



**Comments of the  
Upper Mississippi River Basin Association  
on the  
Draft Interagency Guidelines  
Proposed to Guide Implementation of the  
Principles and Requirements for Federal Investments in Water Resources**

**June 27, 2013**

The Upper Mississippi River Basin Association (UMRBA) is pleased to offer its five member states' comments on the draft Interagency Guidelines, dated March 22, 2013, that have been proposed to guide federal agencies' implementation of the recently finalized Principles and Requirements for Federal Investments in Water Resources. Formed by the Governors of Illinois, Iowa, Minnesota, Missouri, and Wisconsin in 1981, UMRBA represents its member states' common water resource interests and works collaboratively with both state and federal agencies. The federal government, particularly through the U.S. Army Corps of Engineers, has a long history of developing and managing water resources throughout the Upper Mississippi River Basin. As such, our states have a keen interest in the Principles and Requirements and the draft Interagency Guidelines.

**Important Modernization in Water Resources Planning**

Our states see value in the direction taken by the new Principles and Requirements (P&R) and draft Interagency Guidelines, as they make important refinements to the 1983 Principles and Guidelines (P&G). Explicitly directing federal agencies to consider factors beyond the National Economic Development (NED) account in formulating their recommendations should promote a more robust, comprehensive, and nuanced approach to addressing the nation's water resources needs. This also recognizes the evolution of contemporary water resource planning towards incorporation of such considerations. Elevating environmental and social benefits in the Federal Objective and requiring planners to address factors such as watershed considerations, nonstructural alternatives, and ecosystem services are examples of the P&R's potentially important contributions to improved and modernized planning.

**Improvements Recognized and Guidelines Critically Important**

Our states recognize that the final P&R do address some of the comments made by UMRBA on the 2009 proposed Principles and Standards (P&S), as well as recommendations resulting from the National Academy of Sciences (NAS) review of the 2009 proposal. UMRBA welcomes modifications including the harmonizing of the Federal Objective with text in WRDA Section 2031; specifying the affected agencies; making clearer distinctions in the role of the objective, principles, requirements, and guidelines; and removing the statement that planning data may not be greater than five years old. Moreover, the states are pleased that the draft Interagency

Guidelines have been developed, as the importance of providing such Guidelines was among the areas of greatest emphasis in UMRBA's earlier comments. The content of these Guidelines is critical in guiding the implementation of the P&R.

### **Significant Concerns Remain**

While the P&R improvements and the development of draft Interagency Guidelines are quite encouraging, our members states continue to have significant concerns regarding a number of the elements included, or left unaddressed, in the new P&R and draft Interagency Guidelines. Several of these concerns were cited in our comments on the 2009 draft P&S and are described below. Overall, the states believe the draft Guidelines fall short in providing clear and sufficiently detailed direction to affected federal agencies in implementing the new P&R.

#### *Role of National Economic Development Unclear*

While the states support incorporating considerations beyond the National Economic Development (NED) account more fully into decision making, NED's precise role still remains unclear and important questions are left unaddressed. Will the 1983 NED benefit evaluation procedures remain in effect? Will NED no longer be a specific consideration in decision-making? NED is not explicitly mentioned in either document and as such the role of NED is difficult to discern. Perhaps it is now embedded in the concepts of "sustainable economic development" or "justification by public benefits in comparison to costs," but if so this is not made clear. The states remain concerned that in seeking to elevate the consideration of other factors, the role of NED has been unjustifiably minimized.

#### *Best Available Science*

Our states are pleased to see that the new P&R and draft Guidelines do discuss the realities of seeking to bring "best available science" to water resource decision-making. As mentioned above, the removal of the requirement that data used in evaluating alternatives must be no more than five years old is helpful in this regard. The new documents stress the concept of "commensurate level of detail" and in particular the draft Guidelines state: "The requirement to use the best available science does not dictate using the highest level of detail in all situations. Rather, the best available science should be used to provide results with an acceptable confidence level appropriate to the level of detail needed to inform the necessary decisions." While the recognition of "commensurate level of detail" is a welcome development, many questions remain. What are the criteria to determine an "acceptable confidence level"? How is the "level of detail needed" to be determined? Are these decisions left to the individual agencies? The states remain concerned that, without a clearer articulation of this concept and the provision of more concrete guidelines, confusion, inconsistency, delays, and increased costs will likely result.

#### *Quantification and Monetization*

The states are pleased to find a recognition in the new P&R and draft Guidelines that monetization, or even quantification, of social and environmental benefits may not be possible in all cases and, as such, these considerations need to be integrated in addition to benefit-cost analysis. This recognition is responsive to the states' concern that the 2009 P&S may have been overly optimistic regarding the potential for monetization of social and environmental costs and benefits. Further, our states are supportive of the integration of the ecosystem

services concept into the evaluation framework. However, many challenging questions remain unaddressed. While the Guidelines do reference OMB Circular A-4 as a source of further information, there is clearly much left to agencies in terms of how and when to monetize/quantify environmental and social benefits. Moreover, the Guidelines explicitly state that best professional judgment may be employed when not all benefits and costs can be monetized or quantified. Determining whether a water resources investment will “maximize sustainable economic development” and “protect and restore the functions of natural systems” seems potentially quite subjective in this context. In sum, while the states recognize the need to provide flexibility to the individual agencies, the lack of specificity here may result in confusion within agencies and substantial inconsistency among agencies.

#### *Coordination with States*

In UMRBA’s comments on the 2009 P&S proposal, the states expressed concern that the importance of collaborating with affected states and local entities was not emphasized sufficiently. While the states are pleased to see expanded discussion of collaboration under Requirement C, they remain concerned that the theme of collaboration has not been woven thoroughly into the P&R and draft Guidelines. In particular, the states are concerned that neither the P&R nor the Guidelines address the paramount importance of coordinating with state and local governments regarding flood damage reduction and economic development.

#### *Lack of Specificity and Clarity in Guidelines*

The discussions of best available science and monetization/quantification above illustrate two areas where the Guidelines lack the specificity needed to aid agencies in decision-making. In general, the states are concerned that the Guidelines do not provide clear direction to the federal agencies, choosing to focus more on *what* to do (e.g., project vs. program analysis, full vs. simplified analysis) than on *how* to actually execute it (e.g., how to quantify/monetize costs and benefits, how to determine what is commensurate level of detail). In other cases, an expected level of detail is simply not articulated. An example here is that the Guidelines state that simplified analyses require “fewer” alternative plans than full analyses, but the number or types of alternatives to be evaluated under each approach are not clearly described. Additionally, terms including “sustainable economic development” are not well defined. Overall, while recognizing the need for flexibility, the states are concerned that, without further clarity and specificity in the Guidelines, an opportunity will be missed to provide clear direction and that confusion, delays, and increased expense will result. This concern is particularly acute for agencies which are newly subject to the P&R. For agencies previously subject to the P&G, lack of clarity may encourage a tendency to fall back to “business as usual,” thereby frustrating the intent of the new P&R.

#### *Effect on Project Costs*

As stated previously, the states do recognize the benefit of an expanded scope of considerations being integrated into decision making associated with water resource projects. Additionally, our states are pleased to see that some language has been added to the P&R and Guidelines to potentially limit cost increases (e.g., removal of five year data requirement, distinction between full and simplified analyses). However, the states remain concerned that without further direction and specificity in the Guidelines, particularly in regard to best available science and valuation of non-economic benefits, there will likely be unnecessary and significant increases in cost, as well as time invested, in federal water resources planning.

### *Effect on Non-Federal Sponsors*

Perhaps most critically, the states remain very concerned with the potential impacts on non-federal partner responsibilities and resources, given the broadened scope of planning requirements under the P&R. The additional analyses needed to fully implement the P&R will very likely lead to substantial increases in study costs, thus increasing the non-federal sponsors' obligations as well. Of particular concern is the potential that non-federal sponsors will be forced to cost-share development of alternatives that go far beyond the scope of what they would contemplate cost sharing for construction. Neither the final P&R nor the Interagency Guidelines address the impact to cost share partners, nor do they address the potential need to adjust cost sharing requirements in light of likely increased study, and ultimately construction, costs.

### *Identify Needed Legislation Adjustments*

The P&R and Interagency Guidelines should include a commitment to a CEQ-led review of existing federal statutory and regulatory provisions to identify inconsistencies with a true partnership approach to integrated water resources planning. As an example, Article VI of the Army Corps of Engineers' standard project partnership agreement (PPA) language includes indemnification language that is wholly one-sided in favor of the federal government and is inconsistent with many states' constitutions and statutes. The Corps of Engineers maintains that this provision is necessary, pursuant to Section 8a of the Flood Control Act of 1936 and Sections 101 and 103 of the Water Resources Development Act of 1986. If this is the case, then modification of these provisions is in order. Water resources planning that relies on a partnership between the federal government and project sponsors must embody a more equitable approach to liability and recognize the legitimate limitations on these states' capacity to indemnify other parties.

### **Recommendations**

In the context of the preceding discussion, UMRBA's member states urge the Council on Environmental Quality to revise the draft Interagency Guidelines as follows:

- 1) Specify the role of NED in evaluating alternatives.
- 2) Provide more detailed guidance regarding the use of best available science and the monetization/quantification of social and environmental costs and benefits.
- 3) Enhance clarity and specificity in providing direction to agencies, by expanding the discussion beyond descriptions of process to include more guidance to support decision making.
- 4) Emphasize the importance of collaboration with state and local entities, particularly in regard to issues of flood damage reduction and economic development.
- 5) Explicitly address the impact of broadening planning requirements on non-federal cost share partners and define what the expectations for cost share partners will be under the new P&R. Commit to a CEQ-led review of existing statutory and regulatory

incompatibilities with the intended partnership approach to planning and executing water resources projects.

Thank you for the opportunity to provide comment on these critical components of national water resource planning.



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