

**Comments Submitted By 100 Organizations**  
**Draft Interagency Guidelines Related to the Economic and Environmental Principles and Guidelines**  
**For Water and Related Land Resources Implementation Studies**

June 27, 2013

Submitted Via Online Form

<http://www.whitehouse.gov/administration/eop/ceq/initiatives/PandG/submit-comments>

Dear Chair Sutley:

The undersigned 100 national, regional and local conservation, community, taxpayer, and professional organizations appreciate the opportunity to provide comments on the draft Interagency Guidelines related to the Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies (78 Fed .Reg. 18562 and 78 Fed. Reg. 31521). These comments are in addition to any that the organizations may submit separately.

Our organizations have extensive experience working to solve water-related challenges at the local, regional, and national levels. Our members and supporters have experienced firsthand the loss and degradation of vital wetlands, floodplains, coastal resources, and rivers due to federal water projects that have been poorly planned, constructed, and operated. While the concepts embodied in the *Economic and Environmental Principles and Requirements for Water and Related Land Resources Implementation Studies* (P&R) are a positive step forward, they fall far short of what is needed to transform federal water resources planning and will not put an end to wasteful water projects that needlessly put our economy, environment and public safety at risk.

One of the most problematic provisions of the P&R is the overly vague project selection standard, which requires that projects are to be justified by public benefits as compared to costs; public benefits are very broadly defined to include social, economic, and environmental considerations whether monetized or non-monetized, quantified or un-quantified. This decision standard fails to provide any meaningful direction to federal agencies. The problems created by this vague decision standard are compounded by the draft Interagency Guidelines which, as written, do not give the Army Corps of Engineers (Corps) or other federal agencies the direction they need to implement this standard to ensure that federal water projects are in the national interest and effectively address water resource challenges. Instead of providing this critical guidance, the Interagency Guidelines impose the Corps' complex, bureaucratic and flawed planning process on other agencies.

To address the water resource challenges facing the nation from the increased storms, floods, and droughts caused by our changing climate, the Interagency Guidelines should require the federal agencies to adopt a new planning process driven by full and effective compliance with federal law and policy. Our organizations urge you to adopt the specific recommendations outlined below to achieve this goal. These recommendations are based on lessons learned by our organizations through decades of experience in water resources law, policy, advocacy and application.

**I. The Interagency Guidelines Should Ensure Implementation of the National Water Policy**

The Interagency Guidelines should provide the direction needed to ensure that federal water resources projects comply with federal law, the national water policy established in the Water Resources

Development Act of 2007 (42 USC 1962-3), and the goals and objectives established in the P&R. To do this, the Interagency Guidelines should ensure that a water resources project or program addresses a problem that is appropriate for federal investment, utilizes the most environmentally protective measures possible, and complies with applicable federal and state laws.

Federal law and policy require use of the least environmentally damaging alternatives practicable along with extensive efforts to avoid adverse impacts to the nation's waters. The national water policy also requires that projects protect and restore the functions of natural systems, mitigate any unavoidable damage to natural systems, and avoid unwise use of floodplains. 42 USC 1962-3. The language recommended below seeks to ensure that these policies drive project planning in the first instance, rather than acting as mere constraints on final project selection. A planning process that utilizes the process recommended below will solve water resources problems while protecting and restoring healthy rivers, floodplains, coasts, and wetlands. These systems are nature's best defense against storms and floods, provide clean water, recharge groundwater, provide key recreational opportunities, and provide critical fish and wildlife habitat.

Science and experience show that the most effective and sustainable way to restore a damaged ecosystem is to restore the natural functions and processes that will allow the system to heal and become self-sustaining. The P&R fails to adequately recognize the unique characteristics and goals that set restoration apart from other water resources projects. The language recommended below would help ensure that federal restoration projects will actually restore the environment.

Our organizations urge you to include the recommended language in the final Interagency Guidelines to provide the direction needed to ensure that federal agencies select programs, projects, and operating plans that effectively implement the P&R in a timely manner.

**Recommended Language:**

*“Implementing the Federal Objective and Plan Selection Standard—To ensure that federal water resources investments fulfill the national water policy, comply with applicable federal and state laws, and fulfill the federal objective and planning principles established in the Principles and Requirements, federal agencies shall comply with the following requirements:*

1. When planning programs, projects, and operating plans to reduce flood damages, reduce storm damages, support navigation, provide water supply, or support food or energy production, federal agencies:
  - a. Shall first evaluate, and absent a finding of overriding consideration shall select, a program, project or plan that utilizes nonstructural, water efficiency, and/or restoration of natural systems approaches where such approaches will solve all or a portion of a water resources problem and are practicable. Such approaches shall be presumed to be available and practicable unless clearly demonstrated otherwise;
  - b. Shall select a program, project or plan that protects and restores ecosystem functions and processes or that protects and increases environmental quality, over one that does not; and
  - c. Shall select a program, project or plan that increases the resiliency of natural and human communities to climate change and more intense storms, floods, and droughts over one that does not.

2. When planning ecosystem restoration and ecosystem management programs, projects, and plans, federal agencies shall utilize cost-effective measures that restore, enhance, and protect ecosystem functions and processes to improve ecosystem health, sustainability, and resiliency. The public benefits of such measures shall be deemed to exceed project costs.
3. When planning a water resources program, project, or operating plan, federal agencies:
  - a. Shall not select a program, project or plan when other less environmentally damaging alternatives to address the water resources problem are available and practicable, as required by federal law;
  - b. Shall not select a program, project or plan that fails to avoid adverse impacts to the environment to the maximum extent practicable, as required by federal law;
  - c. Shall not select a program, project or plan that produces adverse environmental impacts that cannot be mitigated;
  - d. Shall not select a program, project or plan that includes construction of levees, floodwalls, or other similar structures to protect undeveloped floodplains or to facilitate the intensification of development in undeveloped floodplains or at-risk coastal areas; and
  - e. Shall not select a program, project or plan that precludes maintenance of ecologically sound river flows.
4. To avoid the unwise use of floodplains, as required by 42 USC 1962-3 and the Principles and Requirements, federal agencies:
  - a. Shall not select a program, project, or plan that utilizes structural measures located in, or adversely affecting, floodplain areas when nonstructural measures, water efficiency, and/or restoration of natural systems within the watershed could effectively resolve or minimize the water resources problem. Such approaches shall be presumed to be available and practicable unless clearly demonstrated otherwise;
  - b. Shall not select a program, project, or plan that includes construction of levees, floodwalls, or other similar structures in floodplain areas to protect currently undeveloped land, or to facilitate the intensification of development;
  - c. Shall not select a program, project, or plan that adversely impacts floodplain areas that provide important fish or wildlife breeding, spawning, rearing, nesting, foraging, or migratory habitat; and
  - d. Shall not select a program, project, or plan that undermines or works against other activities within the watershed that are funded in whole or in part by the federal government to protect and restore floodplain areas.”

**II. The Interagency Guidelines Should Ensure Transparency And Consistency In the Planning Process, But Should Not Impose the Corps’ Process on All Federal Agencies**

Instead of providing the guidance needed to ensure that federal agency programs, projects, and operating plans will satisfy federal law, the Federal Objective, and the Plan Selection Criteria, the draft Interagency Guidelines impose the Corps’ complex, bureaucratic and flawed planning process on other agencies. *Compare* Draft Interagency Guidelines at 11 to 18 with the Corps’ Six Step Planning Process (<http://planning.usace.army.mil/toolbox/process/Six%20Step%20Planning%20Process.pdf>). The steps used to analyze projects and the methods for displaying project evaluations are more effectively addressed through the development of agency specific guidelines. The provisions at pages 11 to 18 of

the draft Interagency Guidelines should be substantially revised to direct the agencies to develop agency specific guidelines that will result in a consistent and transparent review process. The Interagency Guidelines should not impose the Corps' planning process on other agencies.

### **III. The Interagency Guidelines Should Require Full Analysis for Project Operations and Post-Authorization Project Reviews**

The Interagency Guidelines should explicitly require "full analysis" for evaluating and recommending actions to operate federal projects and for post-authorization project reviews. These activities are currently excluded from "full analysis." Draft Interagency Guidelines, Table 1 at 6.

As noted by the National Academy of Sciences, the nation's water resources infrastructure is largely "built out" and there are both fewer needs and fewer opportunities for new water infrastructure construction. National Academy of Sciences (2012) *Corps of Engineers Water Resources Infrastructure: Deterioration, Investment, or Divestment?* As a result, a large component of the Corps' future activities will involve operations and maintenance and major rehabilitation of existing projects. These activities should be subject to "full analysis" under the P&R to ensure they are being operated under modern planning criteria and addressing current needs.

The Corps also has a more than \$60 billion project backlog that, with the Corps' limited construction budget, will take decades to construct. As a result, the Corps may be required to reevaluate many of these projects before they are constructed. Such reviews should be subject to "full analysis" to ensure that projects constructed decades from now utilize modern criteria and address actual needs.

### **IV. Conclusion**

The nation faces increasingly limited federal funding for water projects at the same time that communities across the country are suffering from the unintended consequences of many already-constructed water resources projects, more intense storms like Hurricane Sandy, more frequent and intense floods and droughts, and rapidly rising sea levels. To address these challenges, the Interagency Guidelines must require the federal agencies to adopt a new planning process driven by full and effective compliance with federal law and policy. Our organizations urge you to adopt the recommendations made in these comments to achieve these goals.

Sincerely,

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