



April 9, 2013

Delivered via e-mail and overnight delivery

Catherine Allen
Environmental Protection Agency
1200 Pennsylvania Ave. NW.
Washington, DC 20460)

Re: Comments on the EPA Climate Change Adaptation Plan, Docket Number EPA–HQ–OA–2012–0247

Dear Ms. Allen:

On February 8, 2013, the Environmental Protection Agency (EPA) released its draft Climate Change Adaptation Plan (Plan). This letter provides the comments of the Western Urban Water Coalition (WUWC) on the Plan.

The WUWC consists of the largest urban water utilities in the West, serving over 35 million western water consumers in 15 metropolitan areas in five states. The membership of the WUWC includes the following urban water utilities: *Arizona* – Central Arizona Project, City of Phoenix; *California* – East Bay Municipal Utility District, Los Angeles Department of Water and Power, Metropolitan Water District of Southern California, San Diego County Water Authority, City and County of San Francisco Public Utilities Commission, Santa Clara Valley Water District; *Colorado* – City of Aurora, City of Colorado Springs, Denver Water; *Nevada* – Las Vegas Valley Water District, Southern Nevada Water Authority, Truckee Meadows Water Authority; and *Washington* – Seattle Public Utilities. WUWC members have strong interest in the effects of climate change on water availability and in EPA's regulatory response to these effects.

We address our comments to the following sections of the Plan:

2.2.2 Goal 2: Protecting America's Waters (pages 16-20)

The WUWC agrees with the goal of protecting America's waters, and we are pleased that EPA has identified water as a key element of its Plan. We would like to see water play a more central role in addressing climate change impacts overall and in EPA's adaptation strategies. Unfortunately, the Plan is focused on EPA's ability to fulfill its mission and overlooks the significant challenges water utilities face from climate change in fulfilling their missions.

As noted at page 16, climate change alters the hydrological cycle, changing the background conditions in which natural and man-made systems function. EPA should adjust regulatory approaches to ensure that they take fully into account the degree to which climate change impacts the baseline factors for existing and new regulations under the Clean Water Act (CWA). Regulatory approaches should maintain flexibility. Climate change will be a continuous process, rather than a change from one static state to another.

Urban water suppliers face many challenges from the effects of climate change, including:

- diminishing water supplies due to drought;
- difficulties in complying with EPA temperature standards in light of warming of water in rivers, streams and reservoirs;
- difficulty in complying with in-stream water quality standards, including the maintenance of identified designated uses;
- given lower flows and the absence of dilution water; concerns over appropriate TMDL load and waste load allocations in new hydrologic regimes;
- brine disposal issues associated with advanced treatment techniques;
- polluted run-off in the aftermath of devastating forest fires; and problems managing stormwater runoff from larger storm events.

These challenges require flexibility in how compliance is determined, rather than tighter regulatory efforts.

We agree with the statement on page 17 that “changes may be needed in how EPA and our partners implement water quality programs, including Water Quality Standards, Total Maximum Daily Loads (TMDL), Effluent Guidelines, National Pollutant Discharge Elimination System (NPDES), nonpoint pollution control programs, and other watershed management programs.” EPA should adjust regulatory approaches to ensure that they take fully into account the degree to which climate change impacts affect the regulated community, promoting new compliance paradigms and providing greater flexibility in compliance strategies.

EPA has identified at pages 19-20 a number of areas where its programs designed to protect drinking water are vulnerable to climate change. Urban water utilities suffer from the same vulnerabilities. Unfortunately, EPA’s list does not recognize the significance of the existing drought in certain Western States and the corresponding difficulties the current drought has on the operations of water utilities. Moreover, the assumption should not be that more and stricter regulation is necessary to combat the current drought and additional effects of climate change. On the contrary, flexibility in the implementation of water program objectives, along with the use of innovative watershed based approaches, is the better approach.

2.2.5 Goal 5: Enforcing Environmental Laws (pages 23-24)

We agree with EPA that climate change may affect EPA decisions related to the enforcement of environmental laws, including where enforcement resources should be allocated (page 23). Enforcement priorities should take into account the difficulties presented by climate change on regulated entities. It simply will not be possible to expect full compliance with some existing regulatory measures when water supplies are dwindling and operational constraints on water supply utilities are more severe and demanding. The solution is not more rigid and aggressive EPA enforcement, but a more carefully chosen application of enforcement discretion to recognize good faith efforts to comply in the face of limitations imposed as a result of climate change, along with the adoption of modified compliance measurement metrics.

3.3.1.1. Integration of climate change adaptation into rulemaking processes (pages 34-36)

We agree with the integration of climate change adaptation into rulemaking processes. EPA should adjust regulatory approaches to ensure that they take fully into account the degree to which climate change factors impact the baseline factors for new regulations. Flexibility is critical given that climate change adaptation will be a continuous process.

Additionally, we are concerned about the attempts of EPA to “have it both ways” on regulating the effects of climate change. EPA and other agencies have issued regulations to reduce greenhouse gas emissions and restrict other activities including water supply and use, to address the consequences of climate change. The agencies have failed, however, to recognize the difficulties urban water resource agencies experience from the effects of extreme weather events and temperature changes on water quality and availability. These effects will make compliance with current and potential future regulatory measures difficult, if not impossible, putting urban water resource agencies in danger of enforcement actions, even though noncompliance is triggered by the effects of climate change. EPA should adapt its regulatory approach to fit constraints climate change poses for water utilities and their need to provide alternate water supplies.

In addition, EPA proposes to integrate climate adaptation into its Action Development Process (ADP) that EPA has imposed to guide the agency’s rulemaking activities from the start of the rulemaking process through the final publication of a regulation (page 35). The plan directs the following highlighted items:

Rulemaking process. We agree with the plan’s direction (page 35) for EPA to find opportunities to discuss climate change adaptation considerations, both internally and with stakeholders. Early input from regulated entities will help EPA understand the practical difficulties presented by any new regulatory proposals. Water utilities have already begun extensive planning scenarios to address climate change. Extensive efforts have been undertaken collectively on the Colorado River to look at past climate data and to model the future. EPA should incorporate existing knowledge, alliances and information from water utilities into EPA’s process.

Development of guidance. We support the plan's direction (page 35) that EPA develop guidance documents and training for rule writers to understand the implications of climate change impacts. This will enhance the rule writers' understanding of climate change adaptation and how to consider it in rulemaking. Again, this should involve input from water utilities.

Tracking and monitoring rulemakings. We support the plan's direction (page 35-36) that EPA identify rulemakings where climate change adaptation may be relevant. This should be supplemented by input from water utilities for integration of climate change considerations into permitting, monitoring and enforcement decisions.

3.4 Importance of Partnerships

We agree that strong partnerships will be critical for efficient, effective and equitable implementation of climate adaptation strategies. EPA intends to work with States, tribes, and local communities in developing regional and local strategies because the effects of climate change can vary geographically. Of course, urban supply utilities, such as the members of the WUWC, should be a part of this partnership effort. In addition, as EPA works with States, tribes, and local communities, we caution against proliferating regulations at each level government. Inconsistencies among federal, state, tribal and local laws and policies frustrate compliance efforts.

4.1 Existing Strategic Performance Measures (pages 48-49)

The Plan includes the following "strategic measure":

By 2015, EPA will account for climate change by integrating climate change science trend and scenario information into five rule-making processes to further EPA's mission, consistent with existing authorities (preference for one related to air quality, water quality, cleanup programs, and chemical safety.)

As noted previously, the WUWC favors a realistic approach to incorporating the effects of climate change into EPA's regulations by recognizing the need for greater flexibility. The WUWC supports this measure if that is the intended direction of the rulemaking initiative. We urge EPA, as it integrates climate change science into its rulemakings, to avoid additional command and control rules and instead provide flexibility to states and local water agencies in the establishment and implementation of water quality requirements. Stricter standards, along with a failure to acknowledge throughout the program new, on-the-ground hydrologic realities, will only lead to further problems. We also question the rigid approach of targeting five unspecified rules for this purpose. EPA's regulatory response should be driven by practicality and real-world circumstances, not an arbitrary target of "five rule-making processes." EPA, with input from its state and local partners, should let the specific needs of climate change impacts dictate where regulatory effort is focused, beginning with those areas of greatest need.

We support this approach of incorporating consideration of climate change into grant programs.

4.2 New Performance Measures (pages 49-50)

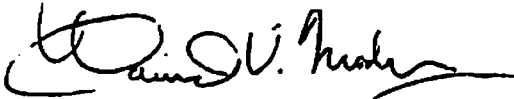
EPA recognizes that the integration of climate adaptation planning into its programs, policies, rules, and operations will happen in stages and measures should reflect this evolution. We agree that the first changes in many programs should be changes in knowledge and awareness, rather than in the issuance of new or more burdensome regulations. Water utilities have undertaken extensive planning scenarios to address climate change. EPA should take advantage of this important knowledge base.

Add an Additional Goal

Finally, EPA should add an additional goal: "Goal 6: Assess Regulatory Challenges for Water Utilities from Climate Change Impacts." This would enable EPA to receive additional input from water utilities and address the one-way nature of the Plan by making the Plan more collaborative.

Thank you for the opportunity to provide comments on EPA's Climate Adaptation Plan. If you have any questions regarding the comments in this letter, please contact Mark Pifher, Chair of the WUWC Water Quality Committee at (719) 668-8693, or our counsel, Donald Baur or Paul B. Smyth of Perkins Coie, LLP, national counsel for the WUWC, at (202) 654-6200.

Sincerely,



David Modeer
Chair
Western Urban Water Coalition

cc:
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INFORMATION

Organization Name: Western Urban Water Coalition

Submitter's Representative: David Modeer

Government Agency Type:

Government Agency:

COMMENT

See attached file(s)

Attachments:
WUWC Comments on EPA Climate Change.pdf



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Document ID: EPA-HQ-OA-2012-0247-0001

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Note this tracking number to find your comment at a later date.

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