

Comments from 137 Conservation, Social Justice, Community, and Faith Organizations

April 15, 2024

Via www.regulations.gov

Stacey M. Jensen

Office of the Assistant Secretary of the Army (Civil Works)

108 Army Pentagon, Room 3E474

Washington, DC 20310-0108

Re: Docket ID: COE-2023-0005, Procedures To Implement the Principles, Requirements, and Guidelines for Federal Investments in Water Resources

Dear Ms. Jensen:

On behalf of our millions of members and supporters across the country, the undersigned **137** conservation, social justice, community, and faith organizations appreciate the opportunity to comment on the U.S. Army Corps of Engineers' (Corps) proposed Procedures to Implement the Principles, Requirements, and Guidelines for Federal Investments in Water Resources (the "ASPs").¹

Our organizations appreciate the work that has gone into developing the ASPs which, if effectively implemented, will drive project planning in a positive direction aligned with federal law and policy. Notably, the ASPs will assist planners in better accounting for the impacts of Corps projects on communities and the environment, including by requiring robust engagement with communities and Tribes during project planning. Importantly, the ASPs stress that Corps projects must protect the environment, and direct Corps planners to conduct robust assessments of natural and nature-based solutions and the implications of climate change as fundamental components of project planning.

The recommendations below highlight our organizations' strong support for key provisions in the proposed ASPs. Our organizations also recommend the inclusion of important additional guidance to assist planners in developing projects that comply with the Corps' many legal mandates to protect the environment, including the mandates to: protect and restore natural hydrologic processes; avoid unwise use of floodplains; use the least environmentally damaging practicable solution; fully mitigate adverse impacts to fish and wildlife and natural systems; and fully consider natural, nature-based, and non-structural measures.² We also urge the Corps to update the Policy for Conducting Civil Works Planning Studies (ER 1105-2-103) and the Planning Guidance Notebook (ER 1105-2-100) to fully incorporate the ASPs as soon as the ASPs are finalized.

Recommendations

Planning Methodology Framework: The ASPs should adopt the following planning methodology framework to assist planners in complying with federal laws and policies that guide Corps planning:

¹ A number of our organizations will also be submitting additional comments on Docket ID: COE-2023-0005.

² E.g., 42 USC 1962-3 (National Water Resources Planning Policy); 33 U.S.C. 2283(d) (Mitigation for fish and wildlife and wetland losses); 33 U.S.C.1344 (Clean Water Act § 404); Clean Water Act 404(b)(1) Guidelines; PR&G; 42 U.S.C. 4331 (NEPA Congressional declaration of national environmental policy).

Step 1: Corps planners should first explore solutions that use natural features, nature-based measures, nonstructural measures, or a combination of such features and measures to solve a water resources problem. If those solutions exist they should be prioritized. For flood and storm damage reduction projects, planners should explore the use of such measures both within and outside of the project area, including for example protecting and restoring upstream floodplains and wetlands. For navigation projects, planners should first explore whether such things as crew training, use of switch boats, appointment scheduling systems, improved maintenance of existing structures, and/or use of multimodal transport could address the identified problem.

Step 2: If the identified problem cannot be fully addressed by the measures identified through Step 1, Corps planners should then explore incorporating smaller scale structural measures to address the remaining aspects of the identified problem.

Step 3: Corps planners should explore larger-scale structural measures only if the measures identified through Steps 1 and 2 cannot address the identified problem.

Plan Selection Criteria: The ASPs should establish the following *minimum* plan selection criteria to further assist planners in complying with the full suite of laws that guide Corps planning:

Planners shall not recommend a project alternative if: (1) the alternative would increase or transfer flood risk onto another upstream or downstream community in excess of local or state floodplain regulations; (2) the alternative would result in disproportionate adverse effects on people of color, or low-income or vulnerable populations; (3) another less environmentally damaging practicably alternative could address the identified water resources problem; or (4) the alternative would result in environmental impacts that cannot be mitigated pursuant to 33 USC 2283(d).

Proposed § 234.2(r)—Unwise use of floodplains: Our organizations urge the Corps to modify the proposed definition of “unwise use of floodplains” to better support the avoidance of impacts to the well-recognized and vitally important values provided by floodplains to people and wildlife. Of particular concern are the proposed definition’s: failure to mention floodplain uses that would harm fish and wildlife; failure to define the parameters of a floodplain area; and suggestion that to qualify as an unwise use, an alternative must meet the inappropriately high bar of resulting in a floodplain “that is no longer self-sustaining.”³ The revised definition should be consistent with the implementing guidelines for E.O. 11988 (Floodplain Management) and E.O. 13690 (Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input), in defining the floodplain area and natural and beneficial floodplain functions and values.

Our organizations also urge that the ASPs include the following examples of activities that constitute unwise use of floodplains to assist Corps planners in achieving the primary intent of these Executive Orders, which is to avoid activities that impinge on the natural functions of floodplains and wetlands:

³ While our organizations strongly agree that an activity that would cause a floodplain to no longer be self-sustaining unquestionably qualifies as an unwise use, this standard establishes an inappropriately high bar for an unwise use determination.

Examples of projects and activities that constitute unwise use of floodplains include: (1) structural projects in floodplain areas when nonstructural measures, nature or nature-based measures, or ecosystem restoration either within the floodplain or within the watershed (either upstream or downstream) could effectively resolve or minimize the problem at hand; (2) new or enlarged levees, floodwalls, and other similar structures to facilitate or encourage the development of currently undeveloped floodplain land; (3) projects that divert floodwaters onto other communities (with careful consideration being given to both upstream and downstream impacts); (4) projects in or affecting floodplain areas that adversely impact important fish or wildlife breeding, spawning, rearing, nesting, foraging, or migratory habitat; (4) projects that eliminate an opportunity to restore the natural and beneficial floodplain functions, or that undermine or work against other federal or federally-funded efforts to protect and restore floodplain wetlands, streams, and rivers; and (5) projects in floodplain areas that would result in those projects being unacceptably vulnerable to flood damage.

Proposed § 234.6(3)(c)(1)—Environmental justice: Our organizations support this important subsection which explicitly establishes environmental justice as a guiding principle that the Corps seeks to promote through investments in water resources.

Proposed § 234.6(3)(c)(3)—Healthy and resilient ecosystems: Our organizations support the important aspects of this subsection that reemphasize the long-standing Congressionally-established Water Resources Planning Policy, including the statements that alternatives: “shall protect the existing functions of ecosystems”; and minimize and mitigated environmental impacts that cannot be avoided. However, to comply with the National Water Resources Planning Policy and PR&G Federal Objective, the word “may” must be deleted from the first sentence in this subsection, as follows: “Alternatives shall protect the existing functions of ecosystems and ~~may~~ restore the health of damaged ecosystems to a less degraded and more natural state.” Both the National Water Resources Planning Policy and PR&G Federal Objective explicitly state that “all water resources projects” should protect the environment by “protecting **and** restoring the functions of natural systems.” The restoration of the functions of natural systems is not an optional requirement.

Proposed § 234.6(d)—Collaboration: Our organizations support this important subsection which emphasizes the need for robust collaboration throughout the planning process with Tribes, underserved communities, other stakeholders, and the public at large. This subsection also emphasizes the longstanding requirement for the Corps to formally consult with Tribes on water resources projects.

Proposed § 234.7(b)(1)—Economic, environmental, and social effects: Our organizations support the vital aspects of this subsection which state that: the analysis of environmental effects and benefits, including ecosystem services must be a “core part of water resources alternatives analysis”; and that ecosystem services “are an important benefit-cost category that should be included in the benefit-cost analysis.” Our organizations recommend adding additional language to clarify that the Corps must account for the value of ecosystem services lost as a project cost, and account for the value of ecosystem services gained as a project benefit, as highlighted in the PR&G.⁴ The ASPs should further state that potential mitigation measures may **not** be used to offset the loss of ecosystem services as part

⁴ Final Interagency Guidelines for the Principles and Requirements, December 2014 at 21 (“Ecosystems provide services to people. . . .Reduced service flows over time amount to costs, and increased services flows over time amount to benefits.”)

of a benefit-cost calculation because such measures, while extremely important, have not demonstrated the capacity to offset the full array of ecosystem services lost.

Importantly, the ASPs should also clarify that they do not establish a new requirement for a positive, quantified benefit-cost determination to justify recommendation of an ecosystem restoration project.⁵ We also recommend that the ASPs direct Corps planners to base cost estimates on realistic projections of the project's: full life-cycle costs; likely construction start date; likely funding streams over time; and historical cost increases by project type and geographic location.

Proposed § 234.7(f)—Climate change: Our organizations support this important subsection which stresses that Corps planners are required to engage in a robust assessment of the implications of our changing climate (including more frequent and severe floods and storms) when planning projects and assessing project impacts. Importantly, this section directs planners to leverage the climate science and modeling developed by others, including for example, by using the sea level rise estimates developed by the National Oceanic and Atmospheric Administration.

Proposed § 234.7(i)—Tribal treaty rights: Our organizations support this important subsection which explicitly states that water projects “must be consistent with protection of Tribal Treaty rights.”

Proposed § 234.8—Final array of alternatives: Our organizations support this section which advances full consideration of natural, nature-based, and nonstructural solutions as directed by Congress. To more effectively advance meaningful consideration of such measures (including as important components of hybrid solutions), the ASPs should include the Planning Methodology Framework and Plan Selection Criteria recommendations discussed above.

Proposed § 234.9—Evaluate effects of alternatives: Our organizations support the aspects of this section that direct Corps planners to: “evaluate the economic benefits and costs, environmental benefits and costs, and social benefits and costs of alternatives, regardless of how they are included (monetized, quantified or described)”; and “fully account for the effects to society of alternative plans and their respective contributions to the Federal Objective, relative to the No Action alternative.” To more effectively achieve these objectives, the ASPs should include the Planning Methodology Framework and Plan Selection Criteria recommendations discussed above.

Proposed § 234.10—Compare alternatives: Our organizations recommend that the ASPs provide additional direction to assist Corps planners in determining how to “maximize” net benefits. This direction should prioritize environmental and social benefits, which are the focus of the PR&G and which for decades have borne the brunt of the adverse impacts caused by water resources projects. The ASPs should also include the Planning Methodology Framework and Plan Selection Criteria recommendations discussed above to help ensure that all alternatives compared by the Corps advance the Federal Objective and comply with federal environmental laws.⁶

⁵ As the Corps is aware, ecosystem restoration projects currently are not required to maximize National Economic Development, but instead are designed to increase the net quantity and/or quality of ecosystem resources.

⁶These changes would also help ensure that Corps projects comply with the federal environmental protection laws (including the requirements to select the least environmentally damaging practicable alternative), which is a fundamental prerequisite for maximizing public benefits. These changes would also help prevent Corps planners from feeling compelled or empowered to: continue the status quo approach to planning that prioritizes economic

While the ASPs tell planners to identify the alternative that “reasonably meets the Federal objective and maximizes net public benefits,” the ASPs do not provide any guidance on how to balance a particular project benefit against recognized project harms, or determine whether net public benefits are maximized. This is particularly problematic with respect to balancing environmental benefits against other benefit types as the preamble to the ASPs states that the “concept” of protecting, restoring, and mitigating the functions of natural systems “is embedded in the Corps’ compliance with environmental laws and regulations, such as the Clean Water Act and NEPA.”⁷ Regrettably, however, the Corps’ efforts to comply with the nation’s environmental laws has often proven to be inadequate to ensure that Corps projects protect and restore the nation’s waters (and has not - ensured that Corps planners are recommending the least environmentally damaging practicable alternative).

Indeed, the PR&G and recent Water Resources Development Acts make clear that Corps planners must do much more to protect and restore the nation’s vitally important water resources. This need is more critical than ever in light of the Supreme Court’s decision in *Sackett vs. the Environmental Protection Agency*, as recently confirmed by the Assistant Secretary of the Army for Civil Works. Notably, the ASA(CW) recently directed the Corps “to use applicable authorities and available resources to engage in specific actions **to protect, restore, and enhance** our Nation’s waters and wetlands that are now more vulnerable” because of the *Sackett* decision.⁸

Conclusion

Thank you for the work that has gone in to advancing ASPs that take important steps towards improving project planning. We urge the Corps to adopt the recommendations outlined in these comments to assist planners in effectively implementing the PR&G so that water resources projects can address critical needs while while protecting and restoring the environment and redressing pervasive environmental injustices.

Sincerely,

Stephanie Robinson
Authorized Signer
350 Wisconsin

Victoria Bradford Styrbicki
Executive Director
A House Unbuilt

Debra Campbell
Chairperson
A Community Voice - ACORN

Kevin Shockey
Founder and Executive Director
Ahora Inc.

development benefits at the expense of the other critically important social and environmental public benefits, or use ecosystem restoration projects to advance economic benefits at the expense of critically important and achievable environmental outcomes.

⁷ 88 Fed. Reg. at 12072.

⁸ Michael L. Connor Assistant Secretary Of The Army (Civil Works), Memorandum for Commanding General, U.S. Army Corps of Engineers, *Civil Works Actions to Sustain and Advance the Nation’s Waters and Wetlands After the Sackett Decision* (22 March 2024).

Charles Miller
Policy Director
Alabama Rivers Alliance

Pamela Miller
Founder and Executive Director
Alaska Community Action on Toxics

Eliza Evans
Climate Change Activist and Artist
All the Way to Hell

Don Jodrey
Director of Federal Relations
Alliance for the Great Lakes

Eileen Shader
Sr. Director, Floodplain Restoration
American Rivers

Caleb Raspler
Manager of Federal Government Affairs
American Society of Landscape Architects

Harriet Festing
Executive Director
Anthropocene Alliance

Cameron Baxley
Riverkeeper
Apalachicola Riverkeeper

Wanda Rios
President
Asociacion de Residentes de La Margarita, Inc.

Brian Moore
Vice President
Audubon Delta

Lindsay J. Brice
Policy Director
Audubon Upper Mississippi River

Kristen Schlemmer
Senior Legal Director & Waterkeeper
Bayou City Waterkeeper

Lilias Jarding
Executive Director
Black Hills Clean Water Alliance

Zappa Montag
Ecological Activist
Black to the Land

Anne Millbrooke
Designated Signer
Bozeman Birders

Karen Bareford
River Sustainability Director
Cahaba River Society

Connie Ramos-Williams
Executive Director
Calusa Waterkeeper

David Kyler
Executive Director
Center for a Sustainable Coast

Jonathan Compton
Executive Director
Center for Environmental Transformation

David M Iwaniec
Professor
Center for Urban Transformations

Renee Dolney
Director
Chalfant Run-Thompson Run Watershed Association

Keisha Sedlacek
Federal Director
Chesapeake Bay Foundation

John Koefel
President
Citizens Against Widening the Industrial Canal

Deb Katz
Executive Director
Citizens Awareness Network

Susan Liley
Co-Founder
Citizens Committee for Flood Relief

Jesse Deer In Water
Community Organizer
Citizens' Resistance At Fermi Two (CRAFT)

Marcy Brandenburg
Founder and Co-Chair
Clean Air For All Now

Gabriella Velardi-Ward
Co-Founder
Coalition for Wetlands and Forests

Dale Beasley
President
Columbia River Crab Fisherman's Association

Michelle Smith
Marketing Director
Community In-Power and Development Association Inc. (CIDA Inc.)

Treva Gear
Founder and Chair
Concerned Citizens of Cook County

Tyler Schwartze
Executive Director
Conservation Federation of Missouri

Jesse Demonbreun-Chapman
Executive Director & Riverkeeper
Coosa River Basin Initiative

Mark Nardone
Director of Advocacy
Delaware Nature Society

Susan Diane Mitchell
Founder and Co-Executive Director
Dynamite Hill-Smithfield Community Land Trust

Chris Eaton
Senior Attorney
Earthjustice

Lydia Marie Kelley
Authorized Signer
Ebony Misses

Katherine Eglund
Founder
Education, Economics, Environmental, Climate and Health Organization (EEECHO)

L.Marie Kelley
Authorized Signer
Expertise Community Outreach

Kathleen Bergeron
Chair, Conservation Committee
Fly Fishers International

Liz Kirkwood
Executive Director
For Love of Water (FLOW)

Jill M. Ryan
Executive Director
Freshwater Future

Trevor Russell
Water Program Director
Friends of the Mississippi River

June Summer
President
Genesee Valley Audubon Society

Dana Skelton
Director of Operations
Georgia River Network

Steven Pulliam
Authorized Signer
Good Stewards of Rockingham

Dimitra McCabe
Founder and Executive Director
HUBitual Learning and Outreach

Fred Akers
Operations Manager
Great Egg Harbor Watershed Association

Gary Struck
President
Illinois Division of the Izaak Walton League

Lisa Dinon
Program Manager
Great Lakes Business Network

Jim Buitert
President
Indiana Division, Izaak Walton League

Krystal N. Martin
Founder
Greater Greener Gloster

Gene Hopkins
President
Indiana Sportsmens Roundtable

Sandra Lovely
Founder
**Greater Neighborhood Alliance of Jersey City,
NJ**

Dan Boritt
Executive Director
Indiana Wildlife Federation

Maritza Mendoza
Water Equity and Ocean Program Advocate
GreenLatinos

Ryan Smith
Executive Director
Iowa Wildlife Federation

Barbara Hopkins
Executive Director
Green Infrastructure Leadership Exchange

Dallas Slagle
Chapter Secretary
IWLA Harry Enstrom Chapter

Theaux M. Le Gardeur
Exec. Director and RIVERKEEPER
Gunpowder RIVERKEEPER

Richard Graham
National Great Lakes Committee Chairman
Izaak Walton League of America

Martha Collins
Executive Director
Healthy Gulf

Jim Burkhardt
President, Ohio Division
Izaak Walton League of America Ohio Division

Sr. Rose Therese Nolta
Justice and Peace Coordinator
Holy Spirit Missionary Sisters, USA-JPIC

Sandy Bihn
Executive Director
Lake Erie Waterkeeper

Indra Frank
Director of Environmental Health and Water
Policy
Hoosier Environmental Council

Rylee Hince
Executive Director
Lake Pepin Legacy Alliance

Mayci Shimon
Leader
LandHealth Institute

Jason O'Rear
Vice President Laurel Rod and Gun Club
Laurel Rod and Gun Club

Madeleine Foote
Senior Director, Healthy Communities Program
League of Conservation Voters

Sandy Rosenthal
President and Founder
Levees.org

Steven Emerman
Owner
Malach Consulting

June Farmer
Director
Marin City People's Plan

Cynthia Robertson
Director
Micah Six Eight Mission

John Ropp
CEO
Michigan Wildlife Conservancy

David Schmitt
Executive Director
Mill Creek Alliance

Pam Mitchell
Leader
Milton's Concerned Citizens/Save Blackwater River

Cheryl Nenn
Riverkeeper
Milwaukee Riverkeeper

Joe Fitzgerald
Policy and Advocacy Manager
Milwaukee Water Commons

John Siekmeier
President
Minnesota Division, Izaak Walton League of America

Kelly McGinnis
Executive Director
Mississippi River Network

Tamela Trussell
Founder
Move Past Plastic (MPP)

Romona Taylor Williams
Executive Director
Mississippi Communities United for Prosperity (MCUP)

Brian Moore
Vice President
National Audubon Society

Kurt Strand
President and CEO
National Mississippi River Museum & Aquarium

Chad Lord
Senior Director, Environmental Policy and Climate
National Parks Conservation Association

Sarah Collier
Executive Director
National Road Heritage Corridor

Melissa Samet
Legal Director, Water Resources and Coasts
National Wildlife Federation

Jon Devine
Director, Freshwater Ecosystems
Natural Resources Defense Council

Carrie Clark
Executive Director
NC League of Conservation Voters

Vel Scott
President
New Image Life Skills Academy Inc

Ed Potosnak
Executive Director
New Jersey League of Conservation Voters

Anni Hanna
Founder
New Mexico Climate Justice

Virginia Necochea
Executive Director
New Mexico Environmental Law Center

Yvonka Hall
Executive Director
Northeast Ohio Black Health Coalition

Gregory A. Remaud
NY/NJ Baykeeper & CEO
NY/NJ Baykeeper

Rich Cogen
Executive Director
Ohio River Foundation

David Peterson
Director
Ozark Society

Aleta Toure
Coop Member
**Parable of the Sower Intentional Community
Cooperative**

Tonyehn Verkitus
Executive Director
**Physicians for Social Responsibility
Pennsylvania**

Eloy Ortiz
Special Projects Manager
Regeneración - Pajaro Valley Climate Action

Irene Senn
Coordinator
Religious Coalition for the Great Lakes

Julie Rentner
President
River Partners

Terri Straka
Leader
Rosewood Strong Community

Dan Le
Senior Campaigner
San Antonio Bay Estuarine Waterkeeper

Joseph Bogaard
Executive Director
Save Our Wild Salmon Coalition

Dawne Dunton
Founder
Saving Island Green Wildlife & Beyond

Yvonne Taylor
Vice President
Seneca Lake Guardian

Elaine Packard
Chair, Grassroots Network Water Sentinels
Team
Sierra Club

Jacqueline Echols
President
South River Watershed Alliance

Shannon Francis
Executive Director
Spirit of the Sun Inc.

Laurie Ward
Leader
Stop the Lies. Stop the Landfill.

Michael Brown
Executive Director
Sustaining Way

David Whiteside
Executive Director
Tennessee Riverkeeper

John DeFillipo
Executive Director
Texas Conservation Alliance

Sharon Fisher
President
The Clinch Coalition

Ian Nakayama
Government Relations Manager
Theodore Roosevelt Conservation Partnership

Melanie Winter
Founder & Director
The River Project

Rebecca Malpass
Director of Policy & Research
The Water Collaborative of Greater New Orleans

Joyce Tasby
Founder and CEO
The Young Peoples Guild

Lee First
Twin Harbors Waterkeeper
Twin Harbors Waterkeeper

Timon McPhearson
Director and Professor
Urban Systems Lab, The New School

Roishetta Ozane
Founder
Vessel Project of Louisiana

Jacqueline Esposito
Advocacy Director
Waterkeeper Alliance

Robin Broder
Deputy Director
Waterkeepers Chesapeake

Wynnie-Fred Victor Hinds
Executive Director
Weequahic Park Association

Na'Taki Osborne Jelks
Co-Founder and Executive Director
West Atlanta Watershed Alliance

Autumn Crowe
Interim Executive Director
West Virginia Rivers Coalition

Buffalo Bruce
Director
Western Nebraska Resources Council

John Whitney
Chairperson
Western New York Environmental Alliance

Barry Drazkowski
Chapter President
Will Dilg Chapter, Izaak Walton League of America

George Guyant
Great Lakes Committee Chair
Wisconsin Division - Izaak Walton League of America

Joyce Tasby
Authorized Signer
Young People's Guild Tidewater Coalition