

Before the  
Council on Environmental Quality

Draft Principles and Standards Sections of the "Economic and  
Environmental Principles and Guidelines for Water and Related Land  
Resources Implementation Studies";  
Initiation of Revision and Request for Comments

Proposed National Objectives, Principles and Standards for Water  
and Related Resources Implementation Studies

**Comments of the  
NATIONAL WATERWAYS CONFERENCE, Inc.**

The National Waterways Conference, Inc. (NWC or Conference) submits these comments in response to the Notice and Request for Comments published in the Federal Register on December 9, 2009. 74 Fed. Reg. 65102.

The National Waterways Conference, established in 1960, is dedicated to a greater understanding of the widespread public benefits of our nation's water resources infrastructure. Our mission is to effect common sense policies and programs, recognizing the public value of our Nation's water resources and their contribution to public safety, a competitive economy, national security, environmental quality and energy conservation. Conference membership is comprised of the full spectrum of water resources stakeholders, including flood control associations, levee boards, waterways shippers and carriers, industry and regional associations, port authorities, shipyards, dredging contractors, regional water supply districts, engineering consultants, and state and local governments.

I. Background

Section 2031 of the Water Resources Development Act of 2007 (WRDA 2007), Publ. L. 110-114. 121 STAT. 1041, directed the Secretary of the Army to revise the 1983 Principles and Standards applicable to planning studies of water resource projects.<sup>1</sup>

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<sup>1</sup>In furtherance of that directive, the Secretary issued a "Request for suggestions and notice of public meeting," on May 8, 2008. 73 Fed. Reg. 26086. That notice sought suggestions for revising the Principles and afforded the opportunity to appear at a public hearing. Subsequently, the

Subsequently, CEQ took over the proceeding, with a goal of expanding application of the Principles to water resources development programs and activities government-wide.

## II. General Overview

CEQ's proposed revisions to the Principles and Guidelines governing the development of water resources projects (Proposal) would significantly alter our nation's water resources planning. Recognizing the critical role of our water resources infrastructure to a robust economy and environmental well-being, it is imperative that the resulting Principles establish a clear, concise, and workable framework to guide the development of these critical projects.

As drafted, the Proposal fundamentally fails to achieve this critical end and must be extensively revised to offer a path to balanced solutions, clear and consistent guidance to planners, and replicable results that are understandable to all stakeholders.

- Water resources planning ought to be governed by a well-defined set of over-arching principles which set forth the national interest in water resources planning decisions. Thereafter, individual agencies would develop the procedures, guidelines and standards for implementing projects. Unfortunately, CEQ's Proposal uses the concepts of "principles," "guidelines," "procedures," and "standards" interchangeably so that the Proposal is confusing and unworkable.
- A concise set of Principles should:
  - Utilize cost-benefit analysis and other such recognized and proven analytical tools as a basis to compare options,
  - Provide for the unbiased consideration of all alternatives, and not exclude or penalize classes of alternatives from consideration and recommendation,
  - Require that decisions are made based on an assessment of net beneficial effects, and
  - Establish a peer review process that is appropriate to the potential impacts of the project and seamlessly

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Secretary issued proposed Principles and again sought public comment. 73 Fed. Reg. 52960 (September 12, 2008), with comments due by October 22, 2008.

integrated into the planning process.

- The National Objectives must be clarified in order to provide for efficient water resources planning.
  - Although it's stated in the Proposal that the National Objective is to maximize economic, environmental and social benefits, the "modernizing" changes proposed clearly (and inappropriately) elevate environmental goals over economic and social ones. This approach would be especially detrimental to flood control, navigation and water supply projects.
  - The Proposal also contemplates forcing multiple objectives in every water resources planning study. Requiring that every study include the multiple objectives of economic, environmental, and social benefits would lead to including features in projects where they have lesser returns than in other projects, programs or plans. Such a requirement is impractical, does not reflect the reality of project development, and would result in a waste of scarce resources.
- Collaborative planning, on a watershed basis, rather than project-by-project, should be encouraged. The Proposal fails to recognize that reality.
- The reality of cost-sharing introduced in WRDA 86 must be incorporated into the decision-making process. Non-federal sponsors, as well as federal planners, have a clear and important role in the decision process and must have a complete understanding of the process as they decide whether to expend financial resources for feasibility studies. Failure to recognize this reality results in a process which lacks transparency and predictability - critical defects in the Proposal.
- Vague, ambiguous, and confusing mandates and directives must be clarified or deleted.

### III. Detailed Comments

#### A. Planning Principles

Principles governing water resources planning provide the

important framework for reviewing and analyzing potential projects. Such Principles should be clear and concise, and provide to agencies and the public the clarity needed for a cogent decision-making process. Thereafter, standards should be developed to implement the over-arching principles.

CEQ's proposal falls short of achieving this goal. First, the proposed laundry list of Principles (Proposal, pages 1-2) is overly broad, contradictory and unwieldy. Moreover, that list fails to make a distinction between principles and the implementing standards. For example, items such as "D. Utilize watershed and ecosystem based approaches," and "L. Ensure the planning process is fully transparent" would be more appropriate, provided they are clarified through further elaboration, in the implementing standards. In addition, items "E. Utilize best available science, practices, analytical techniques, procedures and tolls," and "F. Apply a level of detail commensurate with the potential decisions," are unduly vague so as to be confusing and impractical. The result would be a confusing system that would totally impede effective implementation by the agencies.

We strongly recommend that, in order to formulate a viable, long-term planning model, CEQ narrowly tailor its list of proposed Principles to include a concise set of principles useful and necessary for sound decision-making, that the agencies are able to effectively make operational. Such a list should be premised on the notion of net beneficial effects, whereby decision-makers would utilize cost-benefit analyses and other such analytical tools to compare various plans. The principles should ensure consideration of all alternatives, and those alternatives should be quantified. In addition, peer review is an important element of successful planning. It can add to the knowledge available to planners and is best integrated into the planning process on an ongoing basis, occurring seamlessly at key milestones throughout plan formulation, so as not to add additional time and expense to an already time consuming planning process.

## B. Planning Objectives

Section 2031 of WRDA 2007 states that:

It is the policy of the United States that all water resources projects should reflect national priorities,

encourage economic development, and protect the environment by-

- 1) seeking to maximize sustainable economic development;
- 2) seeking to avoid the unwise use of floodplains and flood-prone areas and minimizing adverse impacts and vulnerabilities in any case in which a floodplain or flood-prone area must be used; and
- 3) protecting and restoring the functions of natural systems and mitigating any unavoidable damage to natural systems.

42 U.S.C. 1962-3. Section 2031 further provides that any revisions to the principles and guidelines address not only economic principles, but also public safety, the value of projects to low income communities, the interaction of a project with other water resources projects or programs within a region or watershed, the use of contemporary water resources, and evaluation methods that ensure water resources projects are justified by public benefits. Thus, WRDA 2007 contemplates water resources planning founded upon multiple national objectives: economic, environmental, and social well-being, including a public safety objective. Additionally, WRDA 2007 emphasizes a watershed approach to planning, recognizing the importance of collaborative planning and implementation.

CEQ's Proposal does not promote co-equal objectives in water resources planning, but instead elevates environmental considerations at the expense of economic benefits. This framework, in apparent contradiction of the directive in WRDA 2007, is reflected throughout the entire Proposal, starting on page one, the statement of National Objectives: [the primary objective is to] "protect and restore natural ecosystems and the environment while *encouraging* sustainable economic development." Similarly, the Objectives are to: avoid adverse impacts "whenever possible" and avoid "unwise use" of the floodplains. These directives are not predicated on an analysis of the net beneficial effects. Rather, they are vague and ambiguous terms, providing no basis for measurable criteria.

In order to develop a long-term planning model, we recommend that CEQ modify its Proposal to reflect a balanced approach to water resources planning. Recognizing the widespread public benefits of our nation's water resources infrastructure, a balanced approach would give due regard to the economic and human uses of water resources, along with environmental and economic considerations.

Similarly the Proposal fails to implement in a meaningful manner a watershed approach to Federal water resources planning as called for in WRDA 2007. Although the Proposal recognizes the importance of watershed planning (Chapter 2, 2.D.), watershed plans are then explicitly excluded from the process. (Chapter 2, 1.B.). It is unclear why a comprehensive planning framework would exclude watershed plans. This is particularly troubling at a time when our nation - both at the federal and state levels - is working toward the development of collaborative, watershed planning, rather than planning on a project basis.

#### C. Use of the Flood Plains

The Proposal directs the avoidance of the "unwise use" of the flood plains, flood-prone areas and other ecologically valuable areas. However, the Proposal does not set forth criteria for determining what would constitute "unwise use." Even more alarming, the Proposal appears to create a bias for selecting non-structural approaches thus limiting, in practice, a full consideration of all alternatives. (K. Recommend a Plan, page 23).

We appreciate that due consideration should be given to the risks and impacts inherent in the use of our floodplains; we also believe that the best approach to floodplain management will continue on a course that puts the principle of balancing economics and other factors at the center of floodplain decisions. Floodplain decisions (including permitting and licensing decisions) should be governed by consideration of the net beneficial effects of all feasible or practicable alternatives. This fundamentally rational approach is consistent with longstanding national policy of balancing economic and environmental values in decision making, and framing solutions guided by the standard of benefit-cost analysis.

#### D. Quantifying Monetary and Non-monetary Benefits and Costs

The Proposal requires that the costs and benefits of alternatives be quantified whenever possible. Similarly the Proposal would require monetizing non-market goods and services. These requirements are quite problematic. Initially, there is no agreed-upon basis or standard for assessing monetary benefits for environmental sustainability. Similarly, the assignment of criteria to various categories has not been articulated. Such a requirement will lead to further uncertainty in the planning process.

#### E. Mitigation

In the statement of Proposed National Objectives, the Proposal requires avoiding adverse impacts whenever possible and "fully mitigating" unavoidable impacts. Elsewhere the Proposal discusses mitigation when "practicable."

These conflicting standards will lead to uncertainty and confusion in the planning process. Moreover, such a distinction is unnecessary. The guidance to avoid, minimize and mitigate in NEPA should be sufficient to address any concerns in the planning process.

#### IV. Conclusion

As drafted, the Proposal fails to establish a clear, concise, and workable framework to guide the development of water resources projects. It is incoherent and inconsistent - and thus not implementable in a practical sense. It substantially fails to comply with the explicit directions in Section 2031 of WRDA 07 as well as the large body of previous law and policy related to water resources. It is written so as to not require or even encourage use of proven analytical tools to distinguish among alternatives. It limits in a preemptive manner certain categories of alternatives, and (even while encouraging "collaboration") seems to assume that water resources planning decisions are the exclusive prerogative of the Federal government thus not recognizing the keystone role played by non-Federal sponsors. Because of these critical and extensive failings, we recommend that this effort be put aside and restarted from the beginning.

Respectfully submitted,

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