



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 8 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 8 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.

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.

Region 8 straddles two different climate regions identified by the U.S. Global Change Research Program -- the Great Plains and the Southwest. This region is made up of Colorado, North and South Dakota, Wyoming, Montana and Utah. The vastness of Region 8 means its Plan must cover a wide range of landscapes, hydrology and climate. Because of 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.

The Region 8 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.

For future reference and follow-up collaboration, the WUWC members within Region 8 are Aurora Water, Colorado Springs Utilities, and Denver Water.

WUWC has reviewed the draft Region 8 Plan with a focus on two of the priority areas: protecting America's waters and enforcing environmental laws. WUWC has three general comments on the Region 8 Plan:

- (1) The need to discuss how climate change can or will be addressed in the context of existing statutory and regulatory constraints.
- (2) The need to identify true "priority actions" as compared to acknowledging a need for future consideration of the identified concern.
- (3) The need to acknowledge the importance of partnerships with parties responsible for water and wastewater infrastructure services, i.e., local municipalities, utilities and special districts.

WUWC's comments on these issues are as follows, based on the corresponding heading in the Plan:

Protecting America's Waters

WUWC agrees that climate change may lead to the types of environmental impacts identified by Region 8, including warmer waters, water degradation, heavier precipitation and storm events and reduced snowpack and earlier spring runoff, among others. However, many of the Region 8 observations warrant a more thorough discussion. For example, while it is acknowledged on pp. 11-12 of the draft that "water bodies may have trouble meeting water quality standards" and hence there may be more total maximum daily load (TMDL) listings, it is unclear how Region 8 believes this factual scenario will impact future regulatory compliance. Similarly, while it is noted that "the baselines used in water quality standard development and implementation could shift, requiring new scientific analysis," *id.*, there is no explanation of the intent behind this statement. Does it mean that standards will become more stringent, reflecting increased "background" pollutant concentrations and/or decreased dilution flows, or potentially less stringent, responding to the highest designated use achievable in such a new environment?

The Region 8 Plan further discusses "greater use of biological monitoring and assessment techniques" and "management techniques that build resilience into aquatic environments" p. 12. These phrases similarly warrant additional explanation, including whether Region 8 is endorsing

the use of biological metrics in a “weight of the evidence” approach, and exactly “how” such resilience can be achieved. Finally, the Region 8 Plan discusses the potential for drinking and wastewater infrastructure to be redesigned and/or replaced due to the impacts of climate change. However, EPA does not discuss how water utilities will support the need for these infrastructure changes, which are very costly.

EPA’s Region 8 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 enforcing rules and standards that are unreasonable and cannot be met due to changing climatic conditions. Water utilities also will need support from EPA to manage upgrades that will be needed for infrastructure. Streamlined processes for upgrades should be considered, along with increased funding mechanisms, such as additional funding under the Clean Water and Drinking Water State Revolving Funds, which has proven to be a very valuable and successful program.

Under the “Priority Actions to Address Program Vulnerabilities” section of EPA’s priority Protecting America’s Waters, *see* p. 25, a number of general observations are made that either are not truly “actions” addressing the problem, or that lack the degree of specificity necessary to be truly useful. EPA should address these concerns in its final Region 8 Plan. The following are examples:

- A. Action: Support evaluation of hydrologic assumptions associated with TMDLs with respect to a changing climate.

Response: Region 8 should explain the ultimate goal of this evaluation. Does this mean that loads and wasteloads will now be reallocated to accommodate greater “storm” flows or lesser “drought” flows? How will this impact water and wastewater entities and their existing investments? While the information gained from this review could be helpful, the purpose should be explained within its regulatory context.

- B. Action: Promote early collaboration among federal agencies/state/tribes on water supply projects and other water infrastructure to encourage the consideration of climate change impacts.

Response: This collaboration should include the project sponsors. The goal of such collaboration should be an improved and better integrated project review process, including under NEPA if applicable, and the Region 8 Plan should clearly state that goal.

- C. Action: Host a headwaters protection discussion with key stakeholders to frame a discussion on climate adaptation, and to identify the Region’s most vulnerable communities with respect to water resources.

Response: Region 8 needs to identify the underlying “action” in this instance, once the “communities” are identified. The discussion should give deference to water rights and the prior appropriation doctrine.

- D. Action: Consider the water quality standards that might not be met, especially regarding sediments and nutrients, due to wildfires.

Response: As with the other Actions, the Plan should discuss the ultimate goal of this undertaking. WUWC supports the use of variances, temporary modifications, revised water quality standards, seasonal standards, etc., to account for changing circumstances caused by climate change. In addition, WUWC believes similar flexibility is needed for other changes to baseline resources that are being caused by climate change, not just fire.

- E. Action: Encourage water utilities to consider and plan for a full range of climate change scenarios in their disaster management and water infrastructure planning programs.

Response: In general, utilities are already accounting for climate change in their planning. Collaboration with EPA and other agencies on these plans is important, but such a dialogue needs to include the goal of finding ways to facilitate the work already underway by utilities. Such assistance can be provided in the form of more efficient and streamlined agency decision-making and approvals, where necessary. Also, financial and research assistance may be appropriate and should be specific topics discussed in the collaborative process.

- F. Action: Consider the potential impacts of emerging and unregulated contaminants.

Response: As with many of the other priority actions, the Plan should provide the regulatory context for “emerging and unregulated contaminants.” What contaminants are involved? Does EPA anticipate new regulations relating to the discharge of the contaminants? WUWC believes it is appropriate to discuss the possible impacts caused by these contaminants, but that no new regulations should be contemplated without detailed consideration of whether the impacts justify additional legal controls.

Enforcing Environmental Laws

The Region 8 Plan limits discussion of enforcement to the effects of climate change on “monitoring and sampling” and “claims of force majeure.” Nevertheless, there are many additional significant enforcement questions related to climate change surrounding such topics as effluent limitations, TMDLs, use designations and protection, performance of Use Attainable Analyses, section 401 certifications, antidegradation reviews, stormwater controls, and use of variances, etc. EPA will need to adopt a realistic and flexible approach to enforcing regulations

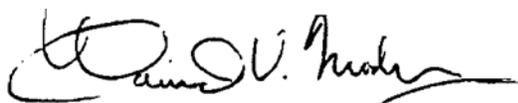
that become unrealistic and standards that become unattainable as a result of climate change. In this case, the long-term solution is to revise the regulations. In the interim, EPA will need to exercise its enforcement discretion to account for good faith efforts to comply with regulatory requirements that do not recognize changed circumstances. A comprehensive dialogue on this topic with all stakeholders is necessary if the Region 8 Plan is to be complete.

Other Priorities

WUWC is pleased that the Region 8 Plan recognizes the need for partnerships between EPA and states, tribes and local communities. Under the Training and Partnerships section, p. 28, EPA states that as a central element of Region 8's efforts to adapt to a changing climate, "states, tribes, and local communities share responsibility for protecting human health and the environment, and partnerships with the EPA are at the heart of this." EPA further states that [t]hese partnerships will be critical for efficient, effective and equitable implementation of climate adaptation strategies, which will evolve over time." WUWC agrees that these types of partnerships between EPA and other state and local organizations will be critical moving forward and that EPA should engage local stakeholders and the public to ensure sound and practical solutions to encourage climate adaptation and mitigation of climate impacts. The Region 8 Plan should be clear that this collaboration will include municipal water utilities, including WUWC and its members.

Thank you for the opportunity to provide comments on EPA's Region 8 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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