversight plan applied to compensatory mitigation?

Christina: As Mike said earlier, the scale of the banking projects in acreages is much larger than single compensatory projects and that should be looked at when comparing what is done for compensatory mitigation.

Bill: Compensatory mitigation acreage, taken as a whole, is larger than banking acreage.

Gretchen: The MBRT also has concerns that when it comes to the as-built credit release request if there is a problem that comes from actions that were taken a year before, those are not noted until the as-built. The MBRT will be developing the construction oversight plan further and as other technical guidance pieces are formulated the Advisor Group will be able to comment on the pieces.

Gretchen: Are there additional comments on accountability.

Jennifer: The process is getting better and we are learning as we build these projects. Different expectations are there and the difference is getting better and she appreciates the efforts that have gone into getting expectations closer to each other. She is trying to figure out how to tie into the creation of guidance documents. She is not aware of what other documents are being worked on. There is concern about policy decisions that are being made.

Gretchen: Policy decisions are made separately as Ecology and COE are co-chair agencies. Ecology will be working on guidance documents to clarify the process. So when it is said that the MBRT is making policy decisions, we are working on guidance and when we present them to the advisor meeting that would be the arena for commenting.

Wendy: Is there a list of policy documents that the MBRT staff is working on?

Kim: There is a table that has been formulated on the topics and the MBRT can send that out to the group. She also clarified that when the Advisor Group sees a piece of guidance for the first time, they should not see it as final. It is difficult for agencies to put out half-formed ideas, so work does go into these items before they are handed out to the Advisor Group.

Bill: He would like to see the list. He would like to have a 5-10 minute overview of where the guidance is going before a lot of work goes into it.

Jennifer: A one page list of the what, why and proposed solution for guidance documents would be good.

Kim: In one way the MBRT has done that because most of the guidance documents are being created out of comments received from Advisor Group.

Mike: Would be good to have those documents in list form because those are the documents that guide the decision making process. Bankers need to have a good understanding of those documents because that is what they will be judged by. There needs to be a two-way dialogue so that they are practical and realistic.

Kim: Policy has in the past been created on a project by project basis because that is what the pilot program is and staff constraints are limiting.

Jennifer: California has a one-page statute on mitigation banking that is working, so what are we missing in this state? Seems like we are going more prescriptive. She wants to see this program work as well.

Kim: She sees the policies that the MBRT is working on as guidance to know where agencies are coming from. The construction oversight plan document is a different animal because it was created in a more prescriptive arena.

**Gretchen: For the next advisor's meeting Ecology will distribute an outline of topics with a why and explanation of each guidance document. Also hoping to have summary of the last three meetings to review to be sure we are hearing suggestions correctly.**

Dee: How do we know California's program is working?

Jennifer: Suggests that the group check out the [www.ceres.ca.gov](http://www.ceres.ca.gov) website that shows the California program is working. She reminded the group that the Ohio study that showed that banks were not working reviewed only Ohio projects.

Bill: There is a fear that if there is a trend in banking to be increasingly prescriptive it will be less and less attractive to do banking. This fear of being prescriptive occurs both

on the front end during MBI creation and during the establishment/monitoring period. He doesn't see it working in this state.

Kim: Why do you feel we are going in that direction?

Bill: It is based on what he's seen in the last 5 years. He sees that 510 days is a large amount of time before certification. Especially with a 10 year monitoring review before a banker's full investment is returned.

Jennifer: What percentage of impact projects in Washington are using mitigation bank credits? Banking is viewed as the answer to all compensatory mitigation problems. This is raising the bar for the bankers compared to compensatory mitigation. The more prescriptive we get the more difficult it is to do banking. There needs to be balance and the bankers aren't seeing that balance at this time.

Bill: The bankers are seeing unintended disincentives that aren't helping bankers financially or meeting regulatory agencies needs to compensate for impacts. The bankers need certainty to see that a project's needs are going to be met. He has seen customers walk from a mitigation bank in this state because there is less certainty that when they need it the bank credits won't be available and usable.

Kim: Has DOT been denied use of a credit?

Bill: No, but that is not when the customer has fear of not being able to use a credit.

Kim: DOT is requiring certainty far before impacts happen. There also needs to be balance with that. There seems to be the impression with the bankers that the agencies will be promoting the sale of credits.

Jennifer: That's not the case, the bankers want to be sure there is a consideration of using banks when looking at compensation. Credit usage is not as big an issue as providing incentives for a projects success. Requirements for banks need to measure up with compensatory mitigation. This is a process that works elsewhere in the nation. So she would like to figure out what the group is missing.

Kim: Would be great if she could write-up a summary of what is working in other states and why and how it would fit into this state. The MBRT members aren't experts on other state programs. She would suggest that when Jennifer is writing this up that she look very critically at what is working well.

Dee: One of the problems here is that there aren't enough people in the agencies to process information. She asked for information on what requirements the agencies have not been able to deal with.

Jennifer and Bill: There are differences between OR and WA and how they process information and conduct their programs.

Kim: CCMP is being expedited and the Portland Corps District is involved in the process, but the Seattle District is working on having a consistent process between districts.

Bill: The COE process in Oregon is very different; the COE has only one banking staff person who completes the MBI certification process in 7-9 months.

Gretchen: Ecology is also trying to get a consistent program around the state. Ecology wants to work on predictability and timelines with the Advisor Group so that there is more accountability. How can we answer more concerns with risk? Where can we improve?

Jennifer: She would like information on other programs where the state is co-lead and how those programs are affected by federal rule.

Gretchen: Clarified that this is Ecology's Advisor Group and Ecology's pilot program and the Corps sits on the group as a stakeholder and the state legislature has directed us to create a rule. Ecology has generally agreed to wait on adoption until the federal rule is finalized.

Jennifer: She believes this is a question for the agencies' legal counsel: How will the adopted federal rule affect the state 401 process?

Kim: None of us know all the details of the federal rule and how the co-lead process will work within it.

Jennifer: She believes it would be good to have counsel's opinion on that question. What would the state's role be given the adopted federal rule?

**Gretchen: Ecology will take the question back to the agencies' banking group and will work with Lauren. Ecology will bring an answer back to the group at the next meeting. She agreed that it would be good to know how it may affect the path forward.**

Comment in October concerning financial decisions tying into process: Jennifer clarified that one example of this is if credit release timelines were shortened or credit ratios were improved. She said that on the construction/monitoring end there are site specific miscommunications as to what constitutes an appropriate as-built. For example, requirements of a topographic survey versus staff gauge measurements have costs related to them. There is confusion among the bankers of site specific requirements versus programmatic decisions. She sees service areas and financial assurances are programmatic decisions.

Gretchen: Ecological decisions are being made by Ecology and that we do take into account some of the financial practicality of requiring certain items. Having guidance may help get at the assurance that is needed by the bankers concerning financial

decisions. She reminded the group that Ecology doesn't review financial statements and projections for bank proposals.

Mike: Ecology is moving toward rule making. The required rule environmental impact analysis, would be an opportune time to conduct a survey with bankers past present and future to try to address the economic issue and the resources that these projects require from the bankers and their ability to see the process through. He sees that Ecology needs some structured feedback concerning economics of projects. An economic analysis done during the EIS process could accomplish this.

Wendy: Clarified that the economic analysis is done to determine onerous costs to small business, so conducting that analysis on the banking program would be an expansion of what is required during rule making.

Mike: The rule is creating a new business, so need to look at the economics of it.

Dee: Reminded the group that Ecology needs to look at the ecological gains of the program.

Mike: There can't be ecological gains in the program if the business doesn't work.

Bill: The banking business' competition is compensatory mitigation, which is more certain and we need to level the playing field.

Gretchen: Are there other issues on accountability?

Jennifer: There is a question concerning the appeal process and conflict resolution. Isn't that in the draft rule?

Kim: That language is for agencies disagreements, not for the banker.

Mike: At what level in each agency is the signature of the MBI happening?

Kim: Corps is District Engineer, Ecology has the program manager, and the locals it is up to them to decide. The Corps representatives sitting on the MBRT are working for the District Engineer.

Mike: At a minimum, the bank sponsor should have the ability to be face-to-face with MBI signatory if they are not willing to sign.

Jennifer: The sponsor doesn't have a lot of formal process for appeal, that's the way it is. There's no statute other than for the permit.

Kim: The way it operates is that the sponsor appeals to the upper management of those sitting on the MBRT.

Jennifer: If there were guidance, there would be a better understanding for the basis of a decision so that it wasn't the agencies decision versus the bankers decision.

Gretchen: Are there comments or questions concerning accountability and communications with bankers. Are there questions concerning response timelines for comments and feedback? Should the group look at that topic?

Jennifer: Would like to thank the group for the work that is going into the whole process.

Bill: As for communication, he believes that better use could be made of the telephone. There is too great a reliance on written communications. He believes that the agencies could use the phone to come to agreements quicker and more amicably with the bankers. This would encourage early communication and eliminate the need for back and forth writing. He acknowledged that both the bankers and the agencies need to improve on that level of communication. He also acknowledged that some things need to go in letters. He felt that interim decisions can be handled via phone conversations or face-to-face meetings.

Gary: On the subject of dispute resolution, there are other hearings boards that look at Ecology decisions and he doesn't know if this program should be under the purview of those boards. In order for there to be dispute resolution with the bankers, there would need to be a neutral third party and that would only cover Ecology, not the Corps.

Dee: Has dispute resolution with the bankers been needed? The group agreed that the disputes that have come up have been handled.

### **Public Questions**

Appreciate the potential of the banking program both ecologically and economically. It was noted that guidance documents that are 1,000+ pages are daunting and difficult for outside parties to work with. It was also noted that the bankers in the room seem to be experienced and would like to remind the group that there are sponsors out there who may be trying mitigation banking for the first time. Report templates are good guidance. As the process progresses and becomes more streamlined hopefully things will improve. The mitigation banking program is seen as a good way to create compromise in the system.

Financial incentives need to be there and they need to work. If you are going to tie up money and property to restore, sponsors need to have certainty, but if a project works, it's viewed as a win-win situation. It has the potential to be a great program. It's good that the Advisor Group process is being conducted.

MEETING ADJOURNED