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February 24, 2010

TO: Council on Environmental Quality
Attn: Terry Breyman
722 Jackson Place, NW
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FROM: National Association of Flood and Stormwater Management Agencies

SUBJECT: NAFSMA Comments on December 3, 2009, "Proposed National Objectives, Principles and Standards for Water and Related Resources Implementation Studies"

Thank you for the opportunity to comment on the December 3, 2009 "Proposed National Objectives, Principles and Standards for Water and Related Resources Implementation Studies." We recognize the difficulty in writing Principles and Standards for such a variety of water resources projects. Since the National Association of Flood and Stormwater Management Agencies (NAFSMA) is an organization of local, regional, and state flood and stormwater management agencies, our comments are from the flood risk management perspective. Many of our member organizations have written planning standards and procedures, have experience with planning studies that balance multiple objectives, worked closely with stakeholders from varied backgrounds, and have actual experience with federal agencies and requirements on water resource projects. Most of our members are local sponsors, or non-federal partners, for Corps of Engineers studies and projects; and many have utilized FEMA's mitigation grant programs to reduce flood risks in their communities.

NAFSMA commends the federal water resource agencies under the direction of CEQ for moving forward with updating the Principles and Guidelines to help our Nation address challenging water resource issues for many years to come. While NAFSMA supports and agrees with most of the December 3 draft Principles and Standards document, we feel there are some areas where clarifications or changes are needed so federal and non-federal partners can work together efficiently to identify and implement water resource projects.

NAFSMA comments are presented below in three categories – What We Like, Our Concerns, and Recommendations.

What We Like

- Objectives that are important at the local and regional level are stressed – economic well-being, environmental benefits, and social equity when applied to water resources for flood risk reduction, water supply, fish and wildlife, ecosystem services, recreation, public health and safety, and many other purposes.
- The inclusion of a full analysis of nonstructural approaches, including a commitment to communicate risks, residual risks, and means of mitigating risks in floodplains.
- Acknowledging public safety as an important factor in evaluating alternatives.
- Acknowledging the need to treat all income levels and communities equally and without bias while evaluating alternatives.
- Encouraging the use of professional judgment, along with sound rationale and documentation of assumptions, where data may be lacking.
- Planning fundamentals necessary for successfully completing any planning study are captured and well summarized.
- The recognition of the importance of local, regional, and state involvement in federal water resource studies and projects. Particularly, recognizing the need to integrate plans developed by others, where appropriate. In some cases, the federal project is just one of several water resources projects in a watershed being studied, implemented, or operated by various entities.

Our Concerns

- Water resources planning should strive to balance economic, environmental, and social benefits; while at the same time recognizing that these areas are in fact interrelated and interdependent. As proposed, the new Principles and Standards seem to favor environmental protection and restoration over economic and social benefits. While we understand that historically there may have been too strong a bias toward economic benefits, future water resources planning should recognize and emphasize the equal importance and interdependency of economic, environmental, and social factors.
- In this severe economic downturn and the need to manage the flood risk and put people to work, undue procedures would make the federal government fail on both accounts. The federal government needs to keep in mind that we are not close to recovery and we need to put people to work to stimulate the recovery. The only way to accomplish this is to streamline processes and permitting. Even when the economy is healthy a streamlined planning and permitting process is key to maintaining a healthy, sustainable economy, environment, and society.
- Because this document will eventually guide billions of dollars worth of decisions and project work, it is imperative that all terms are extremely well- defined, that no ambiguity exists unless specifically warranted, that vague language is eliminated, and that process is clearly separated from ideals, goals and objectives. The document suffers from a blending of policy and process, and would benefit from a clear and hierarchical separation between Objectives, Principles, Standards, Guidelines, and Procedures. These terms and similar ones are often used interchangeably in the document. Therefore, a clear “roadmap” of critically important terms, their definitions, and their placement or role (hierarchical) within the document is necessary at the outset of the document. Other words that appear to be blurred are Study, Project, and Alternative. The terms should be clearly defined and used specifically. For example, the Standards in Chapter 2 generally describe or justify the Principle, rather than establishing clear performance standards against which achievement of that Principle would be held.
- The Planning Guidelines and Procedures on page 3 explain how the various parts of the Federal Water Resources Planning Process will be developed. The overall plan is reasonable; however, for a study to be successfully completed, the Interagency Guidelines and Agency-Specific Procedures will need to be

developed in conjunction with input from local sponsors and non-federal partners. In addition, with a government that is open and transparent, serves the public and needs to manage the flood risk/environment in a timely manner, each agency's procedures should be made available for public comment. Also, prior to adopting the specific procedures, the agency should confirm broad local sponsor and public support.

- Even though there are 11 “local” references in the draft document, it is our belief that active participation from the local sponsor during all phases of the planning process is critical to the success of any federal water resources study and subsequent project. In the case of Corps of Engineers flood risk reduction projects, the local sponsor is an active partner with the federal government in terms of contributing funding, knowledge, and expertise.

Recommendations

NAFSMA recommendations are presented below in three sections – General, Prologue, and Specific.

General

- NAFSMA members are concerned that the new Principles and Standards will make the planning process even longer, more expensive, and more difficult than it is now. To fully appreciate how these new Principles and Standards will change the Corps of Engineers planning process, NAFSMA recommends that the Corps and NAFSMA work through an example flood risk reduction study from initiation to completion while the National Academy of Science is preparing their comments. Because NAFSMA member agencies have extensive experience with different local conditions, different Corps Districts, and different stakeholders, NAFSMA can provide an evaluation of how the proposed Principles & Standards might perform. This effort could help not only completion of the Principles and Standards, but also development of the Interagency Guidelines and Agency Specific Procedures that can streamline the process.
- In the past three decades, prioritizing federal water resources projects for federal funding has primarily been based on economic performance. In the past decade, this has gotten more difficult with the recognition of the importance of environmental and social factors. Since these new Principles and Standards will require inclusion of environmental and social factors in evaluating and selecting alternatives, it will be more difficult to prioritize projects for federal funding. NAFSMA recommends that the federal government develop budget prioritization guidelines for water resources projects in conjunction with the development of the new Principles and Guidelines.
- NAFSMA recommends that the Corps of Engineers not try to amend existing guidelines and procedures to comply with the new Principles and Standards, but start over using applicable parts of the existing guidelines, taking every opportunity to streamline the process, and incorporating Lean approaches in all procedures. Also, there may be discoveries made while developing the Interagency Guidelines and Agency Specific Procedures that necessitate making revisions to the Principles and/or Standards. Please remain open to making necessary changes.
- NAFSMA recommends that the Corps of Engineers and ASA (CW) use this opportunity to also streamline the overall review and approval procedure in coordination with the new Principles and Standards including identification of critical decision points. Again, the Lean approach can be fully utilized to make good use of shrinking federal resources.
- NAFSMA members have experienced various degrees of success in working with federal agencies on identifying, evaluating, and recommending environmental options in water resources studies and projects. The challenges have ranged from federal environmental agencies not actively taking part in a study to inconsistencies within and between agencies. For these new Principles and Standards to be successful, improvements and increased funding within the federal environmental agencies will be necessary.
- In the appropriate location within the Principles and Guidelines, clarify study authorization criteria, alternative selection criteria, project authorization criteria, and decision points within the planning process.

Prologue

- The separate prologue or cover letter creates confusion and diminishes the importance of the subjects covered, particularly the Applicability and National Objectives. We recommend it be incorporated directly into the Principles and Standards document and listed in the Table of Contents.
- Section 2. Applicability - This is an important part of the proposed update of the Principles and Guidelines because it has the potential of affecting many ongoing water resources studies. NAFSMA recommends this section be reconsidered for the following reasons:
 1. Federal agencies will not be able to implement the new Principles, Standards, and Interagency Guidelines until the Agency-Specific Procedures are developed and adopted. Implementation needs to occur a reasonable time after Agency-Specific Procedures are adopted.
 2. The term “completed” referring to studies needs to be clearly defined. For example, completion of Corps of Engineers studies is relative depending on the type of study and where in the process one defines completion.
 3. For studies that are well underway and nearing “completion,” the new Principles, Standards, Interagency Guidelines, and Agency-Specific Procedures could result in having to redo a substantial portion of the study effort. While the six-month transition time in the proposed Principles and Standards may cover some on-going studies, it will not cover all of them.

For ongoing studies, NAFSMA recommends the local sponsor be allowed the option of continuing to use the 1983 P&G or applying the new P&G. All studies commencing after adoption of the new P&G would comply with the new P&G.

- Section 3. National Objectives of Water Resources Planning – While NAFSMA generally agrees with the apparent stated objectives in this section, it is confusing how it is written. Since the Principles and Standards reference compliance with the National Objectives, it is very important that these objectives be clearly written for all to understand. Below is a suggestion for consideration:

“America’s water resources – streams, rivers, wetlands, estuaries, lakes, and coasts – are at the heart of our economy, our environment and our history. These water resources support billions of dollars in commerce, provide drinking water for millions of Americans and supply needed habitat for fish and wildlife and other benefits.

The national objectives of water resources planning are to:

- reduce risks, vulnerabilities, and losses due to natural disasters,
- improve the economic well-being of the nation for present and future generations, and
- protect and restore the environment.

Identifying projects that meet these objectives will require a collaborative effort between the federal agencies, non-federal partners, and stakeholders; as well as sound science, knowledge, and experience. By utilizing these updated Principles and Standards, the United States will demonstrate leadership by modernizing the way the nation plans water resources projects.”

Specific

Page 1, line 14: Insert “interrelated, interdependent, and equally important four” before “principles.” This will help emphasize using a balanced approach among the Principles.

Page 1, lines 15-16: Strike “It is the policy of the United States that all federal water resources implementation studies shall.” These are principles, not policies, and this sentence is redundant.

Pages 1 and 2: The list of Principles also includes methods and controls. For clarification, we suggest the following:

“Principles:

1. Incorporate public safety
2. Encourage sustainable economic development
3. Protect the environment and, if feasible, restore natural ecosystems
4. Use floodplains, flood-prone areas, and ecologically valuable areas wisely

The following eleven Standards are established to achieve the Principles in water resource implementation studies:

- a. Utilize watershed and ecosystem based approaches
- b. Utilize best available science, practices, analytical techniques, procedures, and tools
- c. Apply a level of detail commensurate with the potential decisions
- d. Account for the benefits and costs in appropriate monetary and non-monetary terms
- e. Account for ecosystem services
- f. Account for significant effects and mitigate any unavoidable adverse impacts to natural ecosystems
- g. Account for social and community effects
- h. Address risk and uncertainty, including the effects of future development and climate change
- i. Ensure environmental justice for low income, tribal and minority communities
- j. Ensure the planning process is fully transparent and inclusive
- k. Collaborate implementation study activities broadly”

The following Principles and Standards were modified because:

Principle 3 – Protecting the environment would apply to all potential projects, but restoring natural ecosystems would not.

Principle 4 – Reworded to be consistent with other Principles.

Standard g – This one was added because the effects are described in the Planning Process but are not covered in the Standards.

Standard h - In flood risk reduction studies, the effects of future development on flood levels are considerably greater and more accurately predicted than possible changes due to climate change.

Move, and modify as necessary, the descriptions of the four Principles from Chapter 2, “Standards” to Chapter 1, “Principles.”

Pages 1 and 2: One of the National Objectives is social benefits. A social benefit that has successfully been incorporated into water resources projects is recreation. Even though recreation is not a primary project purpose that can justify a project, we recommend it be mentioned in the Principles and Standards.

Page 2, line 25: In 2.E., replace “all” with “only.” The word “all” may lead to more alternatives than is reasonable, and lead to unnecessary analytical and evaluation work.

Page 2, line 44: At the end of the sentence, add “while accommodating local and regional objectives to the extent practicable.” Local and regional objectives need to be considered, as well, in selecting the plan. Make corresponding revisions in the subsequent chapters of this document.

Page 3, lines 3-4: Is the Water Resources Council going to be revived?

Page 4, line 33: Strike “watershed plans.” Add the following paragraph after paragraph B – “The Principles and Standards are not required to be used for developing watershed plans, but it is suggested the principles, standards, and guidelines that are applicable to the specific study be followed.”

Page 6, lines 1-5: Strike this paragraph “The concept of ecosystem services provides an approach to evaluating the ways in which ecological systems, and changes to those systems induced by human actions, affect human well-being. Ecosystems, however, can also be valued not only for the services they provide to humans directly or indirectly, but for other reasons, including intrinsic natural values such as biodiversity.” This paragraph is repetitive and too detailed for the Standards. It could be included in the guidelines.

Page 6, lines 23-26: Avoiding and minimizing actions and changes in floodplains and flood prone areas is a preferred alternative, however, it is sometimes the best alternative when all economic, environmental, and social factors are considered. If the intent of this statement is to prevent all development in the floodplain/flood prone areas, it will be a problem in some urban and developing areas of the U.S. and it violates one of the principles – “encourage sustainable economic development.”

Page 6, lines 28-29: While moving damageable properties and critical infrastructure out of flood prone areas is a preferred alternative, it is sometimes not practical. Recommend modifying the wording to allow moving structures out or reducing the flood risk in place. Some structures can be elevated, and structural alternatives to reduce inundation frequency are options, as well. Suggested wording – “Help communities move damageable properties and critical infrastructure out of flood-prone areas or reduce the chance of flooding in place to reduce repetitive losses and risks to life.”

Page 9, line 26: Strike “No data over five years old.” Time periods should be handled in the Agency-Specific Procedures. The problem is that Corps of Engineers’ studies are rarely completed in less than five years, and many take longer than 10 years. This requirement would lengthen the study due to having to update data. Instead of using a time limit, say that if existing data is no longer valid or representative of current conditions, then new or updated data must be collected. Suggested wording - The data used shall be the best available and updated as necessary to represent current and future conditions. Long-term data sets used to establish historical events, trends and patterns would not need to be updated.”

Page 9, lines 36-38: Some agencies could easily interpret this sentence regarding the level of peer review as the only two options. Recommend inserting this option between the two referenced – “reviews by appropriate professionals in the field or professional associations.”

Page 11, lines 14-15: Standard I, Address Risk and Uncertainty, Including the Effects of Climate Change and Future Development includes a description of climate change, but not future development. We recommend adding a paragraph on watershed changes that includes future development. As stated earlier, the effects of future development on flood levels are considerably greater and more accurately predicted than effects of climate change. Also, other possible future changes in the watershed should be evaluated besides future development. For example, changes in agricultural practices may occur in rural areas and public work projects can impact watershed conditions in urban areas already developed.

Page 11, lines 34-39: Strike “The increased variability in temporal and spatial patterns of precipitation and water availability will challenge water systems serving all human needs. From specification of existing problems and opportunities to the formulation, evaluation and selection of plans, the accelerating changes in aquatic systems caused by a changing climate should inform our understanding of what our water resource needs are and how we can realistically respond to those needs.” These sentences are explanations and do not add to the understanding of a Standard. It could be included in the guidelines.

Page 12, lines 9-21: NAFSMA is and has been a proponent for equity among all communities and income levels. Clear Interagency Guidelines will be important for uniform and consistent application of these requirements among the agencies.

Page 13, line 5: Strike “Overview of the.” The overview was presented in Chapter 1, Principles.

Page 13, line 27: Start the paragraph with “The planning process includes addressing the Principles and applying the Standards in order to ultimately recommend an alternative that meets the National Objectives.”

Page 13, line 27: Substitute “addressing” for “solving” in this sentence – “Planning is an orderly and systematic process for solving problems and ...” In many instances, we can only address problems, not solve them. (We reduce flood risks, we do not control floods.)

Page 13: The last paragraph on this page is a good description of the iterative nature of planning studies; however, it also seems to justify the need for expending excessive time and resources on planning studies. NAFSMA recommends adding this paragraph at line 44. “While the planning process can be iterative, a planning study must be completed in a timely manner and the agencies must recognize resources, funding, and patience are limited. The level of effort and detail must be commensurate with the type of study, the process step, and the anticipated scope and breadth of benefits of the project.”

Page 14, line 37 and 38: Strike “is generally the most” and insert “must be considered and may be the.”

Page 15, line 46 and page 16, lines 1-3: Where would one find the significant water and related resources problems and opportunities in the study area declared to be in the national interest by the Congress or Executive Branch?

Page 16, lines 14: Insert “Include applicable local, regional, and/or state study objectives” after the sentence ending in “... mission.” (An example of a local objective is no downstream increase in flood risks.)

Page 16, line 25: At the end of the sentence, add “at the federal and non-federal partner levels” in order to address constraints for all partners involved in the study.

Page 17, lines 12-14: Requiring an alternative to include compensatory mitigation is not appropriate. At the beginning of the second sentence, insert “Unless an alternative avoids or minimizes adverse impacts to ecosystem services,”.

Page 17, lines 39-42: The last line reads “The evaluation categories are used to provide information for the alternative comparison and recommendation process, however, no single category shall be the principal driving factor considered in alternative formulation.” While this statement is true in plan formulation, it is not necessarily true when comparing, screening, and selecting an alternative. It is helpful to rank the objectives and associated evaluation categories. Please include a short discussion in Step J, Compare and Screen Alternatives and Step K, Recommend a Plan.

Page 18, lines 38-46: This detailed explanation in the Monetary Effects Category is one of the few places in the Standards that are difficult to understand and may be too much detail for the Standards. Please remove or simplify.

Page 20, lines 5-6: Replace “Value is indicated by the scarcity and significance of ecosystem components” with “Value is indicated by the scarcity and significance of ecosystem components with a special consideration given to restoration of impacted ecosystems due to previously constructed federal projects.”

Page 21, lines 15-17: Does “Long-Term Productivity” also include sustaining and increasing jobs and job security in a community? The ecosystem example cited is important; we just want to confirm if human productivity is also included. Recommended adding another example such as “and addressing job growth and job security in a community.”

Page 22, lines 9-12: Allow other ways to express monetary costs and benefits than just average annual equivalent values. While these values are important, there are several other ways to express values that are also important and more easily understood by non-economists who will be evaluating alternatives and making decisions.

Page 22, lines 43-46 and page 23, lines 1-5: This is paragraph 3 under Step J. Compare and Screen Alternatives. Up to this point, this document uses the term “effects,” not “impacts” most likely because “effects” can be positive or negative, while “impacts” infers a negative effect. Please change to “effects” in this very important paragraph. In line 45 on page 22 and in line 4 on page 23, the word “categories” is more appropriate than “impacts.”

Page 23, lines 5-13: Strike “areas of special consideration, including achieving public safety, environmental justice, equal treatment for low income and minority communities, and the application of nonstructural solutions. When nonstructural alternatives or alternatives that would achieve environmental justice or equal treatment for low income and minority communities are screened from further consideration, the rationale shall be fully explained and highlighted in the decision document” and insert “other study objectives by addressing the Principles and applying the Standards.” During screening and evaluation of alternatives, all study objectives need to be considered, not just the National Objectives. Also, all Principles and Standards need to be addressed, not just some of them as indicated. If additional documentation is desired, then cover it in a documentation section of the Interagency Guidelines.

Page 23, lines 26-28: Strike these lines. This is not a “subject to” statement and does not fit in this section. If additional documentation is desired for this topic, then cover it in a documentation section of the Interagency Guidelines.

Page 23, lines 30-32: Substitute “the non-Federal preferred plan” for “other non-Federal plans.” This is intended to clarify the sentence.

Page 24: The Principle, Standard, Guideline, Procedure paradigm is good. Please define each term in the glossary to improve understanding with people not familiar with the federal planning process.

Page 24, lines 4-7: For Corps of Engineers studies and projects, a non-federal sponsor is required. We recommend substituting the following - “Acceptability is the viability and appropriateness of an alternative from the perspective of the nation’s general public and the local sponsor, consistent with existing federal laws, authorities, and public policies. It may, but does not necessarily, include local or regional preferences.”

Page 24, lines 13-14: It is not clear what “Associated Costs” are. Please add some examples.

Page 24, lines 20-21: “Cost effectiveness” is not used in the body of the document. Also, a cost effective alternative may not be the least cost. Cost effectiveness is determined when a relative measure or metric is compared to both benefits and costs.

Page 25, lines 4 and 7: Replace “opportunities” with “objectives” to be consistent with the planning process described.

Page 26, line 7: Include “home buyouts” as an example of nonstructural measures. It has been successfully used in many parts of the U.S.

Page 26, line 19: Replace “impacts” with “effects.”

Closing

NAFSMA is ready to discuss our comments, provide additional feedback, or assist with developing a working document for all concerned.

For additional information, please contact NAFSMA Flood Management Committee Chairman Steve Fitzgerald at steve.fitzgerald@ucfcd.org or 713-684-4060 or Executive Director Susan Gilson at sgilson@nafsma.org or 202-289-8625.