



**ASFPM's Comments regarding Corps of Engineers Agency Specific Procedures to Implement the Principles, Requirements, and Guidelines for Federal Investments in Water Resources  
Docket ID: COE-2023-0005**

**April 15, 2024**

The Association of State Floodplain Managers (ASFPM) appreciates this opportunity to comment on the Principles, Requirements & Guidelines (PR&G), critically important proposed rules to broaden, update, and modernize the basis for planning and choosing Corps of Engineers projects for recommendations to Congress. Many believe these rules are coming at just the right time to help communities all across the nation meet a host of significant challenges in managing, using, and conserving among their most precious resources: water. We look forward to working with you in moving forward to finalize and implement the final rules as soon as possible.

**ASFPM Background**

The Association of State Floodplain Managers (ASFPM) is the nation's most respected voice in floodplain management practices and policy. Founded in 1977, ASFPM is a scientific and educational nonprofit organization dedicated to creating an adaptable nation resilient to flooding, while reducing loss of life and property due to floods. Together, our national members and state chapter members are 20,000+ strong and consist of state and local officials and private sector planners, engineers, mappers and academics who support the work of state and local floodplain managers.

ASFPM accomplishes this mission by educating policymakers on sound floodplain management policies and practices; improving the knowledge of floodplain managers through the Certified Floodplain Manager (CFM) certification program; delivering on-going professional development and training events; conducting applied research, promoting emerging technologies, and developing tools that address all aspects of flooding and floodplain management; and increasing international awareness on flooding and flood loss reduction.

Through its advocacy efforts, ASFPM has influenced many important federal water-related programs, such as the National Flood Insurance Program (NFIP), and secured substantially increased funding for initiatives, such as the nation's flood risk mapping. Since its first founding, ASFPM has worked with the U.S. Army Corps of Engineers to improve the nation's approaches to managing and reducing flood-related risks, and to expand the use of nonstructural and natural and nature-based approaches to floodplain and flood-risk management.

ASFPM supports and promotes innovation and technological advances in all aspects of flood risk management, seeking to make informed decisions based on best-available science, long-range and watershed-based planning, and a focus on future flood risk and preserving ecosystems. ASFPM recognizes that comprehensive solutions to flooding problems require multiple approaches and contributions from the federal, state, local, individual, and private sectors.

### **General Comment**

ASFPM strongly applauds the efforts of the U.S. Army Corps of Engineers and the Assistant Secretary of Army, Civil Works for working to modernize the Corps of Engineers' water resources planning procedures by establishing Agency Specific Procedures (ASPs) to guide Corps planners in addressing national water resources concerns. These new procedures will address most aspects in scoping, developing and formulating alternatives, evaluating, comparing, and, ultimately, choosing actions and projects to address the nation's water concerns that fall within the Corps' portfolio of activities.

Unquestionably, over the past 40 years since the Principles and Guidelines (P&G) were first issued, there have been huge changes in not only the water resources planning context of most decision-making, but also in what the public needs and values today in both current and future water resources planning and management. In 1983, when the P&G were first issued, the nation's water agencies were already in a turbulent time — the vast majority of large dam projects on the nation's river systems had been completed, major navigation systems were largely in place, and the nation was turning its of attention toward environmental protection and enhancement, water conservation, urban flood management, infrastructure maintenance, and major civil works project rehabilitation. The current and likely future, large-scale effects of climate change, more intense storms, rising sea levels and changing flooding characteristics from urbanization and more intensive land use development in watersheds, have become far more apparent in the past 40 years, making this clearly a critical time to review and reset the planning procedures to focus on the multiple-objective water resource needs, literally at all levels.

### **Specific Comments**

**Support for Basic Rules Outlining Corps ASPs PR&G application.** ASFPM commends and emphasizes key positive aspects represented in these proposed rules. First, we endorse setting as Corps regulations (in 33 CFR new 234), the basic rules to help garner improved reliability, uniformity, and comparability among water resources activities being planned, evaluated, and implemented across the nation. Secondly, we also support expanding the PR&G's application to both new Corps projects or significant project modifications, and to new programs, activities, and related actions. In recent years, Congress has added new Corps authorities that will benefit from an overall comprehensive planning update.

**Public benefits, best available science, quantitative and qualitative benefit valuation, future conditions.** ASFPM strongly supports the emphasis on crediting "public benefits relative to costs," using "best available science," supported by monetized or quantitative benefits and cost analysis — and if unavailable — qualitative benefit and cost assessments, as key economic and environmental principles. Modern evaluative science, properly applied, can help limit and at least identify risk and uncertainty, provide better benefit and cost estimates, and ultimately reduce overall societal costs of water resources problems. The draft rule, however, lacks clarity on, first, what would be differences

between current methods of economic analysis that attempt to “maximize net national economic benefits,” which are mainly driven by National Economic Development (NED), and how “net public benefits” will be identified among alternatives with multiple objectives, and then compared with other alternatives where more than a single alternative may provide high benefits relative to costs and be appropriate for recommendation.

**Climate Change, sea-level rise, more intense and severe storms, and emphasis on intergovernmental collaboration and public involvement.** ASFPM also greatly appreciates the strong focus on planning for the short-term and long-term water resources implications of our changing climate, including more severe storms, water extremes, ongoing watershed development, and sea-level rise, especially at Sec. 234.6(c)(2). However, as we note below, the emphasis and focus is considerably stronger in the Preamble discussion than in the proposed regulation. We recommend these concerns be reflected in the rule itself so as not to be “lost” as a key goal in the planning application. We also commend the emphasis on ongoing collaboration and coordination throughout the planning process with other partner agencies, as well as states, local governments, tribes, and territories, stakeholders and the public (Sec. 234.6(d)).

Here as well, we appreciate the Corps’ shift toward broader, multi-objective water resources planning, as requested by Congress. This move away from single-purpose, narrow interest projects, too often relying only on wholly new structural projects with significant adverse environmental impacts, is encouraging. We support the Corps’ embrace of more non-structural and/or natural and nature-based solutions that enhance environmental resources, prioritize public safety, and promote sustainable, resilient, and more socially-equitable solutions.

**Congress seeking multi-objective water resource planning.** Congress has made clear in recent WRDAs that the below-listed guiding principles should be at the heart of Corps’ water resources planning and valuation. Beginning with WRDA 2007 (Sec. 2031), and subsequently in recent WRDAs focusing on expanding the use of nonstructural, natural, and nature-based approaches, with broadening of continuing authorities and pilot programs, and again in WRDA 2020 (Sec. 110), which directed the creation of these very Agency Specific Procedures. Congress has demanded a much more comprehensive, modernized, and cost-efficient water resources planning process which addresses contemporary needs and concerns.

**Guiding Principles.** We are encouraged to see the Corps has specifically incorporated the P&R’s six basic Guiding Principles — Environmental Justice, Floodplains, Healthy and Resilient Ecosystems, Public Safety, Sustainable Economic Development, and Watershed Approach — (at Sec. 234.6(c)). These are overarching priorities for the Corps – along with sister federal agencies, states and local governments, territories, tribes, and the public – and should be much better and more specifically address in present and future Corps water resources activities, as part of these modernized and updated PR&G Agency Specific Procedures (ASPs). Nevertheless, we believe a number of these should be amplified and more clearly defined directly within the Corps’ rule to assure their focused consideration in both project and program formulations, and we make the following specific recommendations in this regard:

First, as background, the Guiding Principles are drawn from the 2013 Principles and Requirements, which the bulk of federal water resources agencies are either now utilizing or are in the process of implementing. Subsequently, in 2014 the Office of Management and Budget (OMB) and the Council on Environmental Quality (CEQ) further detailed and refined these principles in the Interagency Guidelines, as a key cross-government element to give greater focus, coordination, and cohesion in

federal contributions to water resources planning. In WRDA 2007, Sec. 2031, Congress had specifically set the National Water Resources Planning Policy, stating that all water resources projects should:

“reflect national priorities, encourage economic development, and protect the environment by –

(1) seeking to maximize sustainable economic development;

(2) seeking to avoid the unwise use of floodplains and flood-prone areas and minimizing adverse impacts and vulnerabilities in any case in which a floodplain or flood-prone area must be used; and

(3) protecting and restoring the functions of natural systems and mitigating any unavoidable damage to natural systems.”

ASFPM believes these provisions constitute considered, thoughtful, and critically-important Congressional guidance for addressing the nation’s water resources development and water and associated land management needs. We are very encouraged that the Corps is now seeking to move forward on their implementation, although numerous years have passed.

Section 2031 also called upon the Secretary of the Army, within two years of its 2007 enactment, to develop revisions to the 1983 planning principles and guidelines to include and incorporate: best-available analytic techniques; public safety in alternatives and recommended plans; assessment methods reflecting the value of projects for low-income communities and use of nonstructural approaches; assessment and evaluation of a project with other projects and programs within a regional or watershed context; use of modernized planning paradigms, including integrated water resources management and adaptive management; and use of evaluation methods that ensure projects are justified by public benefits.

These are essentially the guiding principles that were refined in the 2013 P&R, more fully articulated in the 2014 Interagency Guidelines, and which Congress has since directed in Section 110 of 2020 WRDA to constitute the basis of these Agency Specific Procedures.

While these principles in shortened form are incorporated within the proposed rule at Sec. 234.6(c), ASFPM is concerned that the final details reflected in the Interagency Guidelines could become obscured if reflected only in the antecedent documents. To be most impactful and effectively implemented, they should be brought forward and included directly into the ASPs regulation at 234.6(c) in the updated form and wording reflected in the Interagency Guidelines. A key concept discussed in the Preamble [at FR 12072 Feb. 15, 2024] emphasizes that among environmental, economic, and social goals in the proposed PR&G (unlike in the P&G where the dominant goal has focused on economic development), seeks to broaden the at times “unduly narrow” benefit-cost comparison to include “environmental, economic and social goals” and that “no [hierarchical] relationship exists among these three goals.” ASFPM applauds this broadening of the basic analysis and calling for a more comprehensive scope, which has long been needed.

1. **Environmental Justice.** In Sec. 234.6(c)(1), the draft proposal emphasizes the need to establish Environmental Justice as a key guiding principle, and to increase efforts to assist disadvantaged populations. ASFPM strongly supports this critical focus. Historically, water resource planning has prioritized maximizing national economic value often at the expense of economically, racially, religious, culturally, or other marginalized populations who often face the greatest risk and receive the least assistance.

2. **Floodplains.** Of all the concerns expressed by Congress in the WRDA 2007 directives, it is arguable that Congress has placed a strong emphasis upon the Corps (and water-related federal agencies) with a major task in the WRDA 2007 National Water Resources Planning Policy to “[seek] to avoid the unwise use of floodplains and flood-prone areas and minimiz[e] adverse impacts and vulnerabilities in any case in which a floodplain or flood-prone area must be used;”. Thirty years earlier, the basic 1977 Floodplain Management Executive Order 11988 stated “In order to avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative, it is hereby ordered as follows: Section 1. Each agency shall provide leadership and shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands, and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. . .”

In this instance, we would urge that the language proposed for the Floodplain Guiding Principle be clarified and strengthened. We strongly applaud the Corps’ affirmative statement in the Preamble (FR at 12078) that the Corps will continue to implement the Federal Flood Risk Management Standard (FFRMS) as provided in E.O. 13690 (80 FR 6425) with preferred implementation using the Climate Informed Science Approach (CISA) and presumably the other FFRMS methods when CISA data is not available. We believe this is of such importance, particularly in evidencing and providing Corps leadership, we would urge the Corps to specifically incorporate the statement of intent to apply FFRMS procedures directly into the rule as a key element of its water resource planning process.

We would also urge the Corps to strengthen its proposed regulation (at Sec. 234.6(c)(2)) to bring the substance of the Interagency Guidance description regarding ‘floodplains’ directly into the proposed regulation, as well. As previously referenced, the nation is witnessing a dramatic and alarming increase in societal costs from changing climate, resulting in more damaging storms, droughts, and erosive events, as well as rising sea-levels and associated expansions of floodplains and floodways. There is little to suggest that these trends will not continue to accelerate into the future. The Corps could play a critical role in assisting states, communities, tribes and territories across the country in planning for these changes, but in some instances it may require something of a cultural change within the Corps to embrace these changes with new forward thinking approaches. The current proposed rule says:

“All future Federal investments in and affecting floodplains *must meet some level of floodplain resilience* [emphasis added]. Alternatives affecting floodplains should aim to improve floodplain resilience if possible and also should avoid the unwise use of floodplains and /or flood-prone areas.” (FR at 12100, Sec 234.6(c)(2)).

In Sec. 234.2(r) the draft rule defines ‘Unwise use of floodplains’ as “any action or change that diminishes the public health and safety, or an action that is incompatible with or adversely impacts one or more floodplain functions that leads to a floodplain that is no longer self-sustaining or degrades ecosystem services.”



ASFPM believes that these descriptions fail to sufficiently capture and focus the problems. The “Interagency Guidelines” description (at pp 13-14) states much more clearly that the Floodplain Principle seeks for an agency to first avoid, to the extent possible, the long and short-term adverse impacts associated with the occupancy and modification of floodplains. It recognizes that the nation has had in place for more than 45 years, policies that attempt “to avoid direct and indirect support for floodplain development where there are practicable alternatives,” and adds the need for new measures to avoid “increase or transfer of risks, resulting in adverse impacts to human health, safety, welfare, property, natural resources, or functions of floodplains.” Additionally, it suggests the types of actions that could be considered “unwise use of floodplains.” These are the types of guidance that planners today will need to broaden their perspectives appropriately. As currently drafted ((Sec. 234.6(c)(2)), ASFPM believes the rule is too vague and does not yet rise to or communicate a level commensurate with the gravity of the problems that it seeks to address. Again, we would urge the language as included in the Interagency Guidelines be incorporated into the rule itself. ASFPM would like to reference a report that our organization completed in 2015, entitled “National Flood Programs and Policies In Review (2015)”, which identifies many improvements to flood and floodplain-related programs of some 26 federal agencies with water resources responsibilities, including the U.S. Army Corps of Engineers, which we believe will help the nation move toward a future that includes sustainable floodplains and disaster-resilient communities. ASFPM believes implementing these recommendations will help the nation cultivate a holistic perspective, spread responsibility more equitably, and foster sensible attitudes toward the use of environmentally sensitive lands. We very much look forward to working with the Corps to strengthen the Floodplain Principle’s intent and description, to help Corps of Engineers planners and its stakeholders in their water resources planning.

**3.) Healthy and resilient ecosystems.** Historically, the use of nonstructural and natural and nature-based solutions for solving or addressing problems related to water resources has been underutilized, as compared with structural approaches. A key approach that many water resource professionals would like to see in the Guiding Principles is an emphasis to develop and employ more nonstructural and/or natural and nature-based approaches, wherever practical. These approaches inherently will support healthy and resilient ecosystems.

ASFPM is pleased the Corps’ proposed rule will require (in Sec 234.8(a)(3)) a nonstructural alternative and a nature-based alternative (in both cases, “if one exists”) in the final array of alternatives to be considered, and also calls for nature-based solutions to be included as components with other alternatives. For many years it has often been an unfortunate pattern that many nonstructural and nature-based-type project approaches have fallen to the status of being only minor parts of final proposals. We note that Congress has passed numerous WRDA amendments in recent years that encourage greater efforts to develop more environmentally-oriented projects and management approaches with lower long-term risk (such as limiting urbanization behind levees) and that work more in consonance with natural processes. Again, however, we believe the proposed rule at Sec 234.6(c)(3) would benefit from including more of the substantive detail currently included in the Interagency Guidelines (see Chapter 3, p.12 of 29) and the Preamble, but not yet in the rule itself.

**4.) Public safety.** With an ever increasing inventory of aging water resources infrastructure and growing populations often nearby, ASFPM appreciates the Corps’ inclusion of public safety as a highlighted Guiding Principle, and strongly supports the Corps’ plans to evaluate public safety concerns from the standpoint of existing and future conditions, including documentation, and

open dialog with all stakeholders and the public. The Corps asks for comments regarding the potential for human caused threats to public safety. We urge the Corps to work with dam and levee owners and states to consider these threats going forward in management plans, especially for high-hazard and potentially high-hazard facilities.

**5.) Watershed approach.** ASFPM has long believed that water resources management should be conducted from a watershed perspective and strongly supports the Corps placing this as a priority guiding principle.

**6.) Sustainable economic development.** The notion of promoting water resources that will continue to serve all Americans and our environment on a sustainable and equitable basis is also among the most important Guiding principles. The recognition that our long-term success as a nation depends on sustainability of our environment calls for a range of measures that speak to long-term sustainability now and considering environmental and population needs into the future. The proposed rule focuses on conditions for humans and nature to “coexist”; however, this principle should be bolstered to a notion that investments can help humans and nature — together — to thrive.

### **Other Comments or Concerns**

**Excluded Activities from PR&G applicability.** ASFPM wishes to flag a concern regarding the proposal at Sec. 234.4(d)(vi), [FR 12099] to exclude the PR&G rule applicability to the Corps’ “Public Law 84-99 program.” In recent years and in recent WRDAs, the P.L. 84-99 program has been expanded several times to allow certain water resources project modifications that can extend well beyond the historic project dimensions, after projects (including non-federal projects) experience damage from storms, flooding, wave erosion, etc. Changes in the name of repairs or rehabilitation can include increasing a levee’s height or width (with implications on other water resources conditions), increasing pumping capacity, various types of coastline modification, or relocation or rebuilding of whole structures. ASFPM does not believe it would be appropriate to waive the P.L. 84-99 program entirely from the PR&G. The rule at Sec. 234.4(d)(2)(vi) is a full 84-99 program waiver. However, numerous elements of P.L. 84-99 extend far beyond immediate public emergency situations and often could and should lend themselves to a deliberative water resources planning procedure.

A paragraph in the Preamble at FR 12074 notes: “The Interagency Guidelines provides that short-term actions to remove immediate danger to public health and safety or prevent imminent harm to property or the environment should be excluded.” The paragraph, however, ends with: “This would not apply to longer-term actions to rehabilitate damaged resources or prepare for future emergencies.” ASFPM urges that much clearer alternate language be adopted that would identify “excluded” actions aimed at removing immediate danger to public health and safety, but that would clearly include as applicable to PR&G, those longer-term actions for major repairs and rehabilitations that should be subject to deliberative consideration of the Guiding Principles and consideration of environmental, economic, and social effects concerns to help guide longer term actions. The Corps should recommend a decision to either: (1) implement an alternative project, program, or plan, or (2) take no Federal action. Federal investments should seek to meet water resource objectives and maximize net public benefits, relative to public costs. It is possible that more than one alternative might “reasonably and approximately” meet these conditions. “Net public benefits” implies that the anticipated benefits will be presented relative to the costs associated with the accrual of those benefits. Net public benefits can include both quantified and non-quantified benefits. Any recommendation for authorization will clearly delineate the federal

water resource project(s) being recommended for authorization and Corps implementation and any condition precedent for construction, with specificity.

**Maximize vs. Optimize. Potentially a balancing Act of Values.** The Preamble and the proposed text of the PR&G observes in several places that, in part, because the planning process seeks to “maximize net public benefits, relative to costs”, and benefits may accrue for economic public benefits, but also for environmental benefits, and for social benefits, it is possible to identify more than one alternative that meets the requirements for a project’s being recommended for authorization or funding. (see FR 12105 Sec. 234.11 “Select the Recommended Plan.”)<sup>1</sup>

A substantial weakness of the present P&G is its overriding focus to “maximize” net National Economic Development (NED), while essentially meeting basic environmental legal requirements, and relying primarily on “monetized” benefits and costs. Other accounts may be developed (environmental quality, regional benefits, other social effects), but with the present emphasis on NED, these seldom are given weight. ASFPM believes that weighing projects’ benefits should be a serious effort to balance the broader range of values now being considered. Projects that have little or no economic or environmental quality value should not be solely justified on social effects, particularly if, for instance, a nonstructural design could accomplish the same or nearly the same purposes without adverse environmental effects. We suggest, to help with a final choice in cases difficult to sort out, a process of “optimization” of multiple types of benefits could be used as a substitute for “maximization” of a single value.

As we have said in these comments, ASFPM greatly appreciates the Army and the Corps’ leadership in developing these proposed rules, which now would consider a full range of highly relevant values and principles in the planning process and lead to a more comprehensive recommended plan considering national priorities, sustainable economic development, protecting the environment, and considering social equities, Using a decision process that optimizes consideration of multiple benefits will support this effort.

**Need for continuing leadership to incorporate planning modernization and expand the range of options and approaches.** Finally, a fundamental principle of organizational change is that to redirect long-held approaches and values, concerted attention must be paid to support and reward those who are willing to try new approaches such as are being suggested in the new PR&G. ASFPM looks forward to working with all levels of the Corps to explore more land and water management options and examples, supporting necessary data development to address changing flooding conditions, and to support District and Regional expertise and staffing to help carry out these long-discussed changes in our water resources development and management.

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<sup>1</sup> Sec. 234.11 Select the Recommended Plan. 2) The Corps should recommend a decision to either: (1) implement an alternative project, program, or plan, or (2) take no Federal action. Federal investments should seek to meet water resource objectives and maximize net public benefits, relative to public costs. It is possible that more than one alternative might “reasonably and approximately” meet these conditions. “Net public benefits” implies that the anticipated benefits will be presented relative to the costs associated with the accrual of those benefits. Net public benefits can include both quantified and non-quantified benefits. Any recommendation for authorization will clearly delineate the federal water resource project(s) being recommended for authorization and Corps implementation and any condition precedent for construction, with specificity.



## **Conclusion**

The Association of State Floodplain Managers wishes to again thank the leadership of the Army Corps of Engineers and the Assistant Secretary of the Army for bringing forward these draft Agency Specific Procedures with thoughtful and promising elements to improve and modernize the water resources planning process and answer many of the critical needs in water planning for the 21st Century. A number of our comments suggest that including more detail regarding the needs and expectations found in recent WRDAs and in the Principles and Requirements and the Interagency Guidelines within the new Section 234 of 33 CFR would be most helpful in assuring that the redirection of policies to broaden the range of values served in water resources management will benefit all Americans. ASFPM stands ready to work with the Corps to meet these exciting challenges.

Most sincerely,  
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