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Via E-mail: larry.j.prather@usace.army.mil

Mr. Larry Prather, Assistant Director of Civil Works
HQUSACE, Attn: P&G Revision
CECW-ZA
441 G Street, NW
Washington DC 20314-1000

Re: Comments on the Proposed Revisions to the Principles of the “Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies” dated March 10, 1983

Dear Mr. Prather:

American Rivers, the National Wildlife Federation, and Environmental Defense Fund (the Conservation Organizations) appreciate the opportunity to comment on the proposed revisions to the Principles of the now quarter-century-old Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies (P&G). Modernizing the P&G is vitally important for ensuring that the Nation’s water resources project planning will be able to meet the critical needs of the 21st Century.

American Rivers is a national conservation organization dedicated to protecting and restoring the nation’s rivers and wetlands so our communities can thrive. Through national advocacy, innovative solutions and our growing network of strategic partners, American Rivers protects and promotes our rivers as valuable assets that are vital to our health, safety and quality of life. American Rivers has more than 65,000 members and supporters nationwide, and works in partnership with thousands of river and conservation organizations. American Rivers has offices in Washington, DC and the Mid-Atlantic, Northeast, Midwest, Southeast, California and Northwest regions.

The National Wildlife Federation is the nation’s largest conservation education and advocacy organization with over four million members and supporters, affiliate conservation organizations in some 47 states and territories, and which is dedicated to inspiring Americans to protect, preserve and restore wildlife, wildlife habitat and natural resources for our children’s future. The Federation has a long history of active involvement with protection, restoration and wise management of our nation’s precious water resources.

Environmental Defense Fund is a leading national environmental nonprofit organization, representing more than 500,000 members. Environmental Defense Fund links science, economics, law and innovative private-sector partnerships to create breakthrough solutions to the most serious environmental problems. For more than three decades, Environmental Defense Fund has worked to reform water policies and protect our nation's most important water resources.

The Conservation Organizations have extensive experience with the project planning and implementation processes of the U.S. Army Corps of Engineers (Corps), and both have a long history of working to improve the Corps' project planning process. The Conservation Organizations strongly supported passage of the Corps reform provisions in the Water Resources Development Act of 2007 (WRDA), including the requirement to revise the P&G, because we believe the current system is failing to responsibly address the Nation's current and future water resource needs.

General Comments

In WRDA 2007, Congress enacted a new national water policy that requires a fundamentally different approach to water resources project planning, and directed the Secretary of the Army to develop new planning guidelines to implement that policy. While the Conservation Organizations appreciate the Corps' commitment to a timely revision of the P&G, the proposed Principles are unacceptable as they do not comply with numerous legal requirements, and do not meet the Nation's 21st Century water resources needs.

For decades, the Nation has invested in structural water resources projects designed to fuel economic development or reduce flood damages by altering and manipulating river systems and coastlines. While these approaches have produced some positive economic benefits for the Nation, they have also caused significant environmental harm. The environmental damage has been so great that Corps projects are recognized as one of the leading reasons that North America's freshwater species are disappearing five times faster than land based species, and as quickly as rainforest species.¹ Large-scale structural projects planned and constructed by the Corps have also increased flood risks for many communities, reduced water quality, impaired recreational opportunities, and damaged economies that rely on a healthy environment.

Many of the problems caused by Corps projects can be traced to the current P&G, which focus almost exclusively on maximizing National Economic Development at the expense of the environment. Two National Academy of Sciences panels and the Department of the Army Inspector General have also concluded that the Corps has an institutional bias for approving large and environmentally damaging structural projects, and that its planning process lacks adequate environmental safeguards.² Less environmentally damaging, less costly, nonstructural measures

¹ Ricciardi, Anthony and Rasmussen, Joseph B., "Extinction Rates of North American Freshwater Fauna"; *Conservation Biology*; 13 (5), October 1999, at 1220.

² National Research Council, New Directions in Water Resources Planning for the U.S. Army Corps of Engineers, 1999, at 4, 21, 61-63; National Research Council, Inland Navigation System Planning: The Upper Mississippi River-Illinois Waterway, 2001, at 25-28; 53-54; US Army Inspector General, Report of Investigation, Case 00-019, 2000, at 7-8.

that would result in the same or better outcomes are routinely ignored or given short shrift. This results in projects that are unnecessarily destructive, costly, and in many cases, simply not needed.

Much has changed since the P&G were developed 25 years ago, and these changes mandate a fundamental transformation of the P&G. For example, Federal water projects and other activities have created major new environmental problems. Climate change is leading to increasingly dire environmental consequences, including increasing sea-level rise, changes in glacial and snowmelt patterns, additional ocean and estuary “dead zones,” declining ecosystem health and threats to biodiversity, and more frequent and severe storms, floods, and droughts. And the Nation has experienced significant economic changes, population growth, intensive urbanization in areas that are experiencing increasing hazards, and major land use changes and conversions.

The laws and policies affecting water resources planning have also changed and evolved during the past 25 years, and there is an important emphasis on protecting and restoring our nation’s water resources. As part of these changes, Congress has given the Corps an environmental protection mission and a number of programmatic restoration authorities. In response to the increasing need for restoration of healthy and sustainable ecosystems – and the vital functions and services they provide to keep communities safe and healthy – Congress has also authorized construction of an increasing number of large-scale and extremely costly water projects designed to restore rivers, coasts, and wetlands that had been severely degraded by earlier Corps of Engineers-led water projects. There also is a growing call for increased use of nonstructural approaches to address water resources needs, and for changes to the operations and purposes served by existing federal water projects, including at times the removal or relocation of previously constructed projects.

Healthy rivers, wetlands, and coastlines are also now well recognized as vitally important to help communities withstand the increased storms, floods, and droughts that will occur as the earth’s climate continues to change. These natural systems absorb flood waters; act as barriers between storm surges and homes, buildings, and people; recharge groundwater supplies; and filter pollutants from drinking water. They also provide critical habitat for fish and wildlife, and exceptional recreational opportunities.

The Nation is also experiencing an increasing need for rapid, and sometimes extremely costly and consequential, decisions regarding the appropriate disposition of damaged or destroyed water resources infrastructure in the wake of large natural disasters. The past assumptions that have guided disaster response by the Corps and other agencies have generally assumed reconstruction of damaged projects and infrastructure to pre-disaster conditions. However, today, many factors call for substantially different approaches than those used in the past to address these situations.

These major changes mandate a fundamental transformation in the direction of water resources planning; a need that has been recognized by Congress. In 2007, Congress directed the Secretary of the Army to modernize the outdated P&G. Congress also told the Secretary that this

modernization must institute a new paradigm in project planning. From now on, environmental protection and restoration must be a primary objective for all water projects.

The proposed Principles fall far short of establishing this much needed, Congressionally-mandated, paradigm shift. Instead, the proposed Principles retain the status quo approach to project planning while giving the Secretary of the Army even more, potentially arbitrary, control over the direction of our nation's water resources planning. The Nation can no longer afford this status quo in water resources planning. To the contrary – and as Congress has directed – we need a fundamentally different approach to planning water resources projects.

The Conservation Organizations urge the Secretary to go back to the drawing board and revise the P&G in the manner and process directed by Congress. Our concerns with the substance of the proposed Principles are discussed in Section A. Our concerns with the process used to develop the proposed Principles are discussed in Section B. Our recommendations for key changes to the P&G are set forth in Section C.

Detailed Comments

A. The Proposed Principles Do Not Comply With WRDA 2007 And Will Not Meet The Nation's 21st Century Water Resources Needs

1. The Proposed Principles Do Not Comply With WRDA 2007

As discussed above, WRDA 2007 establishes a new national water resources planning policy that requires a fundamentally new approach to project planning. The proposed Principles do not comply with this new national policy, and do not comply with the requirements for updating the P&G, established by WRDA. Instead, the proposed Principles retain the existing approach to project planning, and fail to provide meaningful guidance to improve the current haphazard approach to our Nation's water resources planning.

Congress has determined 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.”

WRDA 2007, sec. 2031 (codified at 42 USC 1962-3). WRDA 2007 also requires, among other things, that the new P&G ensure that public safety issues are assessed and incorporated into the formulation of alternatives and the recommended plan.

However, instead of complying with these mandates, the Secretary has proposed a national planning objective that retains the status quo approach to project planning. The proposed national planning objective is “to foster environmentally sound, efficient use of the Nation’s resources consistent with public safety.”

Like the current P&G – which the Secretary has been directed to change – the proposed national planning objective retains the utilization of the nation’s water resources for short term economic gain as the primary goal of water project planning. This national planning objective relegates environmental protection, restoration, public safety, and sustainability to secondary and subservient goals. This violates WRDA 2007 and is not in the best interests of the Nation. The Conservation Organizations strongly believe – and Congress has clearly directed – that no water resources project should move forward unless the project has been designed with the primary goal of protecting and restoring the environment and the natural ecosystem functions that are so essential to community health, resiliency, and sustainability.

Because the fundamentally flawed national planning objective would drive all project planning, it taints the entire set of proposed Principles. The remaining provisions in the proposed Principles likewise do not (and, in light of the proposed national planning objective, could not) comply with the mandates of WRDA 2007.

WRDA 2007 clearly requires a different approach. For example:

- (a) WRDA 2007 clearly and unequivocally requires that all water resources projects “protect the environment by . . . protecting and restoring the functions of natural systems and mitigating any unavoidable damage to natural systems.” WRDA 2007, sec. 2031(a)(3). This mandate is both explicit, and unqualified in any way (compare the directive of 2031(a)(3) with the directives in 2031(a)(1) and (a)(2) which urge that projects “seek[] to” maximize sustainable economic development and avoid unwise use of floodplains and floodprone areas). Instead of complying with this mandate, however, the Secretary has opted to relegate environmental protection and restoration to secondary, subservient project objectives by requiring only that projects be “environmentally sound.” In addition, even this vague term is not defined and the proposed Principles provide no criteria for ensuring that all projects will meet even this secondary goal.
- (b) WRDA 2007 requires that public safety drive planning for all water resources projects. The new national water policy requires the Secretary to avoid projects that can put people at risk (*i.e.*, avoid unwise use of floodplains and flood-prone areas) and WRDA 2007 also requires that public safety be both addressed and incorporated into each alternative considered. WRDA 2007, sec. 2031(a)(2) and 2031(b)(3). Instead of complying with these mandates, the proposed national planning objective relegates public safety to a secondary role by requiring only that projects be “consistent with public safety.” The proposed Principles also provide no criteria for ensuring that public safety will be addressed and incorporated into each alternative.

- (c) WRDA 2007 shifts the goal of promoting economic development to “seeking to maximize sustainable economic development.” Section 2031(a)(1) of WRDA 2007. The proposed national planning objective does not incorporate this new mandate, and indeed, does not even include the word “sustainable.” The proposed Principles do not otherwise focus project development towards sustainability, but instead note only that projects that would “facilitate sustainable national economic development” would be “consistent with” the national planning objective.
- (d) WRDA 2007 directs that water resources projects seek 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.” However, rather than discourage these types of projects, the proposed Principles “encourage wise use of water and related land resources – including floodplains and flood-prone coastal areas” (emphasis added). Encouraging the use of floodplains and flood-prone areas could not be more at odds with the directive to avoid the unwise use of those areas. In short, this provision turns the new national water resources planning policy on its head.

2. The Proposed Principles Promote Project Planning that Ignores Key Provisions of the Clean Water Act, the National Environmental Policy Act, and Water Resources Development Acts

In addition to failing to comply with the new national policy for water resources planning, the proposed Principles promote project planning that ignores key requirements of the Clean Water Act, the National Environmental Policy Act, and numerous Water Resources Development Acts. The proposed Principles recommend a planning process that, in some cases, would violate those laws. For example:

- (a) As discussed above, WRDA 2007 makes environmental protection, restoration, and mitigation a driving objective for each water resources project. A key component of meeting this goal is avoiding and minimizing adverse environmental impacts.³ Clean Water Act § 404 and its implementing regulations also require that Corps projects avoid and minimize adverse impacts to the aquatic environment. WRDA 2007 further codified this requirement by requiring that mitigation plans for each water resources project comply with the mitigation standards and policies established pursuant to Clean Water Act § 404. Section 2036 of WRDA 2007 (codified at 33 USC § 2283(d)(3)). As a result, avoidance and minimization of adverse environmental impacts must be a key and major focus of all water projects, as a matter of law.

However, despite these mandates, the proposed Principles do not make avoidance and minimization of adverse impacts either a driving factor in project planning, or a prerequisite to plan approval. Instead, the proposed Principles note only that

³ It is critical to note that much more than “avoiding and minimizing” environmental impacts will be needed to ensure that water resources projects protect and restore the environment. Achieving these goals will require fundamentally different approaches to project planning.

“[a]ddressing concerns over adverse environmental impact and how to avoid, minimize, and mitigate these impacts on the environment are a component of both structural and nonstructural plans.” Moreover, in its description of plan formulation (7.1 General Considerations), the proposed Principles discuss the goals of avoidance and minimization of impacts only in the context of non-structural plans. As discussed above, all projects must avoid and minimize adverse impacts to the environment, and environmental protection and restoration must be a primary objective of each project plan.

- (b) The National Environmental Policy Act (NEPA) requires that an environmental impact statement “[r]igorously explore and objectively evaluate all reasonable alternatives” before a decision is made on whether or how to proceed with a project. 40 C.F.R. § 1502.14(a). This requires a “thorough consideration of all appropriate methods of accomplishing the aim of the action” and an “intense consideration of other more ecologically sound courses of action.” *Environmental Defense Fund, Inc. v. Corps of Engineers*, 492 F.2d 1123, 1135 (5th Cir. 1974). While an EIS need not explore every conceivable alternative, it must rigorously explore all reasonable alternatives that are consistent with the basic policy objective and that are not remote or speculative. This includes alternatives that are not currently within the authority of the Corps. A viable but unexamined alternative renders an EIS inadequate. The rigorous and objective evaluation of all reasonable alternatives to a proposed project is the “heart of the environmental impact statement.” 40 C.F.R § 1502.14.

The proposed Principles would improperly constrain the development of alternatives by requiring that “the development of alternatives must take into account the ability to implement that plan in consideration of Federal and non-Federal resources” (7. Plan Formulation). Such a mandate would likely lead to a severe narrowing of the alternatives that are considered to the type of structural approaches traditionally considered by the Corps and project sponsors, and is likely to give short shrift to more innovative, non-structural approaches. Limiting the alternatives analysis at the feasibility study phase will severely limit the Corps’ ability to comply with NEPA and will inappropriately limit project alternatives being seriously considered by the Corps. This is particularly problematic since environmental impact statements are typically prepared in conjunction with feasibility studies and examine only those alternatives evaluated in the feasibility study.

- (c) All water resources projects should be planned and constructed in the strictest compliance with the law, and the Principles should make it clear that all alternatives must comply fully with existing laws designed to protect the environment. However, the proposed Principles do not require or even promote full legal compliance. Instead, they state that “[a]ddressing concerns over the implementability of plans is best addressed by including plans that are consistent with existing statutes, regulations and policies” and that any statutory, regulatory or policy changes needed to facilitate a plan should be described in detail. (7.1. General Considerations) While this type of analysis can be appropriate with respect to needed changes to project specific authorizations, the Conservation Organizations strongly object to project

planning that: (1) is not in the strictest compliance with environmental protection laws, or (2) promotes the weakening, or waiving of provisions, of those laws.

- (d) WRDA 2007 requires outside independent review at the planning phase (*i.e.*, feasibility, general reevaluation, environmental review) of most costly or controversial Corps project proposals. WRDA 2007, sec. 2034 (codified at 33 USC § 2343). Internal Corps guidance also addresses outside independent review. However, the proposed Principles severely undermine the WRDA and internal guidance requirements by: (1) failing to reference the legally mandated independent review – the proposed Principles require independent review only when it is “appropriate” and not as required by law; and (2) restricting those reviews in ways that directly contradict both WRDA and the Corps’ internal guidance.

The proposed Principles state that “Where appropriate, outside independent experts should be brought into the planning process to confirm the agency’s analytical methods and analysis, the conclusions of the report based upon these methods and analysis, or the way in which the agency conducted the planning process.” (5. Science Based Analysis). This statement ignores the requirements of Section 2034 of WRDA 2007 and veers widely from its intent which is to ensure a full and robust independent review of the methodologies, data, approach, and conclusions of the Corps’ study. The outside review suggested by the proposed Principles is instead focused on “confirming” the Corps methodologies.

3. The Proposed Principles Fail to Establish Legally-Based, Meaningful Criteria to Guide Project Selection, and Give the Corps Excessive Discretion Over Project Selection

The proposed Principles provide only two firm criteria for project selection, neither of which comply with WRDA 2007. The application of other criteria in the proposed Principles is left to the sole discretion of the Corps. The lack of legally-based, meaningful criteria for project selection combined with the additional excessive discretion given to the Corps essentially makes the Corps the sole arbiter of the nation’s water projects, a role it should not – and is not equipped to – have.

The proposed Principles state that the Chief of Engineers can recommend a plan that involves Federal action “only if that plan would advance the national planning objective” and only if the plan has a “combined NED and beneficial EQ effects that outweigh the combined NED and adverse EQ effects.” (9.1. Selection Criteria). As discussed throughout these comments, neither of these “mandatory” criteria comply with WRDA 2007, and both violate or undermine a number of other laws. For example, the proposed national planning objective – which all projects are supposed to “advance” – does not comply with WRDA 2007 and does not meet the Nation’s water resources needs in the 21st Century. Among other problems, the second criterion’s focus on NED ignores the mandate to promote sustainable economic development, ignores the mandate that all projects must protect and restore the environment, and could be improperly interpreted to require a benefit cost analysis for restoration projects (see discussion below).

The application of other criteria mentioned in the proposed Principles is left to the sole discretion of the Corps. For example, the Corps has complete discretion to choose among a NED plan, an EQ plan, or a Primarily Nonstructural Plan. (*See* 7.2 Alternative Plans). In addition to this unfettered discretion, the proposed Principles also give the Secretary the discretion to ignore ordinary planning criteria “where there are overriding reasons for doing so, including safety and other” federal, state, local, tribal, and international concerns. Consideration of “overriding reasons” needs to be an integral part of the planning process, and not left to the discretion of the Secretary.

As discussed in Section C of these comments, the Conservation Organizations believe that the highest priorities for all water projects should be to maintain and restore the health of our nation’s rivers, streams, and wetlands – and the many ecosystem services that they provide – and to ensure that projects will not put the public at risk. To achieve these goals, we believe that the revised P&G should require the utilization of nonstructural approaches whenever practicable. The proposed Principles do not do this.

The Conservation Organizations believe that a strong preference for the use of nonstructural approaches should be established for all water resources projects. The Conservation Organizations urge that the revised P&G state clearly that a structural project shall not be constructed if a nonstructural approach would solve the properly defined problem. If there is a way to address the properly defined problem through non-structural approaches, then the study of structural approaches *should not proceed*.

While the proposed Principles do give a nod to the selection of nonstructural approaches for flood damage reduction projects, this so-called “preference” is severely constrained by inappropriate requirements and does not create the much-needed preference for nonstructural approaches. The proposed Principles state that in the selection of flood and storm damage reduction projects “[g]enerally, when structural and non-structural components provide viable options when considering all evaluation criteria, including benefits, costs and adverse effects, preference should be given to non-structural components so long as the monetary benefits are at least at unity. If the non-monetary benefits represent a majority of the total benefits and are of National significance, then consideration can be given to selecting a plan with monetary benefits less than unity.” (9.2. Project Types).

The Conservation Organizations strongly oppose the restrictions placed on the selection of nonstructural approaches set forth in the proposed Principles. These restrictions are inappropriate and place unacceptable burdens on the use of nonstructural approaches. As noted above, a preference for nonstructural approaches should not be limited to an individual project type. The prohibition on the use of nonstructural approaches to situations where the monetary benefits of nonstructural approaches are “at least unity” or the non-monetary benefits are “of National significance” is also entirely inappropriate⁴ because, among other things:

⁴ The Conservation Organizations have the same concerns with respect to the ecosystem restoration components of multi-criteria plans. See 9.2. Project Types.

- (1) The Corps' current approach to benefit-cost analyses would not allow an accurate determination of the monetary benefits of those elements of nonstructural approaches that improve or enhance the environment. A substantially different approach that fully evaluates and properly calculates the value of at least the ecosystem services protected and provided by nonstructural approaches would be necessary to make such a determination.
- (2) Many properly designed nonstructural approaches will improve the quality of the environment in addition to providing important flood damage reduction benefits or solving other water resources problems. As a result, in many cases benefit cost analyses should be required since, as a matter of law, such nonstructural approaches would have benefits that are deemed to be at least equal to the costs (*i.e.*, they would be at unity). 33 USC § 2284 (“the benefits attributable to measures included in a project for the purpose of environmental quality, including improvement of the environment and fish and wildlife enhancement, shall be deemed to be at least equal to the costs of such measures.”).
- (3) The requirement that nonstructural approaches supported by non-monetary benefits can only be selected if the non-monetary benefits are of “National significance” is wholly unacceptable and unworkable. This requirement would place a significant hurdle into design and recommendation of nonstructural approaches; a burden that is amplified by the lack of a definition of “National significance” as applied to such approaches.

The proposed Principles also create an unworkable and unrealistic process for developing a cohesive and strategic national water resources plan. The proposed Principles contend that the goal of individual project selection is to formulate a series of projects across the country that “together will amount in effect to an implementable national water resources plan.” (9.1. Selection Criteria). The Conservation Organizations contend that this is an entirely unworkable concept. Project by project development will never produce a meaningful water resources plan. It will simply let any and every type of project move forward. The first step in developing a national water resources plan is to establish a national water resources planning strategy based on: (1) the new national water policy enacted by Congress and other applicable laws and policies; and (2) a full and comprehensive evaluation of the Nation's water resources needs. Only then should individual projects that would meet the goals and objectives of that plan be evaluated.

4. The Proposed Principles Create New and Inappropriate Hurdles for Development of Ecosystem Restoration Projects

The proposed Principles would place inappropriate hurdles into the path of developing ecosystem restoration projects. For example:

- (a) The proposed Principles could be interpreted to improperly require the Corps to conduct a benefit-cost analysis for restoration projects because of the requirement that all recommended plans “must have a combined NED and beneficial EQ effects that

outweigh the combined NED and adverse EQ effects.” (9.1. Selection Criteria). A benefit cost analysis is not required for ecosystem restoration projects because, as a matter of law, “the benefits attributable to measures included in a project for the purpose of environmental quality, including improvement of the environment and fish and wildlife enhancement, shall be deemed to be at least equal to the costs of such measures.” 33 USC § 2284.

- (b) The proposed Principles would prohibit the Chief of Engineers from selecting a recommended aquatic restoration plan unless that plan “best reflects an appropriate level to invest for that ecosystem from a national perspective.” (9.2. Project Types). The determination of whether this new “appropriateness” requirement is met, is left to the sole discretion of the Corps. This is not an appropriate role for the agency, and is not within the Corps’ area of expertise. The decision regarding the appropriate level of an investment in ecosystem restoration is one that is properly within the purview of Congress and the public.

5. The Proposed Principles Fail To Create A Framework For Modifying, Re-Operating, Or Decommissioning Outdated Water Projects

The Nation currently has a vast inventory of already constructed Federal water resources projects. These include thousands of Corps built projects, including hundreds of federal locks and dams, hundreds of major lakes and reservoirs, 75 federal hydropower projects, 8,500 miles of federal levees, and 12,000 miles of commercial navigation channels. Many of these projects have led to the severe degradation of countless miles of streams and rivers, and the loss or degradation of millions of acres of wetlands and vital barrier islands. These losses have put communities in harm’s way, and have led to catastrophic impacts to fish and wildlife.

The Nation can no longer afford to operate projects that fail to provide the highest levels of environmental protection and public safety. It is essential that these existing projects be systematically reviewed to identify needed changes to ongoing operations and/or to identify those projects that should be decommissioned. We applaud the recognition in the proposed Principles that the P&G must address these issues with respect to Federal water resources projects and systems,⁵ but we do not believe that the proposed Principles provide the analytical framework, necessary principles, or policies to ensure a full and meaningful evaluation of existing projects to determine whether re-operation, modification, or decommissioning is required. The proposed Principles continue the failings of the current P&G by instead focusing almost exclusively on the process for developing new projects.

In the face of changing social and environmental conditions, it is essential that the new P&G develop a meaningful framework for reevaluating existing projects to ensure that: water control management criteria protect aquatic resources; dams are made safe and dams that are no longer

⁵ The proposed Principles state that they “provide the analytical framework to be followed for proposed further investments in, extensive modifications to, and expanded changes in operation of existing Federal water resources projects and systems.” The proposed Principles also acknowledge that the planning process “provides and opportunity to evaluate and examine whether extensively modifying operations, adding features, or discontinuing features would contribute to the national planning objective” (7.1. General Considerations).

needed are removed; levees are set back to give more room for rivers to naturally overflow where appropriate, rivers are reconnected to their floodplains, and homes and businesses are moved out of harm's way; and rivers, wetlands, and coasts that have been damaged (and continue to be damaged) by Federal water resources projects are restored.

It is also essential that the P&G establish a framework for making rapid decisions regarding rebuilding or utilizing new approaches after disasters strike. These types of decisions are becoming increasingly important to assure public safety, and are becoming increasingly costly. Yet, the framework for making such decisions under both the current P&G and the proposed Principles is entirely inadequate to guide these critical decisions.

6. The Proposed Principles Fail To Create A Framework For An Improved Planning Process, But Instead Perpetuate Existing Planning Process Flaws

In addition to the concerns raised throughout these comments, the proposed Principles also perpetuate key flaws in the Corps' current planning process. For example:

- (a) Climate Change (8. Evaluation of Plans). The proposed Principles fail to provide the guidance needed for ensuring that water resources projects are appropriate and adequate in the face of the impacts that we will see as the earth's climate continues to change. This is a fundamental failing in the proposed Principles. Indeed, despite the scientific consensus on the increased floods, droughts, storms, and sea-level rise that will result from climate change, the proposed Principles make only a single passing mention to this critical issue: "evaluating the effects of each alternative plan includes, but is not limited to . . . impacts and potential effects of climate change"
- (b) Problem Analysis (3. Overview). The proposed Principles fail to provide critical guidance to ensure full and proper identification, evaluation, and assessment of the alleged water resources problem. Such an analysis is essential for sound water resources planning. For example, when a community or interest group maintains that there is a flooding problem that must be resolved, the Corps should fully examine whether there in fact is a problem that needs to be addressed, the cause of the problem (if there is one), and whether the problem is one that is appropriate for resolving through federal investment. Similarly, in evaluating an alleged flooding problem the Corps should also independently investigate the circumstances and any potential adjustments to existing circumstances that would make it more beneficial to allow the natural flooding processes to operate.
- (c) Watershed Planning (4. Watersheds; 7.1 General Considerations). The proposed Principles fail to provide guidance regarding the elements of a sound watershed analysis. In addition, the proposed Principles only promote "synergy with other entities watershed plans." If a good watershed plan exists, then Federal water resources projects should be consistent with the goals, objectives, and strategies of that watershed plan. Ideally, a sound watershed plan should be developed before individual projects are considered, planned, or constructed.

- (d) Science Based Analysis (5. Science Based Analysis). While the Conservation Organizations agree that a decision will be of the highest quality “when it is founded on the best available data and models with high degrees of accuracy in hydrology, engineering, geology, ecology, other physical and life sciences, economics and other relevant social sciences,” the proposed Principles fail to commit the Secretary to ensuring that all water project planning conducted by the Corps shall be based on the highest quality science, analyses, and decision making. The proposed Principles should clearly state this commitment and lay out steps to ensure that this commitment will be met.
- (e) Inclusion of Other Parties (6. Conditions). The proposed Principles fail to ensure that the Corps will fully and carefully consider the concerns and information provided by other agencies, affected groups and individuals, Tribes, and the public at large. The proposed Principles state only that these groups have the right to provide information. This falls far short of ensuring full and effective participation from other parties. The Principles should establish a standard for the Corps’ obligations to evaluate, analyze, and fully consider information provided by such other parties. The Principles should also establish a robust requirement for the Corps to share information being utilized by the Corps in project planning (as required by WRDA 2007) to ensure that other agencies, Tribes, and the public have access to this information in a timely manner to allow for meaningful public comment, and to promote transparency in the planning process.
- (f) Projection of with and without Plan Conditions (6. Conditions). The proposed Principles fail to establish an approach to assessing “future conditions” that will improve decision making. The proposed Principles essentially maintain the status quo approach to identifying “future conditions” in planning – and likely inject confusion into the current inadequate process – by allowing the Corps to simply “extrapolat[e] current conditions into the future.” This approach is far too simplistic to yield valid assessments of likely future conditions. The revision process should carefully evaluate and address significant improvements to the Corps’ approach for evaluating and planning for future conditions. As part of this process, the Secretary should consider significantly different approaches for projecting future environmental conditions and land use trends, and for projecting future economic growth or market trends. These are fundamentally different phenomena, are often fundamentally different in scope and long term impact, and thus warrant different approaches.

In the past, the Corps’ approach to identifying future conditions has led Corps planners to both ignore clearly foreseeable future environmental trends and to dramatically overstate economic and market growth. For example, the Corps has overlooked – and thus failed to account for – future conditions such as climate change, accelerating sea-level rise, reforestation, changes in land use, and urbanization. Such future conditions clearly have significant implications for water resources project planning.

On the other hand, the Corps has also relied on an unrealistic extrapolation approach to dramatically overstate likely future economic and market growth. For example, the Corps has repeatedly been able to economically “justify” navigation projects with navigation traffic projections that have never subsequently materialized. The Conservation Organizations believe that future economic or market trends should be used to economically justify a project only if the projected future trends are based on established and demonstrated current trends with substantial certainty, and should only be projected for limited periods into the future.

- (g) Regional Economic Development (8.2. Required Accounts). The proposed Principles seek to resurrect use of a Regional Economic Development (RED) account as part of evaluating alternative plans. The Conservation Organizations strongly oppose the resurrection of RED as a planning element in the revised P&G. In the past this account has often been misused to help justify projects that failed to significantly contribute to the national economy. We believe that investments of Federal tax dollars should not be based on the effects of Federal projects on local economies. It would be more appropriate to add considerations of regional interests in the evaluation of social effects or in understanding impacts on and/or needs of low-income residents and communities.

B. The Process Being Utilized To Revise The P&G Is Unacceptably Truncated and Limited

As discussed above, much has changed in the 25 years since the current P&G were enacted. Congress has recognized that these changes mandate a fundamental transformation in the direction of water resources planning. Congress also clearly contemplated a full, open, and comprehensive deliberative process for revising the P&G, as it directed the Corps to consult with other federal agencies and the public, allowed a full two years for the undertaking, and specified that the revised P&G implement new policies and utilize new approaches and methodologies.

Regrettably, however, the Secretary is not utilizing the type of robust process necessary to effectively revise the P&G. The Conservation Organizations strongly object to the current revision process⁶ for at least the following reasons:

- (1) The Conservation Organizations believe it is inappropriate to bifurcate the revisions of the Principles from the revisions of the remainder of the Standards and Procedures component of the Principles and Guidelines.
- (2) The limited 30-day period for public review provided by the September 12, 2008 Federal Register notice, and the seven day extension of that public comment period, is far too short to allow truly meaningful public input on such a complex and important issue.

⁶ The Conservation Organizations also objected to the process being utilized to revise the P&G in our June 5, 2008 comments.

- (3) Critically, the process used to develop the revisions has been far too truncated and has not involved the requisite information gathering and analysis needed to establish a sound basis and direction for the revisions. Not surprisingly, the process utilized by the Secretary has failed to engender the open and thoughtful deliberation and consultation among other agencies, stakeholders, and the public that is essential for ensuring that the new P&G will meet the Nation's 21st Century water resources needs and the mandates established by WRDA 2007.

Sound revisions to the P&G require a clear understanding of: the Nation's overarching water resources issues and challenges, particularly in light of the impacts of increasing urbanization and global climate change; the provisions of the existing P&G that would work against the new national water policy and other applicable legal requirements; and current methods of planning and valuation. In carrying out the revisions, it is particularly important to:

- Understand – and account for – the impacts of climate change on our nation's water resources and the enormous role that healthy rivers, wetlands, and coasts can play in buffering the effects of climate change;
- Understand – and account for – needed improvements to: the Nation's approaches to floodplain management; protecting and restoring the functions of natural systems; and utilizing non-structural approaches to water resources development and management in light of new national policies;
- Understand – and account for – the role that the current P&G have played in the significant underutilization of nonstructural approaches to solving water resources problems, and in the many exaggerated navigation traffic estimates that failed to materialize after projects were completed;
- Address the numerous problems with the P&G that have already been identified in reports issued by the National Research Council of the National Academies, the Government Accountability Office, the Department of the Army Inspector General, and others; and
- Identify and address other key issues and questions.

Understanding these wide-ranging issues may require commission of key studies, and certainly will require the engagement of a broad array of experts, academics, economists, hydrologists, biologists, other scientist, other federal agencies and governmental entities, and the public.

It should be noted that in developing the original Principles and Standards, the Water Resources Council had the benefit of substantial expert and contemporary analysis provided by federal agencies, experts, and the public. This included the findings and recommendations of a study carried out by the National Water Commission, *Water Policies for the Future*, that explored the past and present state of U.S. water resources development and provided a detailed analysis of the Nation's future water resources development needs. In carrying out that report, the National Water Commission had contracted for more than 60 substantive reports and background studies

to inform both its recommendations and the planning recommendations of the Water Resources Council. Indeed, each time the Principles and Standards and the P&G have been revised in the past, the process has included substantial gathering of information, formal studies, workshops, public hearings, and many opportunities for the public to be involved each step of the way.

We strongly urge the Secretary to modify the current P&G revision process and take the fullest opportunity to make revision of the P&G a thoughtful and iterative process that provides the time needed to work with other water-related agencies, stakeholders and the public. The current revision process has failed utterly to provide for the open deliberations that are so essential. The truncated and relatively closed process is unduly narrowing the scope of the evaluations and considerations that are essential for producing the next generation of the P&G.

C. Fundamental Revisions to the Principles Are Required

The nation can no longer afford the status quo – or some minor amendment to the status quo – approach to planning water resources projects. To the contrary, a healthy future demands a fundamentally different approach to project planning. The Conservation Organizations recommend that the Corps abandon its current proposed Principles, and utilize the type of robust and open process described above to revise modernize the P&G as required by law. The new Principles should include at least the following provisions:

- (1) Maintaining and restoring the health of our nation’s rivers, streams, and wetlands – and the many ecosystem services that they provide – is the highest priority for project planning. All projects shall be designed to work with, and maintain, the integrity of natural systems (including a rivers’ natural instream flow) to the maximum extent possible.
- (2) No project shall be proposed or constructed unless it has been fully and comprehensively evaluated to ensure that the project will not put the public at risk. This must include an assessment of the potential for unintended consequences (for example, flood protection or navigation projects that increase flood heights downstream or promote new development in floodplains, unacceptably low levels of protection from structural flood control projects, funneling storm surge through navigation channels, inadequate design and construction techniques that could lead to catastrophic structural failures).
- (3) No project shall be proposed or constructed unless the Corps has fully and comprehensively evaluated the appropriateness and adequacy of the project in the face of the known consequences of global climate change, including increased floods, storms, droughts, and sea level rise; and the critical value of healthy rivers, streams, wetlands, and coasts in buffering communities, and fish and wildlife, from such climate change impacts.
- (4) No project shall be proposed or constructed unless the Corps has fully and independently analyzed, evaluated, and properly defined, the problem that needs to be addressed. For example, when a community or interest group maintains that there is a

flooding problem that must be resolved, the Corps should fully examine whether there in fact is a problem that needs to be addressed, and whether the actual problem is one that is appropriate for resolving through federal investment. For example, we would posit that repeated high water on low lying agricultural land is not a flooding problem. Instead, the problem is more properly defined as the natural system limiting agricultural income. In such a case we would also argue that addressing that “problem” by constructing a project to increase agricultural income is not an appropriate investment of federal resources, particularly when the environment must be damaged to do so. Similarly, in evaluating a so-called flooding “problem,” the Corps should independently investigate whether it is actually more beneficial to allow the natural flooding process to take place.

- (5) No structural project shall be constructed if a non-structural approach would solve the problem. If there is a way to address the properly defined problem through non-structural approaches, then the study of structural approaches *should not proceed*. For example, would upstream wetland and stream restoration resolve a downstream flooding problem? Could traffic congestion on a river be addressed through scheduling or crew training instead of through construction of new locks?
- (6) If a portion of the problem could be addressed through non-structural approaches then any further study should include those non-structural approaches as the first and mandatory elements of any plan recommended by the Corps. In such cases, structural approaches should be used only to the extent that they are needed to address the remainder of the properly defined problem.
- (7) Projects that encourage development in undeveloped floodplain areas shall not be considered or constructed.
- (8) Future economic or market trends should be used to economically justify a project only if the projected future trends are based on established and demonstrated current trends with substantial certainty, and should only be projected for limited periods into the future.

Conclusion

The Conservation Organizations believe that the Nation requires a fundamentally new approach to water resources project planning that places the primary emphasis of project planning on protecting and restoring the Nation's water resources. We urge that the revisions to the P&G produce this vital shift, and that the Secretary establishes a full and open process for ensuring the most effective revisions to the long-outdated P&G.

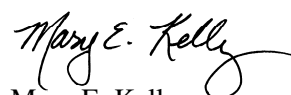
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