WUWC
WESTERN URBAN WATER COALITION

March 25, 2015

Delivered via internet

Christy Goldfuss
Acting Chair
Council on Environmental Quality
Washington, DC 20460

Re: Comments on Proposed CEQ Guidance on the Consideration of the Effects of Greenhouse Gas Emissions and Climate Change under the National Environmental Policy Act

Dear Ms. Goldfuss:

This letter provides comments of the Western Urban Water Coalition (WUWC) on the proposed guidance published by the Council on Environmental Quality (CEQ) on December 24, 2014, that describes how federal departments and agencies should consider the effects of greenhouse gas (GHG) emissions and climate change in their reviews under the National Environmental Policy Act (NEPA). See 79 Fed. Reg. 77,802 (December 24, 2014).

Created in June 1992 to address the West's unique water issues, WUWC consists of the largest urban water utilities in the West, serving over 35 million western water consumers in 13 metropolitan areas in five states. The membership of WUWC includes the following urban water utilities: Arizona – Central Arizona Project, and City of Phoenix and the Salt River Project; California – Eastern Municipal Water District, Los Angeles Department of Water and Power, Metropolitan Water District of Southern California, San Diego County Water Authority, San Francisco Public Utilities Commission, and Santa Clara Valley Water District; Colorado – Aurora Water, Colorado Springs Utilities, and Denver Water; Nevada – Las Vegas Valley Water District, Southern Nevada Water Authority, and Truckee Meadows Water Authority; and Washington – Seattle Public Utilities.

WUWC members must address the challenges associated with climate change while simultaneously securing a sustainable water supply for a growing population and complying with increasingly stringent environmental and water quality regulations. These realities give WUWC members a strong interest in the effects of climate change on water availability and the response of federal regulatory and resource management agencies to these effects. NEPA can be an important tool in helping federal agencies to address the effects of climate change. The purpose of our comments is to identify where the guidance can be revised or explained in more detail to help federal agencies prepare better EISs and EAs that can provide meaningful information relating to climate change, but not to delay the NEPA process by requiring information that is difficult to gather or analyses of uncertain or variable future impacts.

COMMENTS

WUWC agrees with the proposed guidance at pages 2-3 directing federal agencies to "consider the following when addressing climate change: (1) the potential effects of a proposed action on climate change as indicated by its GHG emissions; and (2) the implications of climate change for the environmental effects of a proposed action." Climate change is a fundamental environmental issue and its relation to the impacts of proposed federal actions falls under the NEPA umbrella. The difficulty will be in determining the environmental effects that are appropriately examined in the context of the particular proposal under review, the exact nature of those effects, and how those effects can realistically be addressed considering the uncertainty and range of forecasts for such impacts. A properly framed NEPA analysis should assist with this task.

At page 3, the proposed guidance states that the analysis is to include an examination of the potential impacts or "environmental consequences" associated with the proposed action as a result of a changing climate. The guidance should note the uncertainty in assessing the impacts in question, especially given the limited understanding of climate impact modeling at the local geographic level, or even at the regional level, especially in the Western U.S.

At page 4, the proposed guidance references the need to discuss both the direct, indirect and cumulative impacts of the proposed action. See also page 10. While direct emissions are generally identifiable, CEQ should give further guidance regarding the extent of indirect emissions. For example, if a city is seeking to permit a new water supply project, would the analysis include GHG emissions from homes and industries potentially served by that water supply? We do not believe inclusion of these downstream emissions is appropriate because growth may occur with or without the prospect of a long-term, firm water supply for reasons, such as regional employment opportunities, not directly associated with the project. This confusion as to indirect impacts also applies to emissions from upstream activities. For example, would a project proponent need to analyze the emissions associated with source water development and water transportation to the project area? Please clarify the breadth of indirect emissions analysis contemplated by the proposed guidance. Double counting of emissions should be avoided.

Footnote 11 on page 6 of the proposed guidance indicates that even though a factual analysis may demonstrate that emissions associated with the action are only a "small fraction of local" or "national" emissions, that finding will not be adequate to avoid consideration of such impacts. Please explain what additional information would be necessary to justify when emissions are de minimus and can be excluded from further consideration. Perhaps a de minimus threshold could be identified.

We agree with the statement on page 10 of the proposed guidance that "[w]hen an agency determines that evaluating the effects of GHG emissions from a proposed Federal action would not be useful to the decision-making process and the public to distinguish between the no-action and proposed alternatives and mitigations, the agency should document the rationale for that determination." Undertaking unnecessary reviews and analysis when the facts demonstrate minimal impact does not further the purposes of NEPA.

On page 11 of the proposed guidance we recommend providing examples as to what constitutes a "downstream emission," with specific reference to water projects designed to supply existing and future domestic, industrial and agricultural needs. Would emissions from these domestic, industrial and agricultural activities be attributed to the project? We do not believe that analyzing specific unknown activities is reasonable and request clarification to prevent unnecessary analyses. Similarly, on page 12 an example is provided of a proposed open pit mine where one of the reasonably foreseeable effects is "using the resource." This example suggests that an emissions analysis of the processing, transportation, and use of the finished product by domestic, industrial and agricultural users would be required. Again, we think this "cradle to grave" approach would be unreasonable and request clarification to prevent unnecessary analyses.

Page 14 of the proposed guidance states that federal agencies can provide a frame of reference for discussing the GHG emissions of projects by incorporating by reference "agency emission targets . . . or local goals for GHG emissions. . . ." We note that some water service agencies have already established goals per a public review and approval process, such as through the preparation of a Climate Action Plan that has undergone environmental review pursuant to the California Environmental Quality Act. The guidance should note that federal agencies may utilize such local targets or goals without additional public review provided they identify the rationale for doing so.

The proposed guidance states at page 16 that "[w]hen an agency determines that a quantitative analysis is not appropriate, an agency should complete a qualitative analysis and explain its basis for doing so." The guidance should emphasize the deference that should be accorded to agencies to decide when a qualitative analysis is appropriate and, more importantly, why a quantitative analysis would not be helpful, so long as the agency's rationale for its approach is explained within the NEPA document. In many cases, particularly for water projects, the implications of climate change are so variable that an impact analysis is not helpful because no outcome is more predictable than another for the purposes of NEPA's alternatives analysis. This variability in the predicted impacts is even a bigger concern when the effects described in a NEPA document are used to create mitigation and permit conditions.

At pages 16 and 17, the proposed guidance addresses biogenic GHG emissions from land management actions such as prescribed burning, timber stand improvements, fuel load reductions, etc., recognizing that these actions contribute both carbon emissions and carbon sequestration to the global carbon cycle. The proposed guidance should similarly provide guidance for special consideration of projects and policies which improve the resilience of vulnerable resources, especially water resources systems, in the face of climate change. Simply put, the guidance should direct federal agencies to weigh the potential climate change impacts of a project against the benefits a project might provide to ameliorate the adverse consequences of climate change on natural resources and the human environment.

The proposed guidance at page 20 discusses mitigation as an important component of an agency's considerations under NEPA. We agree and note the *Strategy for Improving the Mitigation Policies and Practices of the DOI* released by the Secretary of the Interior on April 10, 2014. Nonetheless, the proposed guidance itself is silent on the consideration of adaptive mitigation actions. To its credit, the proposed guidance recommends the development and

inclusion of multiple climate change scenarios in the characterization of the affected environment, i.e. a range of future conditions for resources (water systems) vulnerable to changing climate. However, the proposed guidance does not provide for the incorporation of a range of mitigation alternatives expressly developed to address the very broad range of potential impacts that may occur under the numerous and varied climate futures. The potential result of this omission is for federal agencies to require excessive levels of mitigation to address a spectrum of potential future impacts, while they lack the ability to adapt or modify mitigation actions in response to actual conditions. This could cause significant and costly "over mitigation," or mitigation could be made moot by the consideration of the range of futures, i.e. a range of temperature futures due to climate change may make reaches of a stream uninhabitable for sensitive aquatic species with or without the project. We recommend that the guidance address agency consideration of adaptive mitigation programs to address the uncertainty of future conditions due to a range of climate futures.

The proposed guidance at pages 21-22 requires the proponent of the proposed action to use predictive climate change modeling in assessing the status of the future environment during the "expected life of the proposed project." If a new water supply infrastructure has an expected 50-year life span, the proposed guidance appears to require an identification of anticipated environmental conditions 50 years into the future. The guidance should clarify that with respect to climate change, long-term predictions are tempered by the applied capabilities of climate models, projections, and analysis tools and models.

Page 22 of the proposed guidance refers to a situation where "a proposed action may require water from a stream that has diminishing quantities of available water" due to climate change and instructs that this information be used to "inform decisions on whether to proceed with . . . the proposed action. . . ." This instruction should recognize state water allocation systems, which may require that water be taken at a certain point during a certain time frame by a certain party. The federal agencies must balance these competing requirements and honor state law.

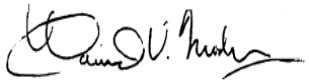
As a fundamental matter, the guidance should recognize that while it is necessary to analyze the impacts of climate change and take these into consideration in project planning, the agencies and project proponents should not have to mitigate for impacts caused by climate change. For example, water infrastructure project proponents should not be required to provide imported water supplies to mitigate for the impacts of climate change that result in dry creek or river beds or warmer water that impacts sensitive aquatic or plant species. Under NEPA, agencies and project applicants are only responsible for analyzing and mitigating the effects of their projects, not compensating for the on-going effects of climate change.

Lastly, the proposed guidance is silent on the timeliness of EIS/EA preparation when considering multiple future conditions due to climate change. Resource management agencies will need to respond quickly, on the order of 1 – 3 years rather than 5 – 10 years common for a complex EIS, in the face of drought impacts and changing resource conditions due to climate change. Projects associated with vulnerable resources, especially water systems, will need to undertake additional infrastructure construction activities and effectuate policy changes in order to protect communities, power, irrigation, tribal, recreation, and environmental uses from the adverse impacts of drought and climate change. These potential policy and project development

actions will likely require NEPA compliance. It would be helpful for the guidance to acknowledge the need for proactive and timely development of NEPA documents. We recommend that the guidance address the timeliness of the EA/EIS preparation process especially when the proposed project is associated with the protection or use of vulnerable resources, in particular water and water systems.

Thank you for the opportunity to provide comments on the proposed NEPA guidance. If you have any questions regarding the comments in this letter, please contact either Don Baur or Paul Smyth of Perkins Coie, LLP at (202) 654-6200.

Sincerely,



David Modeer
Chair Western Urban Water Coalition

cc: Perkins Coie LLP
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