



ASSOCIATION OF STATE FLOODPLAIN MANAGERS, INC.

2809 Fish Hatchery Road Suite 204 Madison, Wisconsin 53713
608-274-0123 Fax: 608-274-0696 www.floods.org Email: asfpm@floods.org

Executive Director

Larry A. Larson, P.E., CFM

Deputy Director

George Riedel, CFM

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Council on Environmental Quality
ATTN: Terry Breyman
722 Jackson Place, N.W.
Washington, DC 20503

Via Web at <http://www.whitehouse.gov/administration/eop/ceq/initiatives/PandG/>

Dear Mr. Breyman,

On behalf of the Association of State Floodplain Managers (ASFPM), its 29 State Chapters, and more than 14,000 members, we want to thank the Council on Environmental Quality (CEQ) and the U.S. Army Corps of Engineers (USACE) for the opportunity to offer the comments on proposed revisions to the Principles and Guidelines. ASFPM strongly supports retirement of the 1983 Principles and Guidelines, to be replaced by Objectives, Principles, and Standards (OP&S) that protect and restore natural systems, provide for sustainable economic development, and minimize adverse impacts through a national policy to meet the nation's 21st Century water resource management and planning needs.

Floods have the greatest damage potential of all natural disasters and affect the greatest number of people. Even so, risk continues to rise as more and more people, infrastructure, and other investments are placed in floodprone areas. The nation can no longer afford to continue on its current path of authorizing and funding projects through a process that is so heavily biased toward maintenance-intensive and ecosystem-altering structural approaches without comprehensive review of environmental impacts and consideration of nonstructural alternatives. Congress enacted the Water Resources Development Act of 2007 as the vehicle for the policy of the United States, signaling their intent that a new direction in national water policy be pursued.

Federal reports going back decades acknowledge that certain federal policies and practices promote adverse impacts and may serve as barriers to innovation in flood loss reduction. While the 1983 P&G need to be retired and replaced by a modern OP&S as soon as possible, Congress also signaled its intent that P&G be modernized and informed by the report requested in WRDA 2007 § 2032. The process should be developed to incorporate the report's findings and recommendations into OP&S, guidelines, and procedures.

Dedicated to reducing flood losses in the nation.

Chair

Gregory Main, CFM
State Floodplain Manager
Indiana DNR
317-234-1107
gmain@dnr.in.gov

Vice Chair

Sally McConkey, P.E., CFM
Water Resources Engineer
INRS Illinois State Water Survey
217-333-5482
sally@illinois.edu

Secretary

Judy Watanabe, CFM
Mitigation Section Manager
Utah Div. of Homeland Sec.
801-538-3750
judywatanabe@utah.gov

Treasurer

William Nechamen, CFM
State Floodplain Manager
New York State DEC
518-402-8146
wsnecham@gw.dec.state.ny.us



The Proposed OP&S include several significant improvements over the 1983 P&G. ASFPM commends the CEQ and USACE for their leadership on these issues, and strongly supports many measures of the proposed OP&S as indispensable to their success. However, the OP&S need to provide for distinct objectives on public safety and environmental protection, and for a deliberative process for project consideration against basic threshold requirements to assure that national objectives are met. We address in detail the strengths and opportunities of the proposed OP&S in the attached comments, and stand ready to work with you through the next steps of the policy development process.

ASFPM has enjoyed a successful partnership with the CEQ and the USACE for many years. Thank you again for this opportunity to make these comments.

Sincerely,

Greg Main, CFM
ASFPM Chair

Larry Larson, P.E., CFM
ASFPM Executive Director

CC: Nancy Sutley, Chair, Council on Environmental Quality
Lieutenant General Robert L. "Van" Van Antwerp, USACE
Major General William Grisoli, USACE
Jo-Ellen Darcy, Assistant Secretary, Civil Works, ASA
W. Craig Fugate, Administrator, FEMA
Dave White, Director, NRCS

Before the Council on Environmental Quality
Proposed National Objectives, Principles, and Standards for
Water and Related Resources Implementation Studies

Comments of the
Association of State Floodplain Managers, Inc.

BACKGROUND

Section 2031 of the Water Resources Development Act of 2007 (WRDA 2007) calls for revision to the 1983 Principles and Guidelines (P&G) for use in the formulation, evaluation, and implementation of water resources projects, and articulates the following National Water Resources Planning Policy:

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 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 further requires that revised principles and guidelines consider and address the following:

- (A) The use of best available economic principles and analytical techniques, including techniques in risk and uncertainty analysis.
- (B) The assessment and incorporation of public safety in the formulation of alternatives and recommended plans.
- (C) Assessment methods that reflect the value of projects for low-income communities and projects that use nonstructural approaches to water resources development and management.
- (D) The assessment and evaluation of the interaction of a project with other water resources projects and programs within a region or watershed.
- (E) The use of contemporary water resources paradigms, including integrated water resources management and adaptive management.
- (F) Evaluation methods that ensure that water resources projects are justified by public benefits.

In laying out these policy priorities and considerations, the Congress expressed its intent that a new direction in national water policy be developed and pursued. The nation can no longer afford to continue on its current path of authorizing and funding projects through a process that is so heavily biased toward structural approaches without comprehensive review of environmental impacts and consideration of nonstructural alternatives.

WRDA 2007 § 2032 requires that the President submit to the Congress a report on the nation's vulnerability to flooding, including risk of loss of life and property, and the comparative risks faced by different regions of the nation. The report is to include the following elements:

- (1) an assessment of the extent to which programs in the United States relating to flooding address flood risk reduction priorities;
- (2) the extent to which those programs may be encouraging development and economic activity in flood-prone areas;
- (3) recommendations for improving those programs with respect to reducing and responding to flood risks; and
- (4) proposals for implementing the recommendations.

Finally, WRDA 2007 § 2033 requires that feasibility studies for all flood damage reduction projects include as part of benefit/cost analysis (BCA) the following:

- (1) a calculation of the residual risk of flooding following completion of the proposed project;
- (2) a calculation of the residual risk of loss of human life and residual risk to human safety following completion of the proposed project;
- (3) a calculation of any upstream or downstream impacts of the proposed project; and
- (4) calculations to ensure that the benefits and costs associated with structural and nonstructural alternatives are evaluated in an equitable manner.

PROCESS & SUMMARY COMMENTS

Floods have the greatest damage potential of all natural disasters and affect the greatest number of people. Even so, risk continues to rise as more and more people, infrastructure, and other investment are placed in flood-prone areas. Federal reports going back decades acknowledge that certain federal policies and practices promote adverse impacts and may serve as barriers to innovation in flood loss reduction.

While the 1983 P&G need to be retired and replaced by a modern OP&S as soon as possible, Congress signaled its intent that P&G be modernized and informed by the report requested in WRDA 2007 § 2032. The process should be developed to incorporate the report's findings and recommendations into OP&S, guidelines, and procedures. We recommend that this report be developed through collaboration among the key federal agencies whose programs directly impact flood risk management and economic activity in flood-prone areas; these include the US Army Corps of Engineers (USACE), Federal Emergency Management Agency (FEMA), the Environmental Protection Agency (EPA), the Department of Transportation / Federal Highways Administration (DOT/FHA), the Department of Housing and Urban Development (HUD), Department of the Interior / Bureau of Reclamation, the Department of Agriculture / Natural Resources Conservation Service, the National Oceanic and Atmospheric Administration, and the US Geological Survey. To address the four elements called for in WRDA § 2032, the report should examine the following issues as they relate to or impact flood risk management at all levels of government: Hazard Identification; Public Engagement; State, Local & Regional Planning; Regulation & Development Standards; Hazard Mitigation; Disaster Relief (Public Assistance & Individual Assistance) Public & Critical Infrastructure; Emergency Services; Adaptation to Climate Change; Floodplain Resources & Functions; and Horizontal & Vertical Program Coordination.

The Proposed OP&S include several significant improvements over the 1983 P&G, including general considerations of watershed management and climate change. ASFPM commends the CEQ for its leadership on these issues and strongly supports the following measures as indispensable to the success of the OP&S:

- Expansion of project selection criteria beyond NED to include social and environmental benefits;
- Requirement to mitigate any unavoidable adverse impacts to natural ecosystems;
- Requirement for unbiased evaluation by full and meaningful consideration of the benefits and costs of alternatives to low-income, tribal, and minority communities;
- Requirements for transparent, accessible, and inclusive planning processes;
- Requirement for utilization of the best available science, practices, analytical techniques, procedures, and tools;
- Inclusion of public safety considerations, with recommendations below;
- Requirements to assess and communicate residual risk, with recommendations below;
- Increased emphasis on investigation and selection of nonstructural alternatives, with recommendations below; and
- Consideration of both monetary and non-monetary benefits to justify and select a project that has the greatest net benefits.

The OP&S appear to revive the co-equal objectives of the 1973 Principles & Standards, to enhance national economic development and to enhance the quality of the environment. However, the OP&S fail to address adequately the observed deficiencies of the 1983 P&G, including problems with planning area selection; consideration of ecosystem services; public safety; and nonstructural options to address flood risk. ASFPM strongly recommends that CEQ modify the OP&S to address the following:

- Stand-alone objectives on public safety and environmental protection;
- An explicit statement of federal interest to justify federal participation in plans and projects;
- A statement of national policy articulating the consequences for nonfederal partner failure to meet operations and maintenance requirements; and
- A clear and deliberative process for the evaluation of proposed plans and projects that includes the following threshold requirements:
 - Compliance with existing state, regional, and local plans and standards;
 - Study and selection of feasible nonstructural solutions;
 - Nonfederal partner use of nonstructural measures such as land use standards to prevent post-project increases in risk or degradation of environmental resources;
 - Nonfederal partner to enter binding commitment for and demonstration of capacity to perform long-term operations and maintenance requirements; and
 - Requirement that proposed plans and projects be evaluated at the watershed level, and as part of any existing broader watershed or basin plan.

The failure to explicitly require watershed planning or evaluation promotes the existing project-by-project planning framework and misses the key opportunity to advance watershed planning. Project sponsors should be encouraged through cost-share adjustments to participate in watershed-based approaches and to demonstrate that proposed projects are reflected in watershed plans. Finally, the proposed OP&S falls short on addressing climate change, and requiring project sponsors to consider reasonably foreseeable climate impacts in planning and project formulation.

SECTION-BY-SECTION COMMENTS

I. National Objectives

In its Proposed OP&S, the CEQ translated the National Water Resources Planning Policy expressed in WRDA 2007 § 2031 into the National Objectives of Water Resources Planning. However, the National Objectives need to more closely track the explicit intent of Congress that water resources projects protect natural systems, protect public safety, and reduce flood losses. A stand-alone public safety objective should address loss of life and protection of the existing built environment and infrastructure. Additionally, water resources projects must not cause or contribute to adverse impacts to adjacent property owners or communities, or those up- or down-stream of the proposed project area. Lastly, the proposed National Objectives lack a stand-alone environmental protection objective. To assure consistency and compliance with the intent of WRDA 2007, public safety and environmental protection must be overriding objectives for all water projects. ASFPM recommends that the National Objectives be redrafted as follows:

The National Objective for water resources planning is to develop water resources projects based on sound science that optimize net national economic, environmental, and social benefits. Consistent with this objective, the United States will demonstrate leadership by modernizing the way the Nation plans water resources projects by:

- (1) Seeking to maximize sustainable economic use;
- (2) Assuring public safety and community resiliency, and preventing loss of life and damage to property in floods;
- (3) Protecting and restoring the functions of natural ecosystems;
- (4) Promoting the wise use of floodplains, flood-prone areas, and other ecologically valuable areas to allow room for natural riverine and coastal dynamics;
- (5) Avoiding adverse impacts to natural ecosystems and fully mitigating any unavoidable impacts; and
- (6) Avoiding adverse impacts to floodplains, flood-prone areas, and the built environment, and fully mitigating any unavoidable impacts in any case in which a floodplain or flood-prone area must be impacted or used.

II. Planning Principles

The Principles represent significant improvements over the 1983 P&G by requiring that all federal water resources implementation studies use watershed and ecosystem-based approaches, ensure environmental justice, and avoid adverse environmental impacts. ASFPM recommends that all federal water activities, plans, and projects take into account foreseeable future conditions and impacts of climate change. The following language changes (underlined) will help refine and clarify the principles:

It is the policy of the United States and all Federal water and associated land and natural resources implementation studies incorporate foreseeable conditions associated with future development and impacts associated with climate change, and shall:

- A. Maximize sustainable economic use;
- B. Protect and restore the functions of natural ecosystems;
- C. Promote the wise use of floodplains, flood-prone areas, and other ecologically valuable areas to allow room for natural riverine and coastal dynamics;
- D. Account for ecosystem services;

- E. Avoid the unwise use of floodplains, flood-prone areas and other ecologically valuable areas and natural resources that provide services;
- F. Utilize watershed and ecosystem based approaches, consider watershed-level impacts, and be evaluated as part of any existing watershed management plan;
- G. Utilize best available science, practices, analytical techniques, procedures and tools;
- H. Apply a level of detail commensurate with the potential decisions, study scale, potential impacts and consequences to adjacent, up-, and down-stream property owners and communities;
- I. Account for the benefits and costs in appropriate monetary and non-monetary terms;
- J. Avoid adverse impacts to natural ecosystems and functions, account for significant effects and mitigate any unavoidable adverse impacts to natural ecosystems;
- K. Address risk and uncertainty, including the effects of climate change and future development;
- L. Incorporate public safety, and anticipate possible impacts to public safety, avoiding adverse impacts to adjacent, up-, and down-stream property owners and communities;
- M. Ensure environmental justice, public health, and safety for low income, tribal and minority communities;
- N. Comply with all federal, state, regional, and local plans, standards, and regulations;
- O. Ensure the planning process is fully transparent, and that all potentially affected stakeholders are included at the study identification stage and beyond; and
- P. Collaborate implementation study activities broadly.

Cost-Shares & Other Incentives for Nonfederal Partners

Although cost-shares are articulated through WRDA legislation, the OP&S present an opportunity to articulate broad policy objectives to incentivize sound and sustainable practices. To assure the success of a resource implementation plans and projects, the federal government will need the participation and commitment of states, regional planning organizations, and local governments. Nonfederal partners will need to commit to robust and inclusive planning processes. They will need to develop, maintain, and consult resource management plans and consider all possible impacts associated with any proposed project with federal participation. Additionally, nonfederal partners should be required to adopt and enforce land use and other standards to manage risks and impacts post-project.

Project cost-shares should be adjusted to help motivate state and local governments in their efforts to partner with the federal government in the implementation of water resources problems. Technical assistance programs such as USACE Public Assistance to States and Floodplain Management Services should be leveraged to support state and local innovations. Plans and projects that address problems through nonstructural means, demonstrate the greatest efficacy with the least impact and consequences should garner the greatest level of federal participation. Incentives should be designed to encourage and reward nonfederal partners that meet and exceed minimum standards on a sliding scale; the more rigorous or innovative the plan or project, the greater the level of federal participation.

III. Planning Process

A. Definition of the Federal Interest

As a threshold matter, the OP&S must define the federal interest to manage nonfederal expectations and provide foreseeable outcomes for potential project proponents. Although the Federal government guides and incentivizes water resource and related land management decisions, development and land use decisions rest with the States and with local governments through their State enabling statutes. The role of the States is to identify and propose solutions to water related challenges and opportunities, such as flooding, water supply, natural resource function, and degradation of waters. Only then should States or local governments request Federal participation. The Federal role is to evaluate these proposals against broad national values, and to assure consistency with existing Federal goals and plans. Only then should the Federal government agree to partner with the non-Federal sponsor.

B. Overview of the Planning Process

While the Planning Process requires formulation of alternatives to ensure that all reasonable possible solutions are considered, literal reading of the process would require that structural options be explored, even for a project that is entirely or primarily nonstructural or that combines structural and nonstructural measures, adding unneeded effort and cost to the planning process. Section 2. D. should be reworded to clarify that activities that are primarily nonstructural, such as ecosystem restoration, need not evaluate structural alternatives.

IV. Planning Standards

A. Applicability of OP&S

Consistent with the intent of Congress, the Principles and Standards will apply to all water projects meeting general criteria, including significant structures, landform changes, and plans. Explicitly excluded are routine project operations, basic maintenance and minor repairs, watershed plans, regulatory activities, as well as grants and technical assistance “for work implemented by non-federal entities to which the United States does not hold title.” Since the adoption of the 1983 P&G, many of the agencies that may be affected by OP&S have grown technically sophisticated in their own engineering, environmental, and public safety missions. In many cases, these policy frameworks already surpass what the OP&S requires in terms of project scope and requirements for sustainability in a changing climate.

Agencies such as the Environmental Protection Agency, Fish & Wildlife Service, and National Oceanic and Atmospheric Administration are responsible for many successful ecosystem protection and restoration programs that have not previously been subject to economic development planning requirements. Water and related land resource restoration activities should continue to focus on resource protection, restoration, and enhancement. ASFPM recommends that OP&S provide for programmatic review of these ecosystem protection and restoration programs to assure that they meet the National Objectives without having to evaluate structural alternatives, or conduct additional economic development analyses.

B. Federal Grant Programs

OP&S Chapter II, Section 1 explicitly excludes grants for work that states and local governments perform on nonfederal lands. However, many federal grant programs promote economic activity and federal investment in flood-prone areas. Moreover, the National Committee on Levee Safety (NCLS) in its January 2009 Report to Congress recommended development of federal grant programs to support development of levee safety programs and to fund levee system repair, rehabilitation, and reconfiguration. Under the NCLS proposal, those grants would go to states and local governments with

qualifying levee safety programs to conduct levee work on nonfederal lands. As currently written, the proposed OP&S would not apply to those grants even though Congress undoubtedly intended that the revised P&G apply to all federally-supported levee activities.

ASFPM strongly recommends that any federal participation through grants or cost-share in levee development, repair, rehabilitation, or reconfiguration be subject to the OP&S, associated guidelines, and procedures. Additionally, ASFPM recommends programmatic review of all federal grant programs that directly impact flood risk management and economic activity in flood-prone areas, including those under FEMA, EPA, DOT/FHA, and HUD. Programmatic review needs to cover grant activities in the 0.2%-chance, or 500-year floodplain, to allow for data or mapping errors, future conditions, changes in the watershed, and climate impacts.

C. Risk & Climate Change

We recommend that Section I (Page 11) be titled Risk Management, and that references to “risk and uncertainty” also be replaced with “risk management.” Additionally, the section needs to discuss how risk to life and property are being impacted, including direct risk impacts and the creation of residual risks that might result in the event a proposed plan fails to meet planned assumptions or events occur that would exceed normally anticipated design approaches. Finally, the risk evaluation should consider climatic changes that within the life of the project might significantly alter anticipated project performance, benefits, or costs.

D. Residual Risk

ASFPM commends CEQ for inclusion of requirements to calculate and communicate residual risk. We recommend that Section J be modified to read as follows: Threats to people, both loss of life and injury, and threats to property, infrastructure, and critical facilities, must be assessed in the determination of existing and future conditions. Additionally, WRDA 2007 § 2033, requires that all flood damage reduction benefit/cost analyses include the following:

1. A calculation of the residual risk of flooding following completion of the proposed project;
2. A calculation of the residual risk of loss of human life and residual risk to human safety following completion of the proposed project;
3. A calculation of any upstream or downstream impacts of the proposed project; and
4. Calculations to ensure that the benefits and costs associated with structural and nonstructural alternatives are evaluated in an equitable manner.

ASFPM recommends that Section J and Section I(4)(b) be compared with the above requirements to assure that they are met. The Proposed OP&S do not appear to address explicitly upstream or downstream impacts at all.

E. Mitigation of Impacts

The OP&S must account for significant effects and mitigate unavoidable impacts to floodplain resources, ecosystem services, and to adjacent, up-, and down-stream property owners, infrastructure, and communities. We recommend that Section H and the process for addressing impacts to ecosystem services be expanded to include mitigation of impacts to property owners, communities, and the built environment. Additional key laws on mitigation include the Disaster Mitigation Act of 2000 and the Stafford Act.

The OP&S must require that all proposed water and related resources implementation plans and projects comport or otherwise comply with existing state, regional, and local plans, including:

- Community plans, such as comprehensive plans, zoning, and floodplain management plans;
- State, regional, and community climate adaptation plans;
- Regional land use, resource management, adaptation, and watershed plans;
- Hazard mitigation, emergency operations, and other public safety plans;
- State, regional, and local water quality management plans; and
- Habitat protection and other resource management plans.

Despite the Clean Water Act's longstanding regulatory requirements to take all steps practicable to avoid adverse impacts to rivers, streams, wetlands, and other water resources, federal water projects underutilize nonstructural or restoration approaches that avoid those impacts and restore the healthy function of the nation's waters. Where nonstructural or restoration measures would solve water resources problems, they should be selected. Establishing clear standards and planning criteria to ensure avoidance of adverse environmental impacts wherever possible will be critical to the ability of the OP&S to fundamentally improve federal water resources planning.

F. Additional Planning Standards Comments

Page 5

- As part of encouraging sustainable economic development, the nonfederal sponsor must be required to demonstrate binding commitment and capacity to long-term operations and maintenance (O&M) requirements. The OP&S must articulate explicit consequences, such as ineligibility for future federal assistance for water infrastructure, if the nonfederal sponsor fails to meet O&M obligations.

Page 6

- Nonstructural measures should be fully evaluated for all water and related land resource activities, including water supply, as part of a broad watershed plan. Where a feasible nonstructural approach addresses the identified resource problems, it should be selected.
- Since States, regional entities, and local governments are best placed to identify water resource challenges and implement efficient and effective solutions, they should investigate all nonstructural measures available, including modifications to regional, land use, zoning, and other plans, as part of the overall project plan to prevent post-project increases in risk or degradation of environmental resources.
- In light of increasing development in watersheds that increase runoff and in light of climate change impacts, the nation must adopt an approach of gradual retreat from the highest risk areas such as deep floodplains and coastal storm surge areas. Plans and projects that allow room for natural riverine and coastal dynamics provide significant economic benefits due to minimal consequences under flood conditions and comparatively low O&M costs. Alternatives that achieve riparian corridor restoration and otherwise preserve or restore "room for rivers" should receive greatest priority for federal participation.

Page 9

- Reasonable efforts must be made to generate or obtain and analyze relevant data, and preliminary information may need to be expanded upon, completed, or updated over the course of evaluation.
- No data over five years old, except as part of long-term data sets that include data that is less than 5 years old, shall be used to portray existing and future conditions, unless shown to remain valid and representative of current and future conditions.
- The level of detail shall not be greater or less than needed to inform the decision efficiently.

Page 10

- The Planning Standards need to clarify how non-monetized subcategories are to be considered and provide explicit thresholds for project sponsors to avoid misinterpretation and misapplication that could undermine National Objectives.
- Account for significant effects and mitigate unavoidable impacts to floodplain resources, ecosystem services, and to adjacent, up-, and down-stream property owners and communities.

Page 16

- Each study objective must clearly contribute to the National Objectives.

Page 20

- The Public Safety Subcategory shall display the effects of alternatives on risks to humans and the built environment from floods, storms, and droughts.

Page 22

- The period of analysis shall be the same for all alternatives, and shall reflect the period of time that alternatives would produce significant beneficial or adverse effects, taking into account that nonstructural and restoration alternatives may take longer for full benefits to manifest.

Page 23

- If the recommended plan is not a primarily nonstructural alternative, the decision maker must explicitly address why these objectives cannot be achieved using the primarily nonstructural alternative.

V. Definitions

Sustainable means to create and maintain conditions, under which humans and nature can exist in product harmony, that permit fulfilling the social, economic, and other requirements of present and future generations of Americans, including providing for foreseeable impacts of climate change and anticipated future conditions.

Sustainable Economic Development considers environmental resource, community, and economic resilience to ensure that development preserves the natural foundations of life for present and future generations, including providing for foreseeable impacts of climate change and anticipated future conditions.