



May 28, 2013

**VIA MAIL AND INTERNET**

Nancy H. Sutley  
Chair  
Council on Environmental Quality  
722 Jackson Place, NW  
Washington, DC 20503

**Re: Western Urban Water Coalition Comments on Draft Interagency Guidelines  
Implementing Principles and Requirements for Federal Investments in Water  
Resources, March 2013**

Dear Ms. Sutley:

This letter provides comments on behalf of the Western Urban Water Coalition ("WUWC"), regarding the Draft Interagency Guidelines ("Draft Guidelines") Implementing Principles and Requirements for Federal Investments in Water Resources, March 2013 ("Principles & Requirements"). The Draft Guidelines are intended to provide interagency guidance for implementing the Principles & Requirements.

The WUWC consists of the largest urban water utilities in the West, serving over 35 million western water consumers in 15 metropolitan areas in five states. The membership of the WUWC includes the following urban water utilities: *Arizona* – Central Arizona Project and City of Phoenix; *California* – East Bay Municipal Utility District, Los Angeles Department of Water and Power, Metropolitan Water District of Southern California, San Diego County Water Authority, City and County of San Francisco Public Utilities Commission and Santa Clara Valley Water District; *Colorado* – City of Aurora, City of Colorado Springs, and Denver Water; *Nevada* – Las Vegas Valley Water District, Southern Nevada Water Authority and Truckee Meadows Water Authority; and *Washington* – Seattle Public Utilities.

WUWC members have a strong interest in federal investment in water resources facilities. Federal investment provides incentives for WUWC members to upgrade facilities, improve services to their customers, and provide ecosystem benefits in the watershed areas in which they operate. Because the Draft Guidelines would likely form a central component of water resources

public policy, they would directly influence water resource planning and development activities. The Draft Guidelines should establish a clear, concise, cost effective, and workable framework to guide the development and evaluation of projects.

## COMMENTS

### **1. The Guidelines do not Reflect Factors Required by Congress**

The Draft Guidelines instruct affected federal agencies to consider factors beyond those expressly required by statute. For example, the Draft Guidelines do not reflect the factors that Congress directed be considered in evaluating all water resources projects, such as “use of best available economic principles,” “assessment and incorporation of public safety,” “value of the projects for low-income communities,” “interaction of a project with other water resources projects and programs within a region or watershed,” “integrated water resources management and adaptive management,” and “methods that ensure that water resources projects are justified by public benefits.” See Section 2031(b)(3) of Water Resources Act of 2007, 42 U.S.C. 1962–3.

These statutory considerations are focused on economic benefits, public safety, and efficiency of water resource management. While environmental effects are required to be considered under the National Environmental Policy Act (NEPA), the Draft Guidelines insert environmental considerations into the project evaluation process in a way that Congress did not envision or authorize.

Federal actions involving water resource projects already must comply with applicable environmental laws including NEPA, the Endangered Species Act, and the Clean Water Act. The implementing regulations for these laws include processes that provide full disclosure, analysis, and mitigation of any significant effects on the human environment. We are concerned about how these existing laws and their implementing regulations interact with the Draft Guidelines without becoming overly duplicative or confusing. The process of determining federal investment in water projects already takes too long. We caution against adding another layer of analysis beyond that already required by law.

For example, the Draft Guidelines require analysis of the equivalent of the NEPA “no action” alternative and require the evaluation to be “dependent on contrasting how future conditions would differ with and without the investment.” (Draft Guidelines at 13) This means analyzing what the future would be without the benefits of an existing project, if the project would no longer be operational without a further federal investment. But existing projects are well beyond the NEPA “go/no go” stage. Analysis of existing projects should factor in the public expectation that the benefits of existing projects and the public investment in those projects will be maintained.

An alternatives evaluation focusing on cost comparisons and evaluating multiple components of a project as discrete units is also not consistent with NEPA or the evaluations undertaken under other statutory authorities, and this added requirement should be reconsidered. In addition, there should be a recognition in the Guidelines that many of the federal investment projects and programs in the arena of water resources, particularly the federal grant programs and funding programs that affect water uses and water quality, are closely tied to integrated regional planning efforts that occur at the state and local level. As part of these integrated regional efforts, many of the local and state entities receiving grants and federal funds have already evaluated the costs and benefits of various alternatives using an open process involving key stakeholders and the affected communities, with a goal of arriving at common objectives and principles, and an understanding of effects and appropriate mitigation. There is little benefit to establishing internal federal agency procedures that will simply repeat this process or add additional conflicting analysis or requirements. Nor is there much worth in a federal process that re-evaluates alternatives that have already been considered and dismissed as part of a state or regional effort. The result would not promote the goal set forth in the Principles and Requirements of collaboration with regional, state, local, and non-governmental entities and it would make the federal investment process less efficient.

**2. The Guidelines are Redundant in Light of the President's Executive Order 13604 of March 22, 2012 (Improving Performance of Federal Permitting and Review of Infrastructure Projects) and His Memorandum of May 17, 2013 on Modernizing Federal Infrastructure Review and Permitting Regulations, Policies, and Procedures**

The President issued the Executive Order 13604 of March 22, 2012 (Improving Performance of Federal Permitting and Review of Infrastructure Projects) for the purpose of integrating project reviews among agencies; ensuring early coordination with State, local, and tribal governments; and strategically engaging with, and conducting outreach to, stakeholders; promoting performance-based permitting and regulatory approaches; and expanding the use of general permits where appropriate; among other things. By imposing another layer of federal analysis to project permitting, the Draft Guidelines seem redundant in light of the purposes of the Executive Order.

Similarly, in a Memorandum to the Heads of Executive Departments and Agencies dated May 17, 2013, on Modernizing Federal Infrastructure Review and Permitting Regulations, Policies, and Procedures, the President re-emphasized his policy "to modernize Federal infrastructure review and permitting regulations, policies, and procedures to significantly reduce the aggregate time required by the Federal Government to make decisions in the review and permitting of infrastructure projects, while improving environmental and community outcomes." Again, the Draft Guidelines are redundant in light of the purposes of this memorandum.

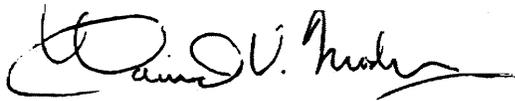
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We support the purposes of both the President's March 2012 Executive Order and his May 2013 Memorandum. We recommend that the Draft Guidelines be revised not to create another round of analysis, when these Presidential Directives already provide appropriate analytical guidance.

### CONCLUSION

Thank you for the opportunity to provide comments on the Draft Guidelines. If you have any questions regarding the comments in this letter, please contact our counsel, Donald Baur (202) 654-6234, or Paul B. Smyth (202) 654-6251, both of Perkins Coie, LLP.

Sincerely,

A handwritten signature in black ink, appearing to read "David Modeer". The signature is fluid and cursive, with a long horizontal stroke at the end.

David Modeer  
Chair  
Western Urban Water Coalition

cc:  
Perkins Coie LLP  
700 Thirteenth St. NW  
Washington, DC 20005-3960