

# Principles, Requirements, and Guidelines for Water Resources Investments: U.S. Corps of Engineers Proposed Rule Establishing Agency Specific Procedures



**Walter Wright, Jr.**  
wwright@mwlaw.com  
(501) 688.8839

02/21/2024

The United States Corps of Engineers (“Corps”) published in the February 15th Federal Register a proposed rule that establishes what it describes as Agency Specific Procedures (“ASPs”) for its implementation of the Principles, Requirements, and Guidelines (“PR&G”) for water resources investments. See 89 Fed. Reg. 12066.

The proposed rule is described as providing a framework to:

- Govern how proposed water resource investments would be evaluated
- Identify which Corps programs and activities are subject to the PR&G

Congress in the Water Resources Development Act of 2020 directed in authorizing language the proposal of the rule.

The Corps has for over 100 years been required in some manner to consider the benefits of water resources investments in relation to their cost. For example, the Corps notes that the Rivers and Harbors Appropriation Act of 1903 contains such a mandate. Other cited examples include:

- Flood Control Act of 1936 (improve navigable waters for flood control purposes of the benefits to whomever they may accrue are in excess of the estimated cost)
- Water Resources Planning Act of 1965 (reflecting two federal objectives which included enhancing national economic development and the quality of the environment)
- Water Resources Development Act of 2007 (indicating water resources projects should reflect national priorities, encourage economic development, and protect the environment)

The PR&G were developed by the Council of Environmental Quality to improve federal decisions on investments in water resources by providing additional emphasis on:

- Ecological concerns
- Public safety concerns
- Environmental justice concerns

The PR&G dictate how federal agencies evaluate proposed water resources development. They include the following three components:

1. Principles and requirements for federal investments in water resources providing the overarching concepts that the federal government seeks to achieve through policy implementation of requirements for inputs into analysis of federal investment alternatives
2. Interagency Guidelines providing detailed guidance for affected federal agencies (including the Corps)
3. ASPs providing agency-specific guidance for identifying which programs and activities are subject to PR&G

The Corps states that it has not issued ASPs to implement the PR&G.

Section 110 of the Water Resources Development Act of 2020 requires that the Corps issue its final ASPs necessary for its civil works program to implement the PR&G. This legislation also requires that the Corps develop projects in accordance with the PR&G as well as Section 2031 of the Water Resources Development Act. It further directed the Corps to provide notice and opportunities for engagement and public comments on the development of the ASPs. As a result, the Corps considers this current proposed rule a response to this Congressional direction.

The Corps states that in order to maintain some federal government uniformity in the implementation of the PR&G it is using the United States Department of Interior's ASPs as a basis for its development of the proposed rule. The Department of Interior's ASPs guide its Bureau of Reclamation. This federal department undertakes water resources investments in a similar manner as the Corps.

Other agencies referenced as having approved ASPs include:

- United States Environmental Protection Agency
- Federal Emergency Management Agency
- National Resources Conservation and Service

The Corps deems those agencies' investments in water infrastructure dissimilar to the Corps.

In providing an overview of the proposed rule, the Corps notes in part in the preamble:

. . . The level of a given Federal investment would be determined on a present value basis over the life of the Federal investment and the net public benefits of an investment would be assessed and used to guide Federal decision making. Federal water resources investments should strive to achieve water resources goals and maximize discounted net public benefits, with appropriate considerations laid out in the PR&G.

The ASPs described in the proposed rule are intended by the Corps to provide a framework for it to use for projects, plans, and programs. Further, it would be used in the planning process in implementing the PR&G for water resources investments.

A copy of the Federal Register Notice can be downloaded [here](#).