



July 28, 2017

Submitted via Federal eRulemaking Portal
<http://www.regulations.gov/>

Mark Lawyer,
Office of the Executive Secretariat
ATTN: Reg. Reform, U.S. Department of the Interior,
1859 C Street N.W., Mail Stop 7328
Washington, DC 20240

Re: Comments in Response to DOI's Request for Input on Regulations Appropriate for Repeal, Replacement, or Modification, Docket ID Nos. DOI-2017-0003-0005, DOI-2017-0003-0009 and DOI-2017-0003-00011.

Dear Mr. Lawyer:

This letter provides comments on behalf of the Western Urban Water Coalition ("WUWC") on the Department of the Interior's ("DOI's") Request for Comment on Regulatory Reform in accordance with Executive Order 13777, 82 Fed. Reg. 28429, June 22, 2017 ("DOI's Request"). WUWC appreciates the opportunity to comment on DOI's Request.

Created in June 1992 to address the West's unique water issues, WUWC consists of the largest urban water utilities in the West, serving over 35 million western water consumers in major metropolitan areas in the western states. The membership of WUWC includes the following urban water utilities: *Arizona* – Central Arizona Project, City of Phoenix and Salt River Project; *California* – Eastern Municipal Water District, Los Angeles Department of Water and Power, The Metropolitan Water District of Southern California, San Diego County Water Authority, and City and County of San Francisco Public Utilities Commission; *Colorado* – Aurora Water, Colorado Springs Utilities, and Denver Water; *Nevada* – Las Vegas Valley Water District, Southern Nevada Water Authority, and Truckee Meadows Water Authority.

INPUT FROM THE WESTERN URBAN WATER COALITION

WUWC provides input below in response to DOI's Request. WUWC has identified regulations, programs and policies that could be streamlined to reduce the burden on regulated entities without diminishing important environmental protections. WUWC's input is focused on ways that DOI can work collaboratively with western water supply agencies to ensure these agencies can meet water supply needs and water quality requirements. A number of WUWC's suggestions do not require any regulatory reform but rather only administrative action by DOI.

I. Tax Exemption for Water Conservation Rebates

Water supply and management utilities and companies throughout the country are implementing effective conservation programs to preserve and extend limited water supplies. These activities directly benefit infrastructure, both by extending the life of existing facilities and by supporting infrastructure enhancement that makes water delivery more efficient and reliable. A key aspect of these programs is to create the incentive for customers to conserve by providing rebates to lower the cost to the consumer for water-saving measures and equipment purchases. Unfortunately, under the last Administration, the IRS determined that these rebates were taxable income. This has discouraged customers from taking these actions. A bipartisan group of members of Congress has urged the Treasury Department to treat these water conservation measures as included within the Tax Code exclusion for rebates for energy conservation measures, based on the commonly recognized energy-water nexus. The Obama Administration failed to respond to this request. The impact of the request on the federal treasury will be minimal.

DOI can support these efforts by encouraging the Treasury Department to exempt water conservation rebates provided to customers from the definition of income for federal tax purposes, based on the connection between energy and water conservation.

II. Comprehensive Reimbursement Agreements

One of the principal concerns for water resource use and infrastructure rehabilitation and development is the potential for delays in decision-making. These problems often arise because of insufficient staffing and lack of federal agency resources to conduct the necessary procedures. Delays caused by insufficient federal staff and resources are likely to increase with budget cuts. A partial solution to this problem would be to make agency review procedures more efficient and expeditious by adopting uniform policy guidance that allows non-federal parties to cover the costs of these reviews through the hiring of federal staff and other support by the involved agencies. Similar procedures exist in a few DOI programs, and a uniform policy should be established for all federal environmental review procedures.

DOI should develop comprehensive and uniform guidance that encourages the use of reimbursement agreements through which applicants can pay for permit processing costs. Such agreements must ensure the objectivity of the reviews and agency actions made pursuant to reimbursement programs.

III. Endangered Species Act Reform

WUWC has been an active participant in Endangered Species Act (ESA) administrative and regulatory improvement measures. WUWC does not believe sweeping legislative reform is needed, but instead supports a continuation of the actions taken by all DOI Secretaries since the mid-1990s in an effort to achieve meaningful regulatory and administrative reform. This includes improvements in the efficiency of the decision-making process and ESA review procedures, and the encouragement of greater participation by non-federal entities in species conservation.

Consistent with this policy position, we strongly support the following actions:

- *DOI should increase its use of procedures and mechanisms that allow applicants to provide financial and in-kind assistance to cover the costs of ESA reviews.*
- *WUWC also believes the revised HCP Handbook, issued on December 21, 2016, should be reopened for public review after a collaborative process of discussion with key stakeholders. In the interim, the previous HCP Handbook should be reinstated. WUWC repeatedly asked for a more open process and extended comment on the draft Handbook, but did not obtain this relief.*
- *The regulations defining adverse modification of critical habitat and establishing the procedures for designating critical habitat, as well as the policy for determining exclusions from critical habitat, should be reopened. The final regulations and policy, adopted in February 11, 2016, need to be revised because the rules are too stringent in their treatment of habitat in areas “unoccupied at the time of listing,” and in their determination of what is “essential to the conservation of the species”. In addition, the policy for exclusion from critical habitat does not provide sufficient flexibility for areas subject to conservation plans developed under other laws.*
- *FWS/NMFS should develop policy guidance to define how exclusions from critical habitat will be made based on the economic impacts of designation on regulatory entities. At this time, FWS/NMFS follow an ad hoc process that lacks consistency and set methodology.*
- *FWS/NMFS should develop regulations to define the meaning of the ESA’s “best available science” test.*
- *FWS/NMFS should develop guidance, and revise regulations, to give nonfederal designated representatives a greater consultative role in formal consultation.*

IV. Mitigation Policies

Former President Obama had issued an Executive Order that required federal agencies to update their environmental mitigation policies, including a requirement that mitigation provide a “net environmental benefit.” The term was undefined, which allows for broad agency discretion, and

exceeds all past federal mitigation requirements. President Trump has repealed President Obama's Order, and Secretary Zinke followed President Trump's order with his own order focused on energy independence and requiring all DOI bureaus to "reconsider, modify, or rescind" their mitigation policies.

DOI should review each bureau's mitigation policies to eliminate the requirement that mitigation provide a "net environmental benefit, "not only for projects supporting energy independence, but also for water infrastructure and wildfire treatment projects."

V. National Environmental Policy Act Reform

The processing of applications for leases and permits is often delayed because the licensing agencies participate in the National Environmental Policy Act (NEPA) process sequentially rather than simultaneously. Moreover, there is usually not an overall schedule for review, with enforceable time lines for deliverables from the agencies. In addition, project opponents are able to delay projects through frivolous appeals. All of these unconstructive practices can be administratively remedied. Finally, special attention should be focused on the provision of categorical exclusions for forest and watershed health projects designed to improve water flow and quality, and to implement measures that prevent forest fires and rehabilitate burned areas.

DOI should revise Departmental NEPA regulations and handbooks to require: (1) the development of an interagency coordination plan whenever more than one agency is involved in permitting that provides for simultaneous preparation and review of NEPA and other environmental documents; (2) a 30-day deadline for agency review of submitted NEPA studies; (3) that administrative appeals of NEPA issues can be brought only by parties who participated in the NEPA administrative process and raised the issue; (4) the utilization of the DOI NEPA regulation that provides EAs need only analyze the proposed action, and may proceed without consideration of additional alternatives, when there are no unresolved conflicts concerning alternative uses of available resources; and (5) expansion of categorical exclusions to exempt larger acreages for wildfire prevention treatments (43 C.F.R. § 46.210(k)) and rehabilitation of burned areas (43 C.F.R. § 46.210(l)).

VI. Maximum Utilization of Existing Facilities

Bureau of Reclamation water projects are a valuable, but often underutilized, asset. Maximizing the use of these assets through the adoption of appropriate policies can help alleviate water shortage conditions and avoid the environmental consequences and huge costs associated with new project development.

DOI, through a public stakeholder process, should examine and revise its standards and directives in the following areas: project expansion, the use of excess capacity, water sharing, the use of storage and conveyance facilities for non-project water, places of use, and fair value pricing.

M. Lawyer
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Thank you for your consideration of these comments. If you have any questions, please contact our counsel Donald C. Baur of Perkins Coie, LLP at (202) 654-6200.

Sincerely,

A handwritten signature in blue ink that reads "Michael P. Carlin". The signature is written in a cursive style with a large initial "M" and a distinct "P" and "C".

Michael P. Carlin
Chairman

cc: Donald C. Baur
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