

Statement of

Amy W. Larson, Esq.
President
National Waterways Conference, Inc.
4650 Washington Boulevard
Suite 608
Arlington, Virginia 22201
(703) 243-4090

Before
The Committee on Transportation and Infrastructure
U.S. House of Representatives

On the

Water Resources Development Act of 2007:
A Review of Implementation in its Third Year

March 3, 2010

Good morning Chairman Oberstar, Ranking Member Mica, and Members of the Committee. My name is Amy Larson and I am the President of the National Waterways Conference. Thank you for the opportunity to appear before you today as the Committee hears about the important work involving our nation's water resources infrastructure.

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 districts, engineering consultants, and state and local governments.

Given the Conference's diversity, our membership is keenly interested in the planning and development of water resources infrastructure projects of all types. My comments today will be primarily focused on the Principles and Guidelines applicable to water resources projects.

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. 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. Thereafter, the Secretary issued proposed Principles and again sought public comment. 73 Fed. Reg. 52960 (September 12, 2008), with comments due by October 22, 2008. Subsequently, CEQ took over the proceeding, with a goal of expanding application of the Principles to water resources development programs and activities government-wide. CEQ issued its "Proposed National Objectives, Principles and Standards for Water and Related Resources Implementation Studies" (Proposal)

in December, with comments from the public due by March 5, 2010. Attached to my statement is a copy of the comments NWC submitted to CEQ in response to its Proposal. I respectfully request that they be included in the record here.

II. General Overview

Reliable, well-maintained water resources infrastructure is fundamental to America's economic and environmental well-being, and is essential to maintaining our competitive position within the global economy. Our water resources infrastructure provides life-saving flood control, navigation critical to national security and commerce, abundant water supplies, shore protection, water recreation, environmental restoration, and hydropower production. Moreover, waterways transportation is the safest, most energy-efficient and environmentally sound mode of transportation and inland waterways have excess capacity that highways and rail lines do not enjoy, thus providing an opportunity for cost-effective congestion mitigation.

As a consequence, the planning and development of water resources projects is vitally important. The Congress recognized this when it passed the Water Resources Development Act in 2007, and in enacting prior WRDA bills. With that in mind, we are very concerned that CEQ's Proposal falls short of enacting a policy model envisioned by the Congress in WRDA 2007.

A. Principles

At the outset, 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 development, management and protection. These Principles should establish a clear, concise, and workable planning framework to guide the development of project recommendations through unbiased, scientifically sound analysis and must recognize the now-critical role non-Federal sponsors play in project formulation and implementation. Fundamentally, revised Principles should strengthen the Executive Branch's ability to recommend to the Congress economically and environmentally sound projects and must be clear enough to have predictable and replicable outcomes thus enabling non-Federal projects interests to make complementary plans. We further suggest that such Principles should:

- o Utilize cost-benefit analysis and other such recognized and proven analytical tools as a basis to compare options,
- o Provide for the unbiased consideration of all alternatives, and not exclude or penalize classes of alternatives from consideration and recommendation,
- o Require that decisions are made based on an assessment of net beneficial effects, and
- o Establish a peer review process that is appropriate to the potential impacts of the project and seamlessly integrated into the planning process.

Unfortunately, the Proposal issued by CEQ fundamentally fails to establish a path to balanced solutions, clear and consistent guidance to planners, and replicable results that are understandable to all stakeholders. Rather, the Proposal doesn't establish a workable set of Principles at all, but instead uses the concepts of "principles," "guidelines," "procedures," and "standards" interchangeably so that the Proposal is confusing and unworkable.

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.

We are concerned that the Proposal, in apparent contradiction of the directive in WRDA 2007, does not promote co-equal objectives in water resources planning, but instead elevates environmental considerations at the expense of economic benefits. This approach would be especially detrimental to flood control, navigation and water supply projects. It is also rather perplexing, and appears contradictory with other Administration initiatives. For example, the Department of Transportation is actively promoting its Marine Highways program. Waterways transportation is the safest, most energy-efficient and environmentally sound mode of transportation, and increased transportation along the waterways would help relieve some of the congestion along our highways. However, at a time when the cost-effectiveness of utilizing the nation's inland, coastal and Great Lakes waterways couldn't be more pertinent, navigation projects to help further this initiative would be negatively impacted under the Proposal. Similarly, the nation's growing population will continue to need protection from flooding and additional water supplies, both of which will necessarily entail structural solutions in addition to the non-structural ones the Proposal seems to mandate. We believe that a balanced planning model, recognizing the widespread public benefits of our nation's water resources infrastructure, would give due regard to the economic and human uses of water resources, along with environmental and ecological considerations.

The Proposal also sets forth a confusing approach to watershed planning. Although the Proposal appears to recognize the importance of watershed planning, as called for in WRDA 2007, watershed plans are then explicitly excluded from the process. It is unclear why a comprehensive planning framework would exclude watershed plans. This is particularly troubling and confusing 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

We are concerned that the Proposal establishes an unworkable policy with regard to use of the floodplains. While directing avoidance of the "unwise use" of the flood plains, the Proposal does not provide criteria for determining what this would be. Instead, the Proposal appears to create a bias for selecting non-structural approaches thus limiting, in practice, a full consideration of all alternatives. This approach ignores the recognition in WRDA 2007 that sometimes use of the floodplains cannot be avoided, providing that in such cases, planners should seek to minimize adverse impacts and vulnerabilities.

Moving people and infrastructure out of the floodplains is not necessarily a viable option. While we appreciate that due consideration should be given to the risks and impacts inherent in the use of our floodplains, we 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. CEQ's Proposal appears to preclude consideration of all alternatives and instead support a non-structural or no-action alternative. Such a policy would be devastating to many communities in or near a flood plain.

Additionally, Title IX of WRDA 2007, the Levee Safety Act, recognizing the complexity of flood risk management in leveed areas, calls for the establishment of a primarily non-federal Levee Safety Committee to develop recommendations and a strategic implementation plan for a national levee safety program. As the work of this Committee progresses, it becomes increasingly evident that an integrated approach is needed to effectively manage our nation's flood risk. One of the principal concepts identified as key to successfully managing the risks associated with levees is improved communications among federal agencies, together with a better vertical integration to achieve strong and balanced partnership at all levels of government.

This concept should be applied not just to leveed areas, and not just to flood risk, but to all water resources management decisions. The opportunity to achieve this ideal and

shift water resources management toward one of shared responsibility by the federal and non-federal interests is through the development of these new Principles and Standards. Regrettably, the Proposal does not recognize the significant and growing role of state and local governments. Rather than being a step forward, the Proposal is a step back from effectively managing our nation's water resources.

D. There are numerous other concerns that the Proposal does not establish a viable, long-term planning model for water resources projects as envisioned by Congress in enacting WRDA 2007. The Proposal requires quantifying monetary and non-monetary benefits and costs whenever possible, yet provides no standard or basis for doing so. This requirement would certainly lead to uncertainty and confusion in the planning process.

The Proposal uses conflicting and contradictory criteria concerning mitigation obligations. These conflicting standards will lead to uncertainty and confusion in the planning process.

The role of non-Federal sponsors and cost-sharing, introduced widely through passage of WRDA 86, must also be incorporated into the decision-making process. When a local community is faced with a decision to expend scarce financial resources for a feasibility study, there must be a transparent and predictable process for the non-federal sponsor as well as the federal planner. The Proposal is silent on this crucial element of the process.

E. Procedure

Besides the substantive concerns about the content of the proposed principles laid out above, we also have some concerns and questions about the process CEQ is utilizing to develop the Principles.

CEQ is purportedly in the first step of the process -- that is, the development of the Principles to guide water resources planning. Thereafter, according to CEQ, an interagency group will develop Procedures, followed by implementation "guidance" by individual agencies. As mentioned above, the initial Proposal uses the concepts of "principles," "guidelines," "procedures," and "standards" interchangeably, resulting in a very confusing and unworkable proposal. We are further concerned that the second phase of the process - the development

of procedures - is already underway. We would expect that the procedures would be properly based on the principles that are ultimately developed. It could be seen as rather premature to develop the second step of the process when the first step is only in the early phase. The public comment period closes this Friday, and the National Academy of Science has until November to complete its review. One cannot build a house until the foundation is properly laid.

This also raises additional questions. The Administrative Procedure Act requires an agency to consider all comments it receives in a notice and comment proceeding. Failure to do so would be considered "arbitrary and capricious" on the part of the agency. We certainly appreciate the opportunity to comment on the development of such an important federal policy in this instance. And we recognize that this process has not been characterized as, and may not be construed as, a notice-and-comment type rulemaking. Nonetheless, the process CEQ is employing here has not been fully explained to the public. Significantly, it is unclear how, or whether, the comments will be addressed by CEQ. Questions to CEQ on this issue were not answered. This is a cause for concern because an open and transparent process is essential to the development of a long-term, viable and balanced approach to water resources management.

IV. Conclusion

In sum, I hope that I have sufficiently conveyed to you the concerns of the members of the National Waterways Conference that the CEQ 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 recommendations are the exclusive prerogative of the Executive Branch of the Federal government thus not recognizing the keystone role played by non-Federal sponsors.

Chairman Oberstar, Ranking Member Mica, and Members of the Committee, thank you for the opportunity to appear before this Committee. I'd be happy to answer any questions that you might have.

Respectfully submitted,

Amy W. Larson
President
National Waterways Conference, Inc.
4650 Washington Blvd., Suite 608
Arlington, VA 22201
703-243-4090
amy@waterways.org