

# NEW GUIDANCE: IMPLEMENTING RISK- INFORMED DECISION MAKING IN CIVIL WORKS

## PCoP WEBINAR SERIES

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US Army Corps  
of Engineers®



# **IMPLEMENTATION OF DPM 2018-05**

**SUBJECT: Improving Efficiency and Effectiveness in USACE Civil Works Project Delivery (Planning Phase and Planning Activities)**



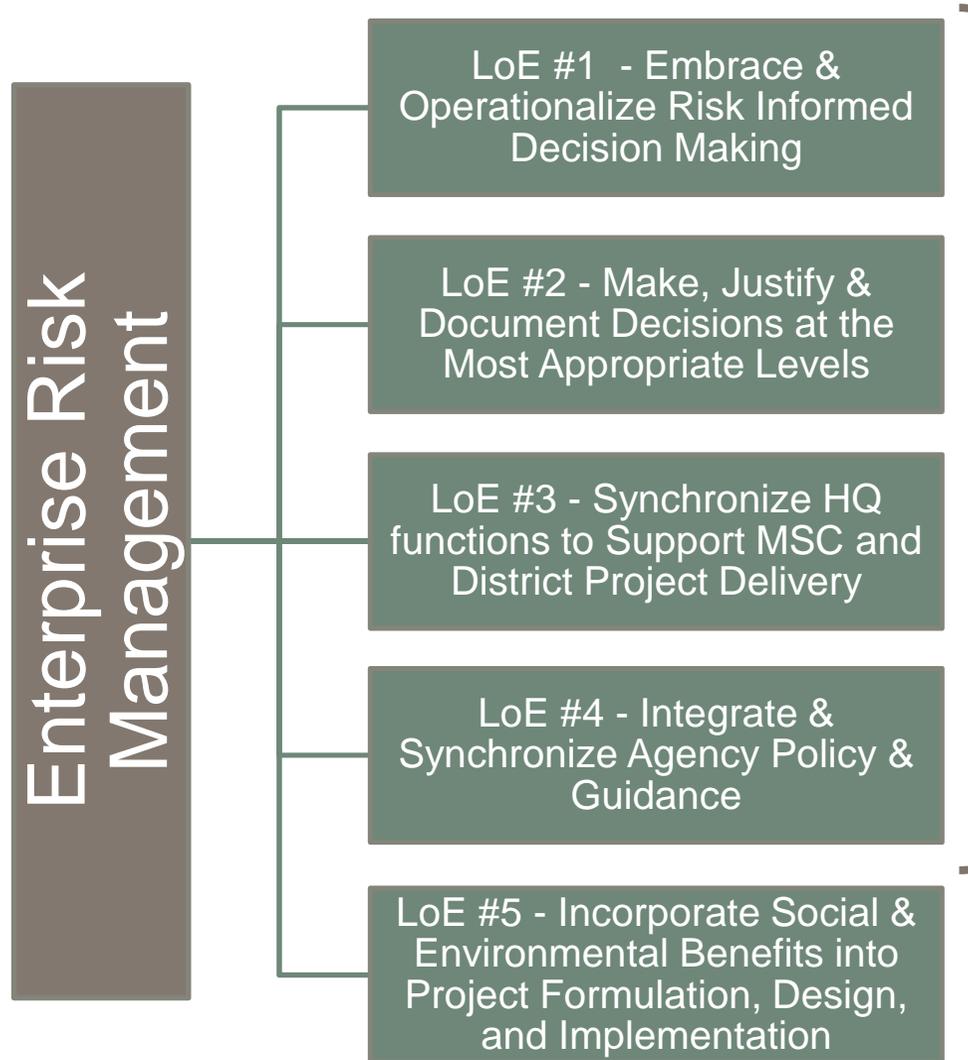
# INTENT: SUPPORT ENTERPRISE RISK MANAGEMENT<sup>3</sup>



- *“As part of the Civil Works strategy, I intend to operationalize risk-informed decision making at all levels of the organization, and then I expect discipline in documenting the decisions at the appropriate level... We must change our behavior regarding risk management across Civil Works and in our policies, analytical approaches and models, priorities, and dialogue with sponsors and communities.”*
- *We must move from a culture and convention of risk aversion to one of innovation and risk acceptance or our partners will go elsewhere for services.*
  - Mr. James Dalton, PE, SES  
Director of Civil Works



# ENTERPRISE RISK MANAGEMENT INITIATIVE: IMPLEMENTATION PLAN (AUG 2017)



Improving Efficiency and Effectiveness in USACE Civil Works Project Delivery (Planning Phase and Planning Activities) memo pushes forward on four of these “Lines of Effort.”

This applies now!



# ARE YOU FAMILIAR: DPM 2018-05: IMPROVING EFFICIENCY AND EFFECTIVENESS IN USACE CIVIL WORKS PROJECT DELIVERY (PLANNING PHASE AND PLANNING ACTIVITIES)



Heard of it

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# DIRECTOR'S POLICY MEMORANDUM

## 2018-05



- Subject: Improving Efficiency & Effectiveness in USACE CW Project Delivery (Planning Phase and Planning Activities)
- Mandates risk-informed decision making in planning phase of CW project development **and throughout project lifecycle**
- Builds on Mr. Dalton's June 2017 Memo on Further Advancing Project Delivery Efficiency and Effectiveness of USACE Civil Works
- The memo:
  - Directs teams to apply Risk Informed Planning approaches and techniques
  - Reframes Decision Milestone Meetings around decision making under uncertainty
  - Delegates Authority for feasibility milestone decision making
  - All policy and legal compliance reviews delegated to MSC; One-Headquarters policy review approach
  - Provides guidelines in resource management and efficient allocation of personnel and funds
- Requires all USACE elements with role in planning to examine and update guidance



# DPM IMPLEMENTATION PLAN OVERVIEW



- Required NLT 90 days from date of memo (3 May 2018)
- Outlines steps required to operationalize risk-informed decision making
- Consists of three elements:
  - Processes and Procedures (Guidance and Tools)
  - Training and Development
  - Strategic Communication



# IMPLEMENTATION PLAN TEAM MAKE-UP



Multi-functional team (breaking down silos)

- Planning representation includes PCoP, Sr. Policy Advisors, OWPR, RITs, and PCXs
- Engineering and Construction CoP representation includes Engineering, Construction, H&H, and Cost
- Real Estate
- Office of Counsel
- Programs and Project Management
- Operations



# GUIDANCE IN SUPPORT OF DPM 2018-05



## **Signed and posted on the Planning Toolbox**

- 31 August Office of Counsel memo, The Role of Counsel in Operationalizing Risk-Informed Decision Making During Project Development
- Planning Bulletin 2018-01, Feasibility Study Milestones, 26 September 2018
- Director's Policy Memorandum Civil Works Program 2018-12: Implementation of Executive Order (EO) 13807 and One Federal Decision (OFD) within Civil Works Programs (PCOP WEBINAR ON 1 NOVEMBER 2018)

**Other functional area guidance is currently under development / review and will be sent to the field as it is signed.**

**All guidance in support of DPM 2018-05 is being vetted and chopped by the implementation team.**



# ARE YOU FAMILIAR: PB 2018-01: FEASIBILITY STUDY MILESTONES

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# PB 2018-01 FEASIBILITY STUDY MILESTONES



**Issued 26 September 2018, supersedes PB 2017-01 of the same name**

- Procedures in the feasibility study process including milestone decision meetings, report submittals, and study approvals
- Aligns with Mr. Dalton's memo on improving efficiency and effectiveness
- Delegates study report approval to MSC's based on criteria of complexity and policy exemptions
- Simplifies milestone activities and read ahead materials/submittal documentation
- Identifies key feasibility study tasks that need to be completed before milestones and report releases (not all inclusive)
- Touches on LPPs and 3x3x3 exemptions which require ASA(CW) approval – additional 3x3 guidance revisions pending



# ARE YOU FAMILIAR: AUGUST 2018 MEMO: THE ROLE OF COUNSEL IN OPERATIONALIZING RISK- INFORMED DECISION MAKING

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# THE ROLE OF COUNSEL IN OPERATIONALIZING RISK-INFORMED DECISION MAKING DURING PROJECT DEVELOPMENT



Purpose of Guidance:

1. Review of nature of RIDM as a continued refinement of the SMART Planning Process for conducting civil works studies by:

(i) using the approach and techniques of the outlined in the Planning Manual Part II: Risk-Informed Planning (IWR 2017R03), cited in the Director's Policy Memorandum, Civil Works Programs, dated May 3, 2018; and

(ii) implementing the procedural changes directed by the DPM in delegating certain milestone decision making authority to the MSCs.

2. Describe how the advice and opinions of Counsel offices are connected with and advance these techniques and procedures, recognizing that the Chief Counsel is the final authority with ultimate responsibility for the legal position of the Corps.



# THE ROLE OF COUNSEL IN OPERATIONALIZING RISK-INFORMED DECISION MAKING DURING PROJECT DEVELOPMENT



## RIDM Approach and Techniques:

1. Goal of RIDM is to proceed with decisions notwithstanding imperfect information through a structured deliberative process that seeks to manage, and where possible, minimize or mitigate, risk to tolerable or acceptable levels. Includes:
  - (i) Gathering only the evidence necessary for the next planning decision; and
  - (ii) engaging in continual iterations throughout the planning process.
2. RIDM will include at least one, but often several, iterations prior to each SMART Planning milestone, with each iteration progressing in level of detail and continually reducing the initial risk and uncertainty.
3. An iteration will consist of: (i) scoping; (ii) plan formulation; (iii) plan evaluation and comparison; and (iv) selection of alternatives; for the next iteration based on further gathering of evidence.
4. The point of risk-informed planning is to focus on those critical risks that are unique to a given study and have the potential to significantly affect decision making.



# THE ROLE OF COUNSEL IN OPERATIONALIZING RISK-INFORMED DECISION MAKING DURING PROJECT DEVELOPMENT



Legal and Regulatory Frameworks Within Which Corps Exercises Plan Formulation:

Legal authorities empower and set the stage for plan formulation, and establish the constraints in which plan formulation as well as the study process itself must evolve. Constraints are defined as “things that should not be done to realize the desired outcomes”, and are to be recognized in the initial scoping of the study. Examples of authorities that shape plan formulation:

- (i) Committee resolutions or specific legislation authorizing the conduct of studies;
- (ii) WRDAs 1970, 1976, 1986, 2007 and regs. directing economic and environmental objectives for plan formulation;
- (iii) WRDAs 1974 and 1986 and regs. setting interest rates for plan evaluation, nature of plan components, and cost shares for each project purpose;
- (iv) WRRDA 2014 and regs. setting timeframes and funding limits of studies; and
- (v) NEPA, CZMA, CWA, ESA and regs. containing environmental requirements for plan formulation.



# THE ROLE OF COUNSEL IN OPERATIONALIZING RISK-INFORMED DECISION MAKING DURING PROJECT DEVELOPMENT



Counsel Role in Advising During Iterations to Refine Risks of Plan Alternatives:

1. Guiding Principle: A recommended plan may not be implemented with anything less than full compliance with the Constitution, all applicable statutes, regulations, Executive Orders, and applicable case law, as determined by Counsel.

2. Starting with the first iteration, Counsel will advise on:

(i) the actual or potential applicability and consequences of statutory and regulatory frameworks to plan alternatives; and

(ii) the legal resource and time constraints on the study process itself.

This advice will inform the risk evaluations of the plan formulators and the Risk Register in enabling comparison of alternatives.

3. The applicability of many of these statutory and regulatory frameworks will be readily apparent at the beginning of the scoping process; others will be dependent on further precision in plan formulation for a full assessment of their applicability and consequences.



# THE ROLE OF COUNSEL IN OPERATIONALIZING RISK-INFORMED DECISION MAKING DURING PROJECT DEVELOPMENT



Counsel Role in Advising During Iterations to Refine Risks of Plan Alternatives (continued):

4. Consequences of legal constraints will typically include process and approval requirements and timeline and funding implications at the appropriate order of magnitude for the iteration in question and to the extent that the details of the tentatively selected plan permits.
5. Counsel will review plan formulation for policy compliance, because policies incorporate Agency interpretations of legal requirements.
6. All uncertainties as to the applicability of particular statutory and regulatory frameworks should be resolved by Agency Decision Milestone, if at all possible, but no later than the Final Report Milestone; e.g., does CERCLA or CZMA apply? does Uniform Relocation Assistance Act apply?
7. Although optimally compliance with all requirements occur by execution of the Chief's Report (e.g., resource agency approvals), where legally permissible compliance during the Pre-construction Engineering and Design phase may be considered.



# THE ROLE OF COUNSEL IN OPERATIONALIZING RISK-INFORMED DECISION MAKING DURING PROJECT DEVELOPMENT



Counsel Coordination with PDTs and Review Teams:

1. In accordance with the Director's Policy Memorandum, the first iteration of the project delivery process will be initiated after the FCSA by a focused team within the PDT.
2. The focused team is required to engage other disciplines within the PDT, including but not limited to Counsel, Real Estate and Cultural Resources, to ensure that all opportunities and constraints are clearly identified.
3. Because critical role of the focused team in establishing the future direction of plan formulation and in shaping project delivery, Counsel offices will be positioned to support these teams immediately, including:
  - (i) assignment of one or more attorneys as members of the PDT to support to the focused team; and
  - (ii) in collaboration with the focused team lead establish the procedure for Counsel participation in the first and subsequent decision iterations.



# THE ROLE OF COUNSEL IN OPERATIONALIZING RISK-INFORMED DECISION MAKING DURING PROJECT DEVELOPMENT



Counsel Coordination with PDTs and Review Teams (continued):

4. Where the milestone authority is delegated to the MSC, MSC Counsel will have direct responsibility for the delivery of legal services to the decision maker.
5. Where the milestone authority remains at HQUSACE, HQUSACE Counsel will have direct responsibility for the delivery of legal services to the decision maker.
6. Adaptations to this arrangement may be made on a case-by-case basis as circumstances dictate, but in all cases all levels of Counsel will engage in active consultation regardless of the level of milestone authority.
7. This is due to the nature of project delivery, e.g., MSC Counsel must always be engaged because of the multiple planning, programmatic and budgeting determinations to be made at the MSC level; HQUSACE Counsel must always be engaged because HQUSACE is responsible for the Chief's Report and because the level of the milestone decision making authority may change.

# Questions?

Type questions in the chat box.  
We will answer as many  
as time allows.

This webinar will be posted to the  
Planning Community Toolbox:  
<http://www.corpsplanning.us>



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