



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 Office of Water 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 **Office of Water 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.

The Office of Water Plan draws on and is intended to help implement EPA's National Water Program 2012 Strategy: Response to Climate Change, which was unveiled back in December 2012. The Office of Water Plan touches on the main areas of: (i) vulnerability of water resources, including clean water and drinking water programs, to climate change; (ii) priority actions for water program response to climate change; (iii) Office of Water contribution to meeting EPA strategic measures on climate change; (iv) legal and enforcement issues; (v) training and outreach for climate change adaptation; (vi) partnerships with Tribes; (vii) populations and places vulnerable to climate change; and (viii) program evaluation and cross-Agency pilot projects.

In general, WUWC commends EPA and the Office of Water for taking the initiative to prepare a Climate Adaptation Implementation Plan. WUWC members are confronting the serious planning, management, economic, and environmental consequences of the effects of climate change on western water resources. 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.

Moving forward, adaptation strategies will be very important to confronting these challenges in the years to come, and WUWC agrees with EPA that collaboration among

stakeholders, combined with financial and technical support and regulatory flexibility, will be the key to success in this effort. The WUWC would be pleased to enter into close collaboration with EPA for developing and implementing effective adaptation strategies on the national and regional levels.

WUWC's specific comments on the Office of Water Plan are as follows, based on the corresponding sections in the Draft Plan:

II. Vulnerability of Water Resources to Climate Change

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. 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 reservoirs and in complying with pollution limits given lower dilution flows, and managing stormwater runoff from larger storm events. These challenges require flexibility in how compliance is determined, rather than tighter regulatory efforts.

WUWC agrees with the impacts of climate change EPA's Office of Water has outlined in its Plan on p. 3, including increases in water pollution problems as air and water become warmer, increased extreme weather events, changes to rain and snow level distribution that affect water availability, and sea level rise, among others.

EPA has specifically identified, at pages 4-9, a number of impacts that are likely to occur on both freshwater and coastal resources as a result of climate change. These vulnerabilities include:

- Warmer air temperatures that will result in warmer water that will promote increased growth of algae and microbes, in turn affecting drinking water quality.
- Increased water use that will stress current water system infrastructure.
- Increased evapotranspiration rates resulting from warmer waters, which may result in water losses for which wetlands and drinking water managers will need to account.
- Heavier precipitation events that will increase flooding, expand flood hazard areas, increase the variability of stream flows, and potentially damage existing drinking and wastewater infrastructure.
- Combined storm and sanitary sewer systems may need to be redesigned due to increased storm activity and frequency that could result in sewer overflows.

- Reduced annual precipitation or increased intensity and duration of drought in some regions will affect water supplies, causing drinking water providers to reassess supply plans and consider alternative pricing, allocation and water conservation options.
- Increased rainfall will result in increased stormwater runoff and overflows and sediment, which will require additional treatment.
- Warming temperatures will cause precipitation in some areas to increasingly fall as rain rather than snow. Combined with seasonal shifts in springtime snowmelt, areas relying on snowpack to serve as a water reservoir may shift to underground aquifers and development of new reservoirs.
- In areas with loss of snowpack or less precipitation, reduced stream flow may make meeting water quality standards more challenging.
- Rising sea levels will move ocean and estuarine shorelines by inundating lowlands, displacing wetlands, and altering the tidal range in rivers and bays.
- Drinking water systems will need to consider relocating facilities or intakes as sea levels rise.
- Coastal areas are likely to see multiple impacts associated with climate change including: sea level rise, increased damages from floods and surges, coastal erosion, changes in drinking water supplies, and increasing temperature and acidification of the oceans.

Recognizing these effects, the Office of Water Plan should not assume that the solution to these problems is more stricter regulation. On the contrary, flexibility in the implementation of standards is the better approach, and EPA should work closely with WUWC and other stakeholders to identify regulations that may need to be revised to confront the realities of climate change, even if that means relaxed, but more realistic, standards.

III. Priority Actions

The Office of Water has identified nine “common activities” that it will attempt to implement beginning in 2013 to support climate adaptation planning. WUWC agrees that many of the priorities listed are a key element of the Office of Water Plan, but has concerns that local water utilities are being left out of the process based on the Office of Water Plan. As a result, the Office of Water Plan should place more emphasis on the need to collaborate and seek feedback from local governments and water utilities on proposed climate change actions, specifically any actions related to rulemaking.

On page 11 of the Office of Water Plan, one of the priority actions listed includes “[e]ngag[ing] key stakeholders in climate change adaptation work by continuing to support the State and Tribal Climate Change Council that advises the National Water Program.” However, among the priority actions listed in the Office of Water Plan, none of the priorities specifically engages municipalities and local water utilities as stakeholders in climate adaptation work. In particular, local water utilities are at the frontlines of experiencing the clear effects of climate change and what it means for operating on a day-to-day basis. In turn, we are a resource to EPA due to our unique perspective and welcome the opportunity to participate in the process.

Similarly, on page 13 of the *Common Climate Change Actions for Regional Water Programs* section, the Plan discusses “[s]upport[ing] national program efforts to inform and educate water program managers in the public and private sectors on climate change and water issues” In the same section, the Plan lists “[a]ddress[ing] Climate Change in Meetings with States and Tribes” in 2013, “includ[ing] a discussion of ongoing Agency and Regional climate change adaptation planning” A common weakness in these discussions is that the scope of engagement leaves out municipal water utilities and is limited to state water programs. WUWC urges EPA to consider engaging local governments and utilities to provide an “on-the-ground” perspective from stakeholders who are actively adapting to changing climates and who intimately understand local systems that will be impacted, what is required to meet existing standards, and the implication of different rulemaking proposals.

IV. Office of Water Contribution to Meeting EPA Strategic Measures on Climate Change

WUWC agrees with the Office of Water Plan’s objective to “integrate climate change science or trend information into five major rulemaking processes,” p. 15. However, EPA should adjust regulatory approaches to ensure that they take into account the degree to which climate change factors impact the baseline factors for new regulations. In particular, 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, even though noncompliance is triggered by the effects of climate change.

We urge EPA as it integrates climate change science into its rulemakings to avoid additional command and control rules and instead provide flexibility to water agencies in meeting existing water quality standards. Urban water suppliers are facing diminishing water supplies due to drought, difficulties in complying with EPA temperature standards in light of warming of water in reservoirs and in complying with pollution limits given lower dilution flows, and managing stormwater runoff from larger storm events. Stricter standards will only be more difficult to meet.

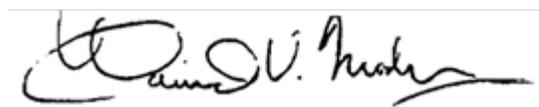
V. Legal and Enforcement Issues

The Office of Water Plan raises the concept of initiating a pilot project with the Office of Enforcement and Compliance Assurance to include climate change considerations in compliance and enforcement activities, pp. 15, 25. However, the Office of Water Plan fails to elaborate on this initiative. WUWC believes this could be an opportunity for EPA to explore the tradeoffs in implementing different adaptation strategies between environmental benefit and economic costs – such as the cost to the environment of increased greenhouse gas emissions from adding more energy intensive water treatment compared to the incremental benefit the advanced treatment process adds. EPA could seek feedback on key research questions from stakeholders to improve the pilot project focus.

EPA should further elaborate on its pilot project plan with the Office of Enforcement and Compliance Assurance. While we agree with EPA that climate change may affect EPA decisions related to enforcement, enforcement priorities should nevertheless take into account the difficulties presented by climate change on regulated entities. EPA's Plan should discuss the ways in which its enforcement discretion will be applied to situations where good faith efforts are being made to comply with standards that have become difficult or impossible to attain as a result of changes in baseline conditions or other relevant factors caused by climate change.

Thank you for the opportunity to provide comments on EPA's Office of Water 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", enclosed in a thin black rectangular border.

David Modeer
Chair
Western Urban Water Coalition

cc: Perkins Coie LLP
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