



January 3, 2014

Delivered via e-mail and overnight delivery

Gerald Filbin
Team Leader
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW.
Washington, DC 20460

Re: Comments on EPA's Draft Region 10 Climate Change Adaptation Implementation Plan, Docket ID No. EPA-HQ-OA-2013-0568

Dear Mr. Filbin:

On November 4, 2013, the U.S. Environmental Protection Agency (EPA) announced the opportunity for public comment on the *Draft EPA Climate Change Adaptation Implementation Plans* (Plans), one for each of its ten Regions and seven National Programs. These plans are the result of the EPA Regional and National Program offices developing adaptation plans specific to their offices to implement the agency-wide *Climate Adaptation Implementation Plan*, initially released in February 2013. Each one of these Plans articulates how the Regional or National Program office will integrate climate change adaptation into its planning and work in a manner that is consistent and compatible with its goals and objectives. The Western Urban Water Coalition (WUWC) appreciates the opportunity to comment on EPA's **Region 10 Plan**, and provides the following comments.

Established in 1992 to address the West's unique water issues, WUWC is a coalition of the largest urban water utilities in the West, serving over 35 million western water consumers across 15 metropolitan areas in five states. Members of WUWC include the following urban water utilities: Arizona – Central Arizona Project and City of Phoenix; California – East Bay Municipal Utility District, 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 is committed to presenting a new and different perspective on the management of water resources in the modern West. WUWC is distinct from existing national and regional water organizations and seeks to articulate the needs and values of Western cities to provide a reliable, high quality urban water supply for present and future generations, while preserving the unique environmental and recreational attributes of the West. The Coalition is an active public and legislative advocate for progressive water and resource management in the West. WUWC advocates effective and practicable approaches to the implementation of environmental protection programs, including the water quality standards program, in a time when water is becoming more scarce and critical to the West's sustainability. WUWC also has strong interest in the effects of climate change on water availability and in EPA's regulatory response to these effects.

EPA Region 10 includes the States of Washington, Oregon, Idaho and Alaska, as well as a number of Federally Recognized Tribes. Similar to other western EPA regions, the vastness of Region 10 (which mainly consists of the Pacific Northwest) means diversity in landscapes, hydrology and climate. For example, the Cascade Mountain Range cuts through Oregon and Washington, splitting the region, which results in significant climate variability on each side of the Range. Due to the diversity and wide range of climate change impacts in this region, climate adaptation planning has to be tailored to meet different needs based on different climate regions, populations and geographic considerations. For future reference, the WUWC member within Region 10 is Seattle Public Utilities.

The Region 10 Plan is based on five major priorities, including: 1) Taking Action on Climate Change and Improving Air Quality; 2) Protecting America's Waters; 3) Cleaning Up Communities and Advancing Sustainable Development; 4) Ensuring the Safety of Chemicals and Preventing Pollution; and 5) Enforcing Environmental Laws. WUWC commends EPA for undertaking this proactive initiative to address climate change and is prepared to partner with EPA in meeting the challenges of climate change through effective coordination and implementation of flexible strategies to combat climate change.

WUWC has reviewed the draft Region 10 Plan with a focus on two of the priority areas: protecting America's waters and enforcing environmental laws. In addition to specific concerns identified below, WUWC has a major overarching concern with the Region 10 Plan.

The Region 10 Plan should discuss the need to partner with those entities actually responsible for water and wastewater infrastructure services, i.e., local government municipalities, utilities and special districts. The water utilities of WUWC are assessing how climate change will affect everyday operations and the overall goal of ensuring consumers have a safe and reliable source of water. These entities, including WUWC members, provide an "on-

the-ground” perspective from stakeholders actively adapting to changing hydrology and climate that intimately understand how local systems will be impacted, what is required to meet existing standards, and the implication of different legislative and regulatory proposals. Partnerships between EPA and responsible entities will be critical moving forward. EPA should engage local stakeholders and the public to ensure sound and practical measures to encourage climate adaptation and mitigation of climate impacts.

WUWC members are assessing how climate change will affect everyday operations and the overall goal of ensuring consumers have a safe and reliable source of water. Members of WUWC are regulated entities that take seriously the various permit and regulatory conditions under which they operate. Given this dual perspective of simultaneously striving to prepare for climate change and meeting permit and regulatory requirements, WUWC strongly believes it is critical for federal agencies, including EPA, to have a dialogue with water utilities about ways to enhance regulatory flexibility to better enable adaptation in the face of uncertainty and climate change. Some issues that warrant further consideration are what types of climate change scenarios the Plans are meant to address; how are the scenarios different from the climate variability we have seen in the past and are currently addressing; what period of time (years) are the plans meant to cover; what is the accuracy of the range of projected impacts; what is the baseline for measuring and reporting the effectiveness of the proposed actions; and whether proposed actions are cost-effective. WUWC fully supports and further encourages improved communication between EPA and its members.

WUWC’s additional comments on the Region 10 Plan are as follows, based on the corresponding heading in the Plan:

Protecting America’s Waters (pp. 16-19)

WUWC agrees that climate change may lead to the types of environmental impacts identified by Region 10. These impacts include:

- Impacts to drinking water, wastewater, stormwater and agricultural infrastructure due to increased precipitation, more frequent flood events, storm surges, and coastal erosion, etc. Specific impacts include flooded facilities, sewer overflows and increased pollutant loads in runoff (p. 16).
- Impacts to freshwater fisheries due to earlier stream runoff and scouring of streambeds due to earlier snow melt, decreased summer stream flows and increased stream temperatures and longer period of low stream flow. Specific impacts include loss of salmon habitat and increased stress on salmon reproduction throughout their entire lifecycle (p. 17).

- Impacts to estuarine watersheds, aquatic ecosystems, and wetlands due to sea-level rise, sea surface temperature and increasing heavy precipitation events during the winter months and decreasing precipitation days and increasing drought intensity during summer months. Specific impacts include changes in precipitation patterns and increased drought intensity that will stress wetland, forest and mountain ecosystems (p. 17). Additionally, warmer sea surface temperature can contribute to sea level rise and increased storm intensity. *Id.*

A number of the Region 10 Plan observations warrant further discussion. While it is helpful and important that EPA raises these serious and real concerns, the Region 10 Plan does not clarify how these scenarios will impact future regulatory compliance or how water utilities will mitigate these effects in the context of regulation and cost. EPA should elaborate further with concrete actions that are practical and feasible and can be employed by state and local entities.

Enforcing Environmental Laws (pp. 22-25)

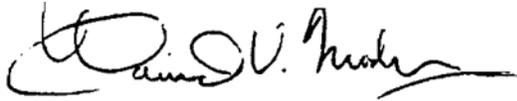
EPA's Region 10 Plan discusses compliance with environmental laws in light of climate change. The Region 10 Plan states that "non-compliance at regulated entities may increase due to extreme weather events and changing weather patterns," p. 23. As a result, EPA states that "[c]ompliance and enforcement programs under the Clean Water Act (CWA) have the potential to see an increase in violations from many situations including sanitary sewer and combined sewer overflows, violations of percent removal at wastewater treatment plants ... and increased violations in numerous programs due to failure of existing infrastructure protecting against extreme weather events." *Id.* EPA also states that non-compliance with certain environmental laws due to climate change may result in a "shift in regional enforcement priorities due to changes in compliance," *id.*, and "may shift the enforcement focus to those violations." *Id.*

EPA's Region 10 Plan should recognize that in order for climate adaptation to be successful, both drinking and wastewater utilities need regulatory flexibility. Although baselines may change, EPA must avoid frustrating efforts by water providers to carry out effective adaptation strategies, by enforcement of rules and standards that are unrealistic and cannot be met due to changed conditions caused by climate change. EPA needs 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 penalties, even though noncompliance is triggered by the effects of climate change. The Region 10 Plan therefore should recognize the potential need to revise some current regulations that are based upon environmental conditions that will not be attainable due to climate change. In addition, EPA should explain that it will

consider ways to invoke its enforcement discretion in those situations where a good faith effort is being made to comply.

Thank you for the opportunity to provide comments on EPA's Region 10 Plan. If you have any questions regarding the comments in this letter, please contact our counsel, Donald Baur or Nidhi Thakar of Perkins Coie, LLP at (202) 654-6200.

Sincerely,

A handwritten signature in black ink, appearing to read "David Modeer". The signature is fluid and cursive, with a long horizontal stroke at the end.

David Modeer
Chair
Western Urban Water Coalition

cc: Perkins Coie LLP
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Washington, DC 20005-3960