



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 9 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 9 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 includes 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.

Region 9 lies within three of the eight geographic regions defined by the National Water Program 2012 Strategy: Response to Climate Change -- the Southwest, Montane and U.S. Pacific Islands and Territories. California, Nevada and Arizona are the states that comprise this region. Similar to other western EPA regions, the vastness of Region 9 means its Plan must cover a wide range of landscapes, hydrology and climate. For example, the Montane Region (watersheds of the Sierra Nevada and Cascade Mountains) is unique because it relies heavily on winter snowpack for its water supply, while much of the Southwest region of Region 9 is arid with relatively high air temperatures. Because this region includes coastal California, there are concerns regarding sea level rise that are not a major concern for other regions. 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 and follow-up collaboration, WUWC members within Region 9 are listed above for the States of Arizona, California and Nevada.

The Region 9 Plan targets its climate change adaptation work on the following criteria: (i) does the action target one of the most severe and immediate vulnerabilities; (ii) does the action focus on one of the most vulnerable populations and/or geographic areas; (iii) does EPA Region 9 have the capacity and ability to take the action and contribute to a solution; (iv) is this a priority action for our partners (federal/state/local/territory/tribal/local government and non-governmental organizations) and are they able to work with us towards a solution; and (v) does the action support and align with other EPA Region 9 priorities and actions. Further, the Region 9 Plan focuses on building a more resilient and climate-responsive program by assisting partners of EPA to meet the challenges of climate change through financial and technical assistance, effective coordination and decision-making, among other ways. WUWC commends EPA for

prioritizing partnerships with climate change stakeholders, taking into consideration their priorities and constraints, and is prepared to partner with EPA in meeting the challenges of climate change.

WUWC has reviewed the draft Region 9 Plan and has some overarching comments about the Region 9 Plan, as well as more specific comments.

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.

Furthermore, while the Region 9 Plan introduces many important priority actions and concepts, the Plan does not always provide concrete strategies or ideas for achieving these priorities and is at times vague. For example, under Section B. Program-Specific Climate Change Adaptation Actions, Section 2. Water Program (p. 19), EPA lists: encouraging the reuse of water through collaboration with state and tribal governments, utilities and non-government partners; encouraging the implementation of green infrastructure through numerous EPA funding programs; and promoting sustainable asset management through enforcement orders and consent decrees as appropriate. However, EPA does not specify how these goals would be met. In the case of water reuse, how does EPA intend on encouraging partners? With regard to enforcement, under what circumstances will EPA resort to enforcement orders and consent decrees? Also, asset management can be defined differently by organizations and individuals within those organizations. In order to fully understand the intent of this part of the Region 9 Plan, EPA should consider better defining asset management. Generally, EPA should clarify direct actions that can be taken to achieve each objective listed in the Region 9 Plan.

WUWC's specific comments on the Region 9 Plan are as follows, set forth according to the corresponding headings in the Plan:

IV. Priority Actions

The Region 9 Plan encourages a dialogue between federal regulators and stakeholders. On page 12 of the Region 9 Plan, EPA lists consideration of the priority actions for its partners and whether a coordinated solution is possible. Additionally, EPA states that, as a specific adaptation action, it intends to “[h]old at least one roundtable discussion session with federal and state agencies, and other key climate change adaptation stakeholders, to discuss climate change vulnerabilities and coordinate efforts to build climate change resiliency.” *Id.* WUWC is pleased that the Region 9 Plan recognizes the need for partnerships between EPA and states, tribes and local communities. EPA should be sure to include municipal water supply entities, like the WUWC members, in this dialogue. These entities, including WUWC members, provide an “on-the-ground” perspective from stakeholders actively adapting to changing hydrology and climate, who intimately understand how local systems will be impacted, what is required to meet existing standards, and the implication of different legislative and regulatory proposals. 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.

B. Program-Specific Climate Change Adaptation Actions, 2. Water Program

With regard to Program-Specific Climate Change Adaptation Actions, the Region 9 Plan should provide for greater stakeholder engagement related to compliance and enforcement. The Region 9 Plan discusses some additional steps to be taken for implementing existing regulations, but it fails to discuss the likelihood that some regulations themselves will have to be modified through rulemaking. Some current regulations seek to maintain environmental conditions that are unrealistic and unattainable as a result of climate change. Under the Plan, Region 9 should begin discussions with stakeholders about the need to make relevant regulations more realistic and reflective of the environmental conditions caused by climate change.

On page 19, the Plan states the intention to “[d]evelop model language for National Pollutant Discharge Elimination System (NPDES) permits to require asset management planning that accounts for existing facility replacement and maintenance, as well a potential upgrades needed to deal with sea level rise and increased flood risk, where appropriate.” WUWC believes that asset management planning also should include activities necessary when there are drought conditions. This is a prime example of an issue that would benefit from input from affected stakeholders, who are living with a changed environment and have an unique perspective into the challenges presented by a regional climate that no longer meets the status quo.

Similarly, on page 20, the Region 9 Plan states that EPA should

[d]evelop model language for commenting on Clean Water Act Section 404 permits (impacts to wetlands) to request that project alternatives consider sea level rise and flood risk, as well as decreasing stressors on wetlands (and other waters of the U.S.) sensitive to climate change (e.g. coral reefs, alpine ferns). Develop model climate change adaptation language for Section 404 permit-related wetland mitigation banks. Incorporate green infrastructure provisions, for management and use of runoff, into appropriate wetland permits and CWA Section 401 certifications for water quality.

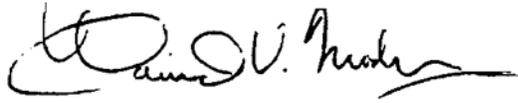
Once again, input from stakeholders affected by these regulatory changes is critical to ensure that new regulatory guidance or provisions meet EPA's underlying objectives, but do not frustrate advances stakeholders, such as WUWC, are making to combat the effects of climate change. While the Region 9 Plan makes significant strides to foster an open dialogue between EPA and Region 9 stakeholders, more emphasis needs to be placed on collaborating and seeking feedback from stakeholders regarding changes related to regulations.

On a separate note, on page 20, EPA states that in order to increase watershed resilience to climate change, there should be "targeted implementation in priority watersheds, based on Total Maximum Daily Load (TMDL) determinations and watershed plans, and collaboration in these watersheds with federal, state, territory, tribal and local agency partners to leverage additional resources and expertise to achieve meaningful results." While it is helpful that EPA is collaborating with other state and local entities on this objective, implementation of this objective needs to be practical and feasible. Input from on-the-ground entities should assist in this application.

WUWC commends EPA's efforts to create policies in the Region 9 Plan that foster effective coordination and communication with state and local partners. EPA should, however, work to include partners in not just the policy planning, but also in revisions to the regulatory framework. EPA's Region 9 Plan should also recognize that in order for climate adaptation to be successful, both drinking and wastewater utilities need regulatory flexibility. 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. 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.

Thank you for the opportunity to provide comments on EPA's Region 9 Plan. If you have any questions regarding the comments in this letter, please contact our counsel, Donald Baur, Paul Smyth, 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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