



Via email: csunstein@omb.eop.gov

April 4, 2011

Mr. Cass R. Sunstein
Administrator
Office of Information and Regulatory Affairs
The Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Re: Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies - Proposed National Objectives, Principles and Standards for Water and Related Resources Implementation Studies

Dear Administrator Sunstein,

The Council on Environmental Quality (CEQ) is preparing to issue a final version of its revisions to the Principles and Standards for Water and Related Land Resources Implementation Studies (Principles). CEQ has indicated that it intends to issue this document in June. This letter serves as a follow-up to correspondence to CEQ from the National Waterways Conference concerning the preparation of the final Principles on February 7, 2011. You were furnished a copy of the letter at that time, and a copy is attached herein for your reference.

In his State of the Union Address earlier this year, the President clearly linked our nation's future well-being to infrastructure and the competitiveness of our great workforce in the global economy; he further established the strategic role of exports in revitalizing our historic pathways of upward economic mobility. Thereafter, the President issued Executive Order 13563, *Improving Regulation and Regulatory Review*, emphasizing the parity of our national objectives for public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. We believe water resources development is a critical component in realizing this vision.

Both the President's State of the Union Address and EO 13563 set forth a firm foundation that should guide the completion of CEQ's Principles. As such, we urge you to review the forthcoming Principles in view of the direction established in EO 13563. Recognizing the critical role of our water resources infrastructure to a robust economy, job creation and environmental well-being, it is imperative that the final Principles establish a clear, concise, and workable framework to guide the development of these critical projects.

CHAIRMAN OF THE BOARD
Fred Caver
Caver and Associates
Austin, TX

VICE CHAIRMAN
B. Sykes Sturdivant
Yazoo-Mississippi Delta Levee Board
Clarksdale, MS

PRESIDENT
Amy W. Larson, Esq.
National Waterways Conference, Inc.
Arlington, Virginia

FIRST VICE PRESIDENT
W. Scott McGeorge
Pine Bluff Sand and Gravel Company
Pine Bluff, AR

VICE PRESIDENT
Darwin Nelson
CDM
Denver, CO

VICE PRESIDENT
John Janoush
Jantran, Inc.
Rosedale, MS

VICE PRESIDENT
Jim Oliver
Tarrant Regional Water District
Fort Worth, TX

COUNSEL
William H. Satterfield, Esq.
Balch & Bingham LLP
Birmingham, Alabama

TREASURER
Brian R. Frennea
Logistics Services, Inc.
Mobile, Alabama

SECRETARY
Evelyn Suarez
Williams Mullen
Washington, DC

Dedicated to a greater understanding of the widespread public benefits of our nation's water resources infrastructure.

Telephone:
(703) 243-4090
Fax:
(866) 371-1390
Web Site:
www.waterways.org

As we have previously articulated to CEQ in our comments, a clear, concise and workable set of Principles applicable to the planning and development of water resources projects which appropriately reflects the national interest in water resources must:

- 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 integrated into the planning process.

With respect to cost-benefit analysis, the National Research Council's Water Science and Technology Board found, as described more fully in the attached letter, that CEQ's proposed revision was "inconsistent with generally accepted application of benefit-cost analysis in at least two important ways." In addition to the obvious – and serious - deficiency this finding reveals, it also indicates that the proposal runs directly counter to the new executive order requiring that Federal regulations maximize net benefits and not be unduly burdensome.

Our February 7th letter also sets forth numerous other significant deficiencies in CEQ's initial proposal as found by the Water Science and Technology Board. We have serious concerns that if those deficiencies are not corrected, the forthcoming Principles will cause devastating economic harm at a time when our nation cannot afford it. We respectfully request that you review CEQ's proposed final principles under the guidance established by EO 13563 and mindful of the myriad benefits our nation enjoys from a healthy and robust water resources infrastructure.

Sincerely,

Amy W. Larson

Amy W. Larson, Esq.
President

Attachment: 02/07/11 NWC Letter to CEQ

The National Waterways Conference, established in 1960, is the national organization to advocate for the enactment of common sense policies recognizing the widespread public benefits of our nation's water resources infrastructure. 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. www.waterways.org



February 7, 2011

The Honorable Nancy Sutley
Council on Environmental Quality
Executive Office of the President
730 Jackson Place, NW
Washington, DC 20503

Re: Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies - Proposed National Objectives, Principles and Standards for Water and Related Resources Implementation Studies

Dear Chairwoman Sutley:

We appreciate the challenges you face in formulating revisions to the Principles and Guidelines for Water and Related Land Resources Planning (the P&G). We write to you to communicate concerns and recommendations that we hope you will adopt as you work toward completion of this important effort.

In his State of the Union Address, President Obama sounded the compelling theme of winning our future. He drew the strong and clear linkages of our future well-being to infrastructure and the competitiveness of our great workforce in the global economy and the strategic role of exports in revitalizing our historic pathways of upward economic mobility. Just days after delivering his State of the Union message, the President signed Executive Order 13563, Improving Regulation and Regulatory Review. The order emphasizes the parity of our national objectives for public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. This policy statement is as directly applicable to investment in and management of water resources as it to regulation.

In the President's State of the Union address and the executive order, the Administration has laid a firm foundation that should guide the completion of CEQ's Proposed National Objectives, Principles and Standards for Water and Related Resources Implementation Studies (Proposal). Water resources development is a critical component of achieving the President's vision. Recognizing the critical role of our water resources infrastructure to a robust economy, job creation and environmental well-being, it is imperative that the Proposal establish a clear, concise, and workable framework to guide the development of these critical projects. As pointed out by the National Research Council (NRC) in its report on the Proposal and in numerous public comments, the Proposal fundamentally fails to achieve this critical end.

We therefore urge you to act on recommendations contained in the NRC report

CHAIRMAN OF THE BOARD

Fred Caver
Caver and Associates
Austin, TX

VICE CHAIRMAN

B. Sykes Sturdivant
Yazoo-Mississippi Delta Levee Board
Clarksdale, MS

PRESIDENT

Amy W. Larson, Esq.
National Waterways Conference, Inc.
Arlington, Virginia

FIRST VICE PRESIDENT

W. Scott McGeorge
Pine Bluff Sand and Gravel Company
Pine Bluff, AR

VICE PRESIDENT

Darwin Nelson
CDM
Denver, CO

VICE PRESIDENT

John Janoush
Jantran, Inc.
Rosedale, MS

VICE PRESIDENT

Jim Oliver
Tarrant Regional Water District
Fort Worth, TX

COUNSEL

William H. Satterfield, Esq.
Balch & Bingham LLP
Birmingham, Alabama

TREASURER

Brian R. Frennea
Logistics Services, Inc.
Mobile, Alabama

SECRETARY

Evelyn Suarez
Williams Mullen
Washington, DC

Dedicated to a greater understanding of the widespread public benefits of our nation's water resources infrastructure.

Telephone:
(703) 243-4090

Fax:
(866) 371-1390

Web Site:
www.waterways.org

and reissue a new draft proposal for public review and comment, including additional review by the NRC. This new draft must ensure that any resulting planning document sets forth a path to balanced solutions, clear and consistent guidance to planners, and replicable results that are understandable to all stakeholders. Failure to establish a long-term, viable planning model will have a devastating effect on our nation's economic stability at a time when we can ill-afford it.

Given the serious concerns raised in the NRC report, several fundamental flaws must be addressed. At the outset, as NRC points out, CEQ's Proposal is only a partial revision to the planning documents – lacking any detail on implementing “Guidelines” and planning procedures. Given this, we further urge CEQ to cease the efforts presently underway to revise the “Guidelines” applicable to planning studies. Such efforts are entirely premature given the substantial revisions to the draft Proposal that are warranted. It is simply not feasible to continue on the path forward preparing the implementation phase of the planning documents until the fundamental Principles have been established.

The NRC report further finds that:

“The proposed revisions contain both general planning principles, and steps and concepts that could be part of a planning process. The planning principles are highly abstract and not fully consistent, while the planning steps collectively are confusing and lack sufficient coherence for practical implementation. As such, the proposed revisions have only limited value as policy guidance and are inadequate as an operational, or ‘decision’ document.”

The flaws articulated by the NRC report undermine the integrity of the entire Proposal; these criticisms are not merely superficial. Rather, as the report points out, the Proposal fails to clearly state its intended applicability, creating uncertainty as to whether it is intended as general policy guidance, a decision document that specifies planning steps, or both. We urge you to consider the alternative set forth in the report of making the Principles and Standards a broad policy statement and then request each relevant water agency to report on how it will help implement national water principles and priorities. Similarly, providing that each agency review its implementing guidance and address terminological issues will address many of the concerns about vague, conflicting and inconsistent terminology and concepts throughout the document as described in the report.

The report notes that many national water management issues lie outside the missions of the agencies to which the Proposal would apply. Such inconsistent application would create significant uncertainty at a time when water resources planners, including those at all levels - Federal, state and local - are working to develop a collaborative, integrated approach to water management. Local communities and non-Federal sponsors who bear a significant share of the cost of projects will be faced with the prospect of substantially higher costs as a result of a confusing and unpredictable process. Many would be forced to forego participation in projects, resulting in job losses and local economic harm. At a time when we ought to be encouraging Federal, state and local cooperation in water resources, the Proposal ignores state and local participation and, instead, inappropriately adopts a Federal-centric approach.

As we have previously articulated to CEQ in our comments, a clear, concise and workable set of Principles applicable to the planning and development of water resources projects which appropriately reflect the national interest in water resources must:

- 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 integrated into the planning process.

With respect to cost-benefit analysis, the NRC report finds that CEQ's Proposal is "inconsistent with generally accepted application of benefit-cost analysis in at least two important ways." In addition to the obvious – and serious - deficiency this finding reveals, it also indicates that the Proposal runs directly counter to the new executive order requiring that Federal regulations maximize net benefits and not be unduly burdensome.

Finally, it is our view that the Proposal, as drafted, fundamentally fails to respond to the requirements of Section 2031 of WRDA 2007. This finding alone argues for a restart of the revision effort from the beginning. We encourage you to revisit the requirements of this provision as you begin again to revise the P&G.

We believe our recommendations will provide a direct, effective and expeditious way to contribute to the President's goal of winning the future and the Administration's principles for integrating complex national objectives into sound decisions and recommendations. We look forward to working with you in the next round of review and comments.

Respectfully submitted,

Amy W. Larson

Amy W. Larson

cc: Cass R. Sunstein
Administrator, Office of Information and Regulatory Affairs
Office of Management and Budget