

BY THE COMPTROLLER GENERAL

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114345

Report To The Congress

OF THE UNITED STATES

Federal Water Resources Agencies Should Assess Less Costly Ways To Comply With Regulations

This report explores the economic impact of social and environmental regulations on the construction of Federal water resources projects. It discusses the concerns agencies that plan construction projects and contractor officials have about regulatory costs and burdens and presents case studies of compliance practices in three regulatory areas: fish and wildlife conservation, cultural properties protection, and employment of women in construction.

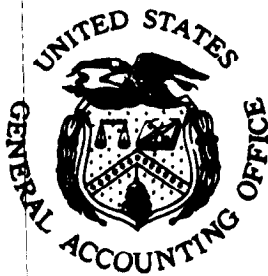
The construction agencies should make a greater effort to determine the costs, benefits, and risks of alternative ways to comply with regulations in order to achieve regulatory objectives more economically and effectively. Insufficient information of this type was being obtained.

GAO makes recommendations for ensuring that

- the construction agencies evaluate alternative methods of regulatory compliance and
- the Water Resources Council develops evaluation techniques for the guidance of construction agencies.



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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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To the President of the Senate and the
Speaker of the House of Representatives

This report discusses the cost, burdens, and other economic impacts which social and environmental regulations impose upon the construction of Federal water resources projects, and it suggests ways of controlling those impacts through evaluations of compliance alternatives.

The review was made because preliminary work had indicated that construction agencies were frequently not evaluating compliance alternatives. Recent public and governmental concern about the growing cost and burdens of regulations has spurred an emphasis on re-writing regulations but not on evaluating compliance alternatives which are frequently available within the existing regulatory framework.

Copies of this report are being sent to appropriate House and Senate committees; the Director, Office of Management and Budget; the Director, Water Resources Council; the Secretaries of the Army, Defense, the Interior, and Labor; the Administrator, Environmental Protection Agency; and other interested parties.

A handwritten signature in black ink, appearing to read "Robert B. Atch".

Comptroller General
of the United States

D I G E S T

The rapid growth of Government regulations coupled with recent economic difficulties facing the Nation has heightened public concern over regulatory costs and burdens. The President has ordered agencies which write regulations to evaluate their economic impact.

GAO believes that agencies which must comply with regulations should seek more economical and efficient means of doing so. This approach to regulatory evaluation generally has not been emphasized (see pp. 37 to 39), but it has value, at least in the construction of Federal water resources projects.

Many social and environmental regulations have a major impact on construction costs, competition, and administration of Federal water resources projects (see p. 11). Both agencies that plan the projects and contractors have major compliance responsibilities during construction and both are concerned about the cost and burden of regulations, especially the cumulative impact (ch. 2).

GAO assumed for purposes of this report that the objectives of these regulations were worth pursuing and focused on ways to carry out the regulations more economically, efficiently, and effectively.

COSTS, BENEFITS, AND RISKS
OF REGULATORY ALTERNATIVES
SHOULD BE DETERMINED

To determine what consideration construction agencies give to regulatory costs, burdens, and benefits, GAO interviewed construction officials about their concerns in several regulatory areas (ch. 2). GAO selected for

review the two major construction agencies-- the Army's Corps of Engineers and Interior's Water and Power Resources Service--and studied compliance practices in three areas: fish and wildlife conservation (ch. 3), cultural properties protection (ch. 4), and employment of women in construction (ch. 5).

Construction officials were concerned about the cumulative cost and burden of regulations, the lack of consideration of economic impacts, and coordination difficulties. Many officials believed that less costly, less burdensome alternatives for compliance were not being evaluated.

Generally, GAO's case studies showed that when agencies planned projects they did not develop enough information on costs, burdens, and benefits to evaluate alternatives. In one instance, agencies did not develop sufficient information to determine whether the design of a proposed bridge would endanger migrating salmon. Although there was insufficient evidence to indicate that the bridge would endanger the fish, the design was revised at one official's suggestion, increasing construction costs about \$150,000.

In another case agencies did not evaluate whether all artifacts or only a sample should be recovered from a construction site. A sample could have been sufficient and less expensive to excavate and store.

In a case involving women-in-construction regulations, agencies did not determine effective and efficient ways for contractors to comply with the regulations. Contractors felt they had insufficient knowledge and needed agency advice in this area.

In most cases, agencies did not develop more information on alternatives for fear of delaying construction. Time was limited because construction was already underway or imminent.

CONCLUSIONS

The Corps and Service officials should evaluate compliance alternatives before construction progress forecloses the options. Construction agencies need

- policies requiring officials to weigh costs, benefits, and burdens in selecting regulatory compliance measures;
- understandings with regulatory agencies on the flexibility that construction agencies have in compliance matters;
- practical criteria and procedures for construction officials to use in evaluating compliance alternatives;
- incentives for construction contractors and agency personnel to explore compliance alternatives;
- procedures for disclosing regulatory compliance costs; and
- increased efforts to make timely analyses of compliance alternatives.

A form of regulatory compliance evaluation is already possible even though the techniques are rudimentary (ch. 6). Agencies should use these and, working with the interagency Water Resources Council, seek advanced techniques to help future compliance decisions be less subjective.

RECOMMENDATIONS

GAO recommends that

- the Secretary of the Army direct the Chief of Engineers and the Secretary of the Interior direct the Commissioner, Water and Power Resources Service, to evaluate alternative methods of compliance with social and environmental regulations in the construction of their projects and initiate action for doing so which satisfies the needs listed above.

--the Director, U. S. Water Resources Council, develop methods and techniques which construction agencies can use in evaluating alternative methods of compliance with social and environmental regulations and consider sharing them with other agencies.

AGENCY COMMENTS AND
GAO'S EVALUATION

Agency comments indicated agreement that construction agencies should evaluate alternative means of regulatory compliance and conduct such evaluations earlier during project development. Several comments which served to strengthen the report and clarify key issues were incorporated into the report.

The Water Resources Council, the Advisory Council on Historic Preservation, and the Departments of the Army and the Interior suggested that recent efforts to develop principles and standards for planning water resources developments have satisfied or will satisfy GAO's recommendation to the Water Resources Council. GAO believes additional efforts are needed to satisfy the recommendation, considering the nature of the guidance which the principles and standards provide and the kind of guidance that GAO believes is needed.

These and other comments from the Environmental Protection Agency, the Department of Labor, and the Office of Management and Budget are summarized on pages 47 to 51 and included in their entirety with GAO's responses in appendixes III to IX.

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ABBREVIATIONS

ACHP	Advisory Council on Historic Preservation
EPA	Environmental Protection Agency
FWS	Fish and Wildlife Service
GAO	General Accounting Office
HCRS	Heritage Conservation and Recreation Service
OFCCP	Office of Federal Contract Compliance Programs
WPRS	Water and Power Resources Service

GLOSSARY

Administrative burdens	The general tasks performed by managers, administrators, supervisors, or others to plan, coordinate, and review compliance with social or environmental regulations.
Compliance costs	The amount of money and time required for construction, administration, labor, and materials necessary for accomplishing the objectives of regulations.
Construction agencies	Federal agencies responsible for planning and constructing water resources development projects.
Construction projects	Federal developments to alter or modify water resources.
Cultural properties	Buildings, sites, structures, objects, or data significant in history, architecture, or science.
Mitigation	The prevention or replacement of losses or lessening of damages to social or environmental values due to water resources developments.
Regulations	Federal laws, Executive orders, and agency prescriptions to be followed in achieving social or environmental objectives.
Regulatory agencies	The Federal agencies primarily responsible for ensuring that social or environmental objectives are achieved in economic or other endeavors.
Regulatory evaluation	The process by which Federal agencies consider costs, benefits, risks, and alternatives in deciding the appropriate measures for achieving social or environmental objectives.
Social and environmental	Adjectives intended to embrace the various kinds of human dealings and natural or physical conditions which regulations address.
Wildlife or fish and wildlife	Birds, animals, and fish and supporting habitat.

CHAPTER 1

INTRODUCTION

The growth of Government regulations in recent years has raised public and governmental concern about the resultant economic impacts on society. Contributing to this concern are the high cost of Government and the recent economic difficulties throughout the Nation. Public officials view regulatory evaluation as one appropriate response to these concerns, but evaluation is difficult and data is still scarce for resolving questions about regulatory costs and benefits.

This report, prepared as part of our continuing assessment of national issues, examines agency compliance with social and environmental regulations for one important Federal economic activity--the construction of dams and other water resources projects. It does not examine the objectives of the regulations. Although focused on two construction agencies, it contains conclusions and recommendations which should be useful to all Federal agencies for controlling regulatory costs and burdens. The objectives, scope, and methodology for the review are discussed on pages 3 through 6.

THE GENERAL CONCERN ABOUT REGULATIONS

Concern about the current state of regulations has been expressed by many sources, including members of the Congress, the President, business groups, and others. Both business and Government have issued fairly extensive reports of regulatory studies. Generally, the concern is whether proliferating Government regulations are overwhelming many organizations.

The actual number of Government regulations is unknown. While regulatory agencies number around 50, the Federal departments, agencies, and bureaus promulgating regulations total over 100. Add to this the State and local regulatory entities, and the total of government entities which regulate our lives is quite large.

The issues in social and environmental regulation involve difficult questions such as: "What is the best way to regulate?" and "How much regulation is enough?" Usually, the objectives of regulations are not in question; some level of compliance is necessary and acceptable.

The concern about social and environmental regulations relates primarily to growth and cost. Before 1970, the Government's major regulatory thrust was control of economic

activity--for example, regulating prices and controlling market entry. In the 1960s and 1970s, numerous laws were enacted and major regulatory entities were established to meet important social and environmental goals such as cleaner air, healthier workplaces, and safer products. Federal regulations now span activities from hiring and firing to product design, workplace conditions, and factory emissions.

The total cost which regulations impose on society is unknown, but estimates for Government budgets alone range well into the billions of dollars per year. The impacts in the private sector can be much greater, with estimates ranging over \$100 billion per year. The Department of Commerce reported in 1977 that private resources redirected by governmental regulatory action were roughly comparable to expenditures for defense procurement.

Regulatory activity may also contribute to the general inflation rate, restrain competition, and suppress innovation and productivity.

THE MOVE TOWARD REGULATORY EVALUATION

The general concern about regulations has prompted the Federal Government to encourage regulatory evaluation. A 1977 Department of Commerce study, "Toward Regulatory Reasonableness," stated the following general thesis supporting this move:

"The pursuit of regulatory reasonableness, then, cannot be one which would seek some radical shift away from the current system. Rather, it must seek to assure balanced consideration of interest in national environmental, health and safety objectives; interests in the avoidance of excessive centralization; and interests in economic efficiency and flexibility."

In 1978 the President issued an Executive order requiring all Federal agencies to evaluate the cost and burden of future and existing regulations. In addition, a large number of regulatory reform bills have been proposed in the Congress. Bills introduced in the 96th Congress would generally require using benefit-cost or other analyses to reduce the cost of regulations. 1/

1/For a summary of these bills, see Congressional Research Service issue brief number IB79025, updated September 30, 1980.

OBJECTIVES, SCOPE, AND METHODOLOGY

This report is based on a review of social and environmental regulations affecting the construction of Federal water resources projects. The primary objective was to determine whether Federal construction agencies give sufficient consideration to economic impacts when complying with regulations during construction. A secondary objective was to determine whether the agencies, while pursuing economic objectives, gave equal consideration to social and environmental objectives.

It was not our objective to question the reasonableness of social or environmental regulations or alternatives to these regulations. We assumed that the objectives of regulatory laws were worth pursuing and that regulatory agency prescriptions, such as goals and procedures, met the intent of those laws and should be observed in practice.

We judged whether agencies gave sufficient consideration to economic impacts by examining agency efforts to obtain and use information on compliance costs, benefits, administrative burdens, risks, and alternatives. Where such information was not obtained, we inquired into its availability and difficulties involved in attempting to acquire it. We considered oral as well as written support, but we were particularly careful to note any documents supporting agency evaluations.

Our efforts to assess the economic impact of social and environmental regulations was generally limited to determining compliance costs. Such costs, although significant, are often hidden from view, being included in prices paid for goods or services and not explicitly stated in cost budgets.

Compliance cost data used in this report was usually obtained from readily available documents such as bid estimates and contracts. In many cases where no cost data was available, we attempted to identify and describe the compliance activities which gave rise to compliance costs.

Data for this report was obtained in several ways. Interviews were held with many sources to obtain the full range of regulatory impacts and concerns of construction officials (see ch. 2). Regulatory actions were examined

in detail as case studies to determine the basis for concerns expressed about regulations and specific causes and effects of problems found (see chs. 3, 4, and 5). Available literature, such as study reports and bibliographies, was researched and public and private interest groups were contacted to determine the state of the arts in regulatory evaluation (see ch. 6). The fieldwork was performed between September 1979 and May 1980.

The interviews for chapter 2 mainly involved representatives of many of the organizations listed in appendix I and others. Page 16 of chapter 2 identifies representatives of construction organizations who critiqued a draft of chapter 2 at our request to help assure the accuracy of the information presented.

The case studies presented in chapters 3, 4, and 5 involve the two major water resources development agencies--the Corps of Engineers, Civil Functions, Department of the Army, and the Water and Power Resources Services (WPRS), Department of the Interior. In our judgment, these two agencies provided sufficient audit coverage for meeting our objectives. Officials of the Department of Agriculture's Soil Conservation Service were also contacted to discuss their concerns about regulations.

Three of the 14 major regulatory areas affecting water projects (see p. 11) were selected for case studies of compliance actions: (1) fish and wildlife conservation, (2) cultural properties protection, and (3) employment of women in construction. These areas cover regulations of high concern to construction officials. Together the three areas provide a mix of both social and environmental regulations; involve construction labor, material, and administrative costs; and require construction agency and contractor compliance efforts.

We selected three water projects (illustrated on pages 7, 8, and 9) to study compliance actions. Criteria for project selection included significant project size and economic importance, geographic dispersion, applicability of the three selected regulations, and a mix of Corps and WPRS involvement. The criteria also included projects well under construction, but not yet complete. While this had the disadvantage of evaluating ongoing actions before all results are known, it nevertheless allowed us to consider how regulations are currently applied and to discuss regulatory concerns with field officials active in compliance matters on the selected projects.

The kinds of compliance actions taken on the three selected projects were similar to actions taken on many Federal water projects. The three construction projects selected were the Second Powerhouse at Bonneville Dam, Washington; the Harry S. Truman Dam and Reservoir, Missouri; and the Granite Reef Aqueduct, a portion of the Central Arizona Project, Arizona. Identifying data for the three projects follows:

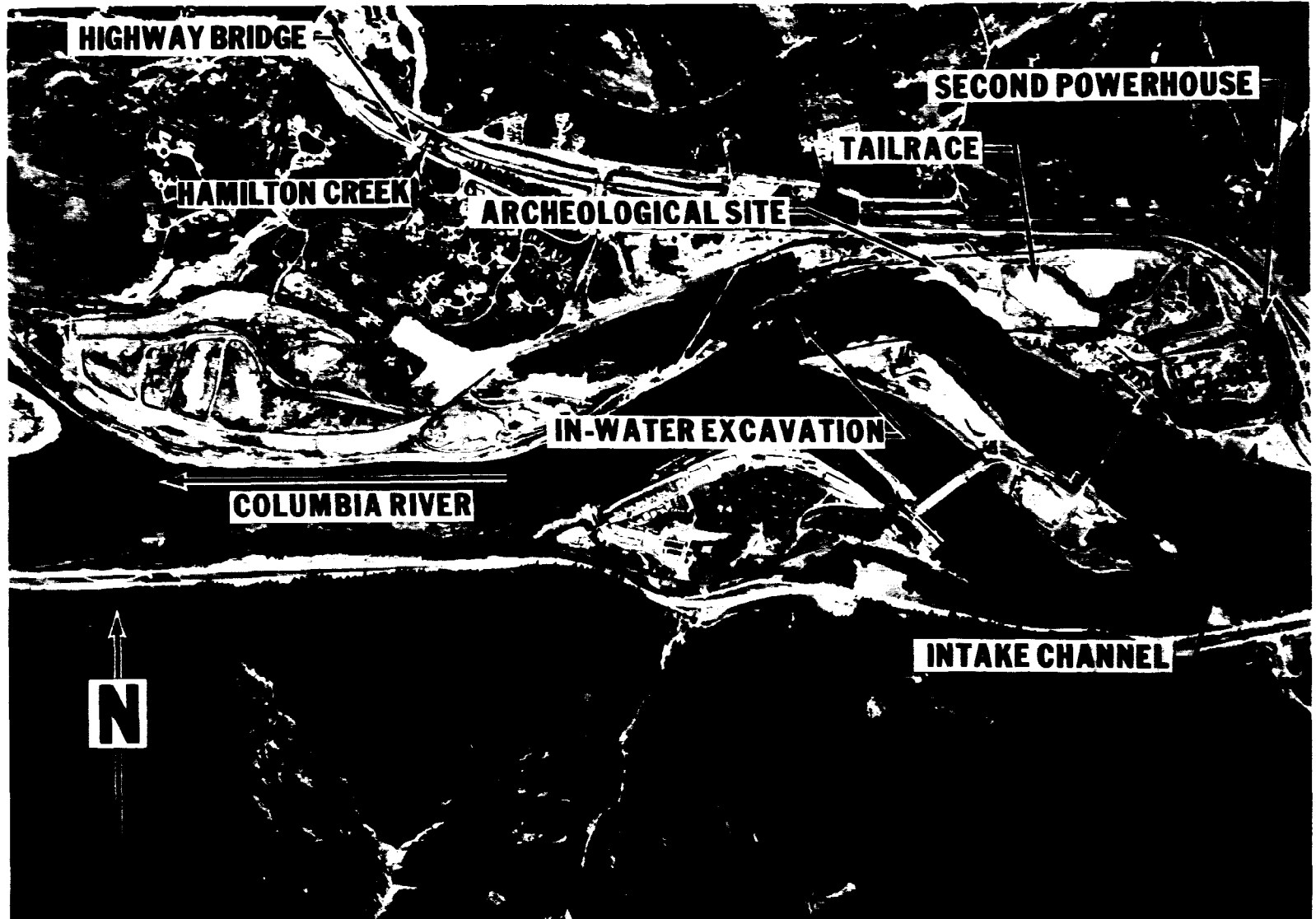
	<u>Second Powerhouse</u>	<u>Granite Reef</u>	<u>Truman Dam</u>
Construction agency	Corps	WPRS	Corps
Estimated cost	\$625 million	\$672 million	\$488 million
Construction period	1974-82	1973-85	1964-84
Major features	Powerhouse Fish passage	Aqueduct Tunnels Siphons	Dam Reservoir
Major purposes	Hydropower	Water supply	Flood control Recreation Hydropower Fish and wildlife
Approximate location	On Columbia River, 42 miles east of Portland, Oregon.	190 miles through west-central Arizona.	On Osage River, 94 miles south-east of Kansas City, Missouri.

In each of the three regulatory areas, only a few actions were studied from

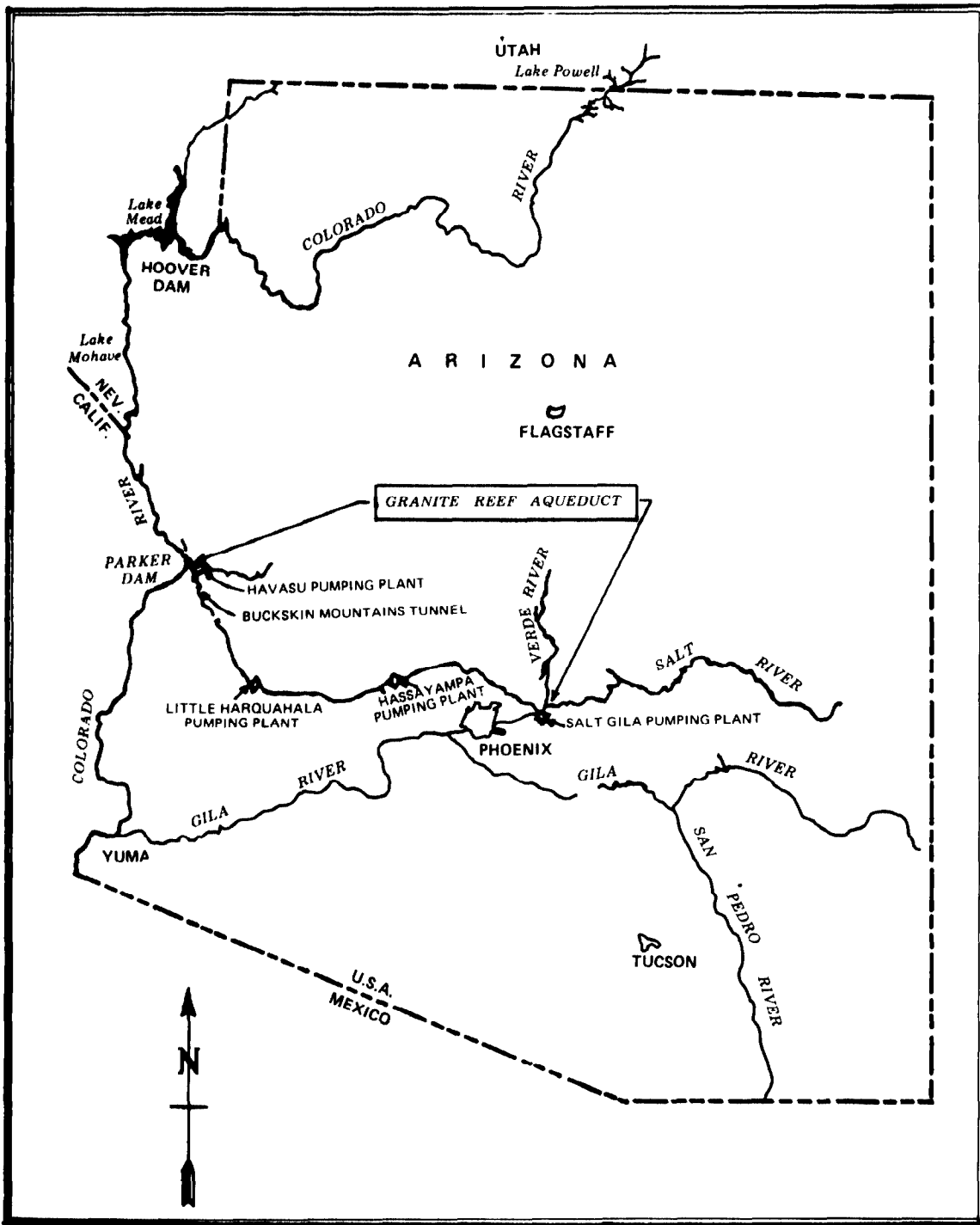
The detail led study included an examination of avail-

The detailed study included an examination of available project planning, design, and construction records and documents; analyses of plans, proposals, and decisions; and discussions with numerous officials of the contractor organizations, construction agencies, and regulatory agencies responsible for the selected regulatory actions. The primary organizations involved in our review are listed in appendix I.

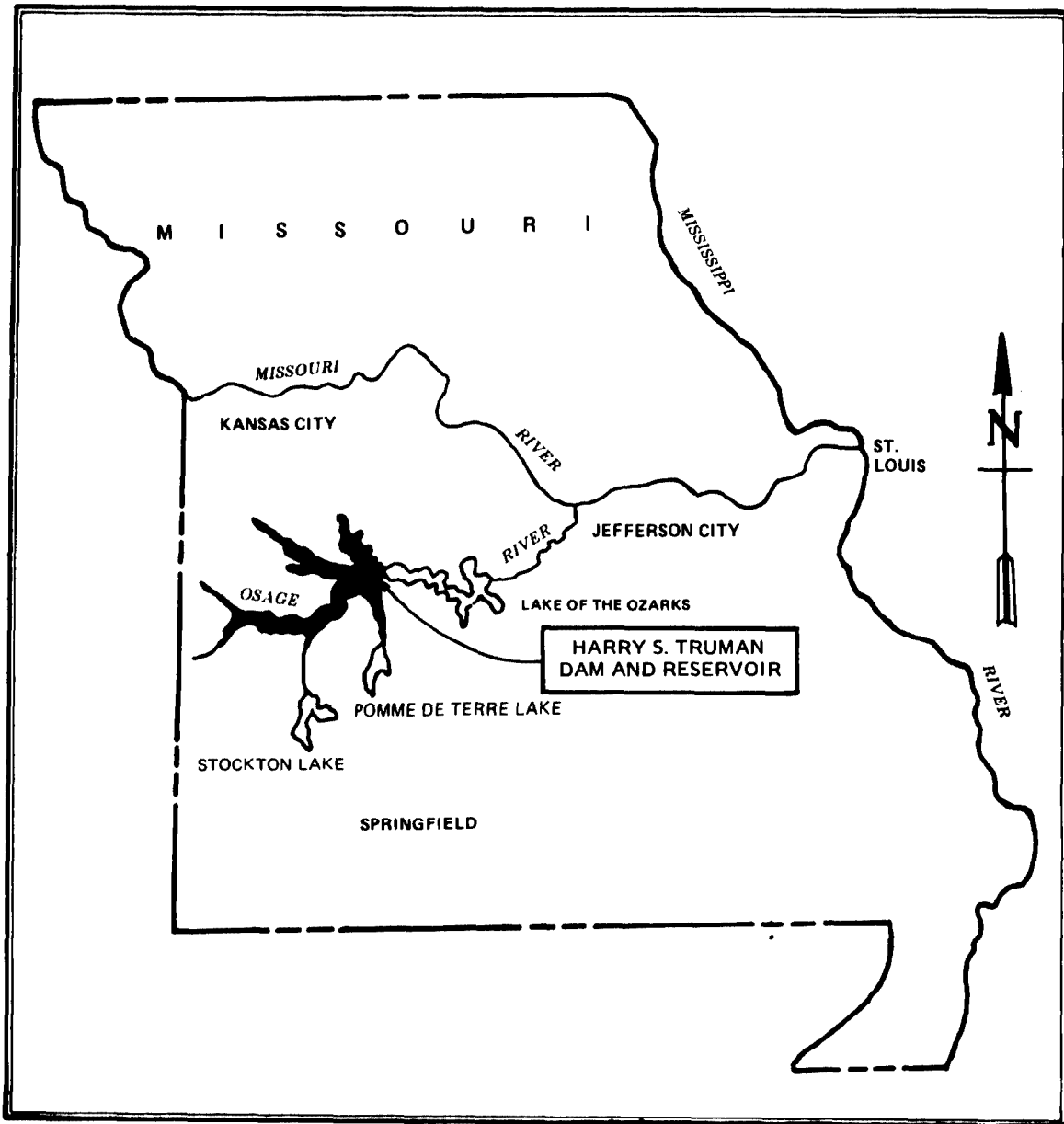
CONSTRUCTION SITE BONNEVILLE SECOND POWERHOUSE



GRANITE REEF AQUEDUCT PROJECT
(A PORTION OF THE CENTRAL ARIZONA PROJECT)



HARRY S. TRUMAN DAM AND RESERVOIR



CHAPTER 2

ECONOMIC IMPACTS OF REGULATIONS

WORRY CONSTRUCTION OFFICIALS

Many social and environmental regulations significantly affect the construction of Federal water resources projects. The effects are felt by both construction agencies and contractors and influence direct labor and material costs, project administration, and construction timing schedules. Construction officials voice a variety of concerns about regulations, but many believe that cumulative impacts are excessive and that not enough attention is being given to ameliorating them.

The information presented in this chapter represents the views of construction officials. It was gathered by interviewing selected construction officials who are accustomed to dealing with social and environmental regulations. We interviewed 29 officials: 11 representing 7 construction companies, 3 representing a contractor association, and 15 field representatives of the Corps and WPRS.

REGULATORY IMPACTS ON CONSTRUCTION ARE NUMEROUS, COMPLEX, AND SIGNIFICANT

Regulations in 14 social and environmental areas have a major effect on the construction of Federal water resources projects. They affect every phase of construction from planning and design to completion. They influence factors such as who will do the work, who the contractor's employees will be, when and how the work will be done, and how much it will cost. (For the 14 areas and examples of their effects on construction, see p. 11. For the objectives, authority, and agencies responsible for each area, see app. II.)

The 14 areas do not embrace all regulations which affect construction. Other regulations such as the Privacy Act, the Buy American Act, and a construction agency's own engineering regulations are also involved. The list also excludes the environmental impact statement preparation requirements of the National Environmental Policy Act of 1969 (42 U.S.C 4321, et seq.). 1/

1/When properly prepared, the impact statement provides a basis for considering the various regulatory areas.

MAJOR SOCIAL AND ENVIRONMENTAL REGULATIONS

AFFECTING FEDERAL WATER PROJECT CONSTRUCTION

<u>Regulatory subject</u>	<u>Examples of construction effects</u>
Air quality	Water down construction roads. Prohibit burning.
Archeological, historical, and cultural properties protection	Locate construction project access roads to avoid significant sites. Excavate and preserve artifacts.
Endangered species preservation	Construct protective barriers. Restrict work to specified hours and locations.
Equal employment opportunity	Recruit minority and female construction workers. Train female and minority construction workers.
Esthetic values	Minimize construction damage to trees and shrubbery. Replant work area after construction.
Facilities for the physically handicapped	Install elevators in offices, tourist facilities, etc.
Fish and wildlife conservation	Restrict in-water work to specified time of year. Construct fish ladders and hatcheries.
Freedom of information	Receive public inquiries. Provide information and documents as requested.
Minority business subcontracting	Require subcontracting to minority firms. Provide contract management assistance.
Noise abatement	Restrict work to daylight hours. Erect noise barriers around work areas.
Safety and health	Install backup warning signals and rollover protection on equipment.
Small business set-aside	Reserve some prime and subcontract work for small contractors only.
Solid waste	Find suitable disposal site. Transport waste and bury.
Water quality	Purify construction wastewater. Divert construction area runoff water.

Many parties are involved

While the agencies identified in appendix II are those primarily responsible for the 14 regulatory subjects, many agencies are involved in each regulatory area. For example, fish and wildlife protection is a concern of the Fish and Wildlife Service, Department of the Interior; the National Marine Fisheries Service, Department of Commerce; State fish and game departments; and the Environmental Protection Agency. Safety and health standards are promulgated by the Department of Labor, State safety and health agencies, and construction agencies and contractors.

Often, regulatory agencies set the requirements, construction agencies determine compliance methods, contractors are the complying party, and the construction agency uses its construction inspectors as compliance monitors.

Compliance costs can be considerable

Regulations often require large labor and material expenditures for construction. For example:

- The consideration of esthetic values at the Bonneville Second Powerhouse led the Corps to choose an expensive alternative for relocating a railroad line. The Corps decided to build an \$8.9 million tunnel instead of a deeply cut embankment (which may have cost about one-third less) because they believed the latter would have an adverse esthetic effect.
- Some of the contracts for the Granite Reef Aqueduct portion of the Central Arizona Project specify that all construction roads will be regularly watered to control dust. WPRS officials estimated that contractors will charge a total of \$2.1 million for dust abatement.

A number of the compliance measures listed on page 11 indicate additional ways that regulations can require labor and material costs.

Administration can be burdensome

Regulations also impose considerable administrative burdens for conferences, negotiations, travel, recruiting, training, accounting, reporting, research, and analysis. The time burdens which regulations impose can become proportionately greater for each higher level in an organization.

Contractors and construction agencies often hire environmental specialists, archeologists, equal employment opportunity specialists, safety engineers and others to handle the administrative workload of regulation. For example, 27 of 267 employees in the Corps' Portland District Engineering Division were assigned full-time to social and environmental regulation related work at the time of our review. Many other employees had similar part-time responsibilities, which took from 20 to 50 percent of their time.

Vague regulations also have impacts

Administrative burdens also arise as a result of vague contract provisions like "the contractor will be expected to comply with the OSHA standards" or "the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects." For a contractor, the administrative burden is determining what the specific requirements are and how to apply them.

Vague contract provisions can also affect contract costs by constituting an element of risk. For example, one provision which the Corps uses for esthetic purposes states that landscape damage which occurs during construction shall be repaired, and "the Contracting Officer will decide what method of restoration shall be used * * *." Without providing any further direction, such provisions create a risk that contractors will make gross errors in estimating costs for bidding purposes. If one overestimates the cost, he or she might lose the bid; if the cost is underestimated, he or she might win the contract but lose money as a result.

Sometimes regulations save construction costs

Economic benefits can sometimes accrue from compliance with social and environmental regulations. For example:

- Safety and health regulations are frequently cost-effective, with the cost of compliance being offset by savings in insurance payments, fines, and avoiding legal fees and avoidance of lost productivity.
- Esthetic concerns have caused selective removal of trees from construction sites with the result that costs are sometimes less than under the former practice of complete clearing.

CONSTRUCTION OFFICIALS POINT TO SEVERAL CONCERNS ABOUT REGULATIONS

Construction officials have a variety of concerns over areas such as the cumulative cost of regulations, the lack of consideration of impacts, and coordination difficulties. The following sections provide their views.

The cumulative cost of regulations is excessive

Many construction officials are concerned about the cumulative impact of what they regard as excessive regulation. This concern stems from the limited time which construction officials have available to meet their primary engineering responsibilities.

As a result of the growth of regulations, construction officials have trouble meeting construction time schedules and at the same time controlling the cost of regulations. The tendency is for cost control to give way to construction timeliness. Controlling regulatory costs could require time-consuming studies or coordination during construction when time is important for both the construction agency and contractors. The agency faces time pressures to get the project operational as soon as possible for meeting the public demand for energy, water, or other project benefits. The contractor wants to avoid late construction penalties and to minimize debt-financing charges. Both parties want to avoid having idle construction equipment and want to release their staff as soon as possible for other projects.

That tendency to incur additional cost to avoid delay seemed justified when compliance actions were fewer; however, now that many such actions affect one project, it creates an accumulation of additional costs which construction officials regard as excessive. This cumulative impact is a major cause of construction officials' concern about regulations.

Impacts are not being evaluated

The accumulation of regulatory impacts has reached the point where many contractors and construction agency personnel believe that:

- The time, cost, and burden of compliance are not considered in determining regulatory measures or goals.

--The degree of benefit to be realized by compliance is not considered in deciding how much regulatory effort is enough.

--Less costly alternatives for accomplishing the goals of regulations are often not evaluated.

Coordination is frustrating and time consuming

When construction officials try to cope with regulatory concerns they are frequently frustrated by the following factors:

--Uncertainty about whom to deal with. This results from the complex and fragmented character of responsibilities for social and environmental regulations.

--Questions on how much flexibility exists. Construction officials appreciate regulatory objectives but often feel that they have little or no latitude to decide degrees or methods of compliance.

--Lack of direction. Contractors expressed frustration about being unable to determine specific regulatory requirements and alternatives.

The above factors often combine to create a cumbersome coordination process for anyone trying to resolve regulatory questions which arise. Construction officials view coordination as a time-consuming imposition that should be avoided unless absolutely necessary.

No one seems primarily concerned about controlling costs and burdens

The primary concern of construction officials and regulatory officials about regulations is often something other than controlling costs or burdens.

--Contractors are often primarily concerned about being fully informed of regulatory requirements before bidding, so they can plan for the requirements and reflect them in their bids.

--Construction agency personnel are often more concerned about project effectiveness and timely completion of construction than cutting the cost of achieving regulatory objectives.

--Regulatory agency personnel often seem more concerned about accomplishing the objectives of their regulations than economizing and often seem to be least

knowledgeable about the specific economic impacts of regulations on construction.

- - - - -

Because the above information was based on many separate interviews and to help assure that views of construction agency and contractor officials are accurately represented in this chapter, a draft was sent for comment to the following:

- Bonneville Area Engineer and Assistant Area Engineer and Chief of Construction, Portland District Office.
- Assistant Project Manager, Chief of the Construction Division, and Chief of the Environmental Office, Arizona Project Office, Water and Power Resources Service.
- Assistant Administrator for Water Resources and Chief of Construction Engineering, Soil Conservation Service.
- Director, Heavy Industrial Division, Associated General Contractors of America.
- Executive Vice President, Land Improvement Contractors of America.
- An owner or representative of four construction contractors who together represent both large and small businesses.

These officials generally agreed that this chapter fairly represents the impacts of social and environmental regulations on construction and the concerns of construction agency and contractor officials.

Our case studies of selected regulatory compliance actions for the Bonneville, Granite Reef Aqueduct, and Truman Projects, discussed in the following three chapters, reflect a number of these concerns.

CHAPTER 3

MORE INFORMATION WAS NEEDED

TO EVALUATE ALTERNATIVES FOR

CONSERVING FISH AND WILDLIFE RESOURCES

For one project studied (Bonneville), late and inadequate fish and wildlife reports, time constraints, coordination problems, and interagency disagreements contributed to the acceptance of more costly measures for conserving fish and wildlife resources. For another project (Granite Reef), construction officials resisted acceptance of expensive conservation proposals, thereby causing mitigation progress to lag far behind construction. This, in turn, pre-empted consideration of at least one mitigation alternative. The third project (Truman) was excluded from this part of our review because important fish and wildlife issues were involved in pending litigation.

FISH AND WILDLIFE LEGAL REQUIREMENTS

The Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661, et seq.), authorizes the conservation of fish and wildlife resources on Federal water projects. The Secretary of the Interior, through the Fish and Wildlife Service (FWS), is responsible, along with construction agencies, for implementing the act. FWS studies possible damage to wildlife resulting from proposed Federal water projects and recommends prevention (mitigation) and improvement (enhancement) measures to construction agencies. The construction agencies, in turn, consider these recommendations. According to the act, construction agencies are then supposed to include in their project plans justifiable measures that maximize overall project benefits.

THE GRANITE REEF PROJECT

The FWS report for this project was issued late and recommended many expensive measures for which it provided little or no supporting data. Further delays ensued because the construction agency questioned the proposal. As a result, at the time of our review in 1980, 12 years after project authorization, a firm fish and wildlife mitigation plan had still not been prepared.

FWS first issued a wildlife report for this project in 1969--1 year after project authorization. The report

recommended some wildlife mitigation measures but viewed recreational hunting and fishing increases as priority measures. In the 1970s, consistent with the increasing national concern for protecting the environment, wildlife agencies became more concerned with preserving existing wildlife and their habitat. Accordingly, in 1974--1 year after construction on the aqueduct began--FWS reassessed its Granite Reef wildlife plans and determined, retrospectively, that they were inadequate, fragmented, and underfunded.

As a result, WPRS funded another study which FWS completed 3 years after construction on the aqueduct had begun. This second study, issued in 1976, recommended new and costly measures to protect the existing desert wildlife, including

- erecting 330 miles of special fencing to reduce drowning of deer and bighorn sheep in the aqueduct;
- building 94 single-purpose aqueduct crossings for deer, sheep, and other animals to lessen impacts on migration patterns; and
- developing 46 oasis-type watering stations to compensate for lost habitat and to divert animals from the aqueduct.

These measures, if fully implemented, could have increased project costs by as much as \$18 million.

WPRS rejected the new proposals, however, characterizing them as costly and lacking substantiating data. FWS agreed that alternative measures should be explored and more information should be developed about the specific aqueduct impacts on desert wildlife. Subsequently, WPRS funded another FWS study to collect data for developing add-on features or other wildlife mitigation measures. This study is scheduled for completion in 1983--10 years after the start of construction and only 2 years before the entire project is scheduled to be completed.

While officials from both WPRS and FWS believe that the final special wildlife features will be considerably less extensive in number than those FWS recommended in 1976, the effect of late completion of the studies is difficult to determine. However, a FWS official told us that at least one alternative for protecting wildlife (creating run-off water retention dikes to preserve wildlife habitat) has been precluded by the completion of construction

for that part of the aqueduct. Also, some preventable wildlife harm may already have occurred during construction.

THE BONNEVILLE SECOND POWERHOUSE PROJECT

At Bonneville, because the Corps elected to start construction without a FWS report or Coordination Act study, unanticipated wildlife problems arose during construction which at times gave the agencies insufficient leadtime to evaluate alternative solutions. As project development progressed, misunderstandings developed because coordination procedures through which agencies could make environmental recommendations to the Corps had not been clearly defined.

These coordination problems led the Corps to establish an Interagency Environmental Task Force in October 1976. Of nine environmental agencies invited, seven elected to participate, including three Federal agencies and four State agencies representing Washington and Oregon. The task force was established as an advisory/coordinating body to identify potential environmental problems and develop recommendations to avoid them on this project. The Corps has taken a number of protective measures during construction which were coordinated through the task force.

Our review covered five protection measures, each of which resulted in situations similar to the above general statement. Two representative measures are discussed below. 1/

In-water work restricted

Salmon runs occur in the Columbia River in the spring, summer, and fall. Any work which involves the river, such as excavation for the powerhouse and its discharge channel, is restricted by the Corps to the period from November 1 to March 1 to avoid interfering with the salmon runs.

Corps officials said that prior to the Bonneville Second Powerhouse project, the Corps had used a March 15 cutoff date for work in the Columbia River. For this project,

1/The others related to (1) disposal of material excavated from the river channel, (2) unloading operations for gravel barged to the construction site, and (3) construction of a roadbed to sustain subsurface water flows.

a March 1 cutoff was established because the Corps wanted to create a small contingency period to be granted to the contractor in case of possible time overruns.

At the end of the first year, the contractor performing the excavation work reported that he was 17 working days behind schedule because weather and site conditions were more extreme than specified in the contract. To make up the lost time, he requested permission to stay in the river 2 weeks beyond the March 1 deadline.

There is little evidence to indicate that much harm could have resulted from granting the 2-week extension. Previous fish passage records for the Bonneville Dam-- for the 22 year period from 1949-70 1/--show an average of 56 salmon passing through the dam between the period March 1 through March 14 compared with an average 96,939 of the same species passing through annually.

Although the Corps at first supported the contractor's request for an extension and presented it to the task force for consideration, the Corps ultimately rejected it to avoid disputes with wildlife agencies over possible risks to the salmon run. Some wildlife agencies were opposed to granting the contractor's request because of a reluctance to relax any restriction affecting the salmon. Many were also concerned about the difficulty in detecting the start of the salmon run. The contractor agreed to do any work necessary to detect the start of the run, but the task force recommended that the contractor's proposal be rejected.

This decision created a large potential loss to the Government. Since the work delays were not the fault of the contractor, the Government was apparently liable for the additional cost of keeping the contractor's equipment at the site for an extra 8 months (until the next in-water season) to complete the work and for the \$2,350,000 in lost power revenues from an 8-month delay in project completion if the contractor could not make up the delay. Fortunately, by discovering and using an alternative construction method acceptable to the Corps, the contractor was able to make up the lost time without increasing the costs, thus avoiding a substantial loss to the Government.

1/According to a Corps official, since 1970 no fish counts were made at the Bonneville Dam until after March 14 because there are so few salmon coming upstream before then.

Bridge extended without documented justification

Construction of the powerhouse site required relocating a highway and, as part of this relocation, building a new bridge across Hamilton Creek (see p. 7). Before bridge construction, a Washington State Department of Game official complained that landfill and piers for the bridge approach would intrude into the creek's high-water channel and possibly interfere with salmon spawning. The official requested that a longer bridge be built to avoid this potential problem. The State did not provide the Corps detailed information as to its objections to the landfill or the specific benefits expected to result from the longer bridge. The official told us that the agency did not know to what extent, if any, the required landfill for the shorter bridge would have interfered with the salmon runs.

Although the shorter bridge had been designed to pass high-water flows, the Corps did not want to risk antagonizing the wildlife agencies and thus did not contest their recommendation. Therefore, the Corps constructed a 270-foot long bridge, 76 feet longer and about \$150,000 more than the one originally designed, without determining whether the longer bridge would benefit fish. (See p. 22 for a photograph of the bridge.)



CHAPTER 4

MORE INFORMATION WAS NEEDED TO

EVALUATE ALTERNATIVE APPROACHES FOR PROTECTING

CULTURAL PROPERTIES

Although construction agencies spent large sums to protect cultural properties at each of the three selected projects, the agencies' efforts illustrate a variety of problems having economic and cultural consequences: 1/

- Construction work can get ahead of cultural resource surveys, potentially wasting protection funds or reducing the potential benefits of mitigation efforts and thwarting protection objectives.
- Construction plans can change without notice for cultural survey purposes, increasing the cost of the surveys and the mitigation work.
- Construction time pressures can force more extensive artifact recovery, thus potentially reducing competition for the mitigation work and increasing artifact excavation, cataloging, and storage costs.
- Artifact storage decisions can be postponed until artifacts are recovered, delaying the acquisition of suitable storage facilities, exposing the artifacts to deterioration, and potentially weakening the Government's position for negotiating a fair storage price.

Generally, these problems stemmed from informational needs that were not met on a timely basis.

1/We reported similar problems concerning another water project in "Uncertainties Over Federal Requirements for Archeological Preservation at New Melones Dam in California" (CED-80-29, Dec. 21, 1979). Among other things, the report discussed controversies over how much preservation is enough.

REQUIREMENTS FOR PROTECTING CULTURAL PROPERTIES

The Reservoir Salvage Act of 1960, as amended (16 U.S.C. 469, et seq.), gave the Secretary of the Interior major administrative and coordination responsibility in preserving archeological sites that might be lost through the construction of dams. This act was amended in 1974 to provide for the use of up to 1 percent of Federal water resources project construction funds for preservation. Construction agencies began managing preservation efforts as a result of this amendment.

The Secretary designated the National Park Service as the Federal focal point for identifying and preserving archeological and historical sites. The National Park Service established the Interagency Archeological Services to advise and assist construction agencies during their attempts to preserve cultural resources. In January 1978 the Secretary transferred the National Park Service's responsibility to the newly created Heritage Conservation and Recreation Service (HCRS).

In 1966 the Advisory Council on Historic Preservation (ACHP), was established as an independent agency by the National Historic Preservation Act of 1966 (16 U.S.C. 470, et seq.) Its duties include recommending measures to coordinate the historic preservation activities of Federal agencies. It comments on Federal agency actions affecting properties listed or eligible for listing in the National Register for Historic Places. ACHP's regulations require that construction agencies contact the historic preservation officer of the State(s) in which the Federal water resources project will be constructed to obtain an inventory of the archeological and historical sites within the proposed project boundary. The inventory is used to determine whether construction will affect National Register eligible or listed properties.

SURVEYS TO IDENTIFY CULTURAL PROPERTIES

Compliance with regulations issued by ACHP often requires that systematic surveys be conducted of all land affected by a construction project. On two of the projects studied, Truman Dam and Granite Reef, the construction agencies did not complete cultural-property surveys in time to adequately plan for mitigation before construction progress limited protection opportunities.

Cultural surveys for both projects were started by the National Park Service but continued by the Corps when the Service began experiencing staffing and/or funding shortages.

The Truman Project

The Corps conducted a sample survey that covered about 45 percent of the 166,500 acres purchased for the project. The project area was divided into one-eighth mile wide segments, and 45 percent of the segments were surveyed. This sampling approach caused consulting cultural agencies to question the sufficiency of the survey for identifying cultural properties to be preserved.

The Interagency Archeological Services was concerned whether the survey adequately established the scope and significance of the properties involved. ACHP's Office of Cultural Resources Preservation also expressed those concerns.

To satisfy those concerns, in May 1977 ACHP requested that the Corps take steps to set out relevant information for use in evaluating project effects and available mitigation alternatives. With this information, ACHP hoped to be able to judge the adequacy of the survey. ACHP also asked the Corps to refrain from taking any action that would prevent the proper consideration of existing mitigation alternatives.

The Corps proceeded to develop information on effects and alternatives and recovered artifacts from some areas but also continued to comply with its construction schedule for completing the dam by filling the reservoir beginning in June 1977. This action ultimately inundated 56,000 acres of the area in question. By March 1980, the information had still not been developed, even though the reservoir was filled.

Corps representatives said they did not finish developing the information before the reservoir was filled because they anticipated delays in obtaining necessary mitigation plan approvals from other Federal agencies and had neither sufficient staff nor time to complete a mitigation plan after assuming management responsibilities for cultural preservation in 1974. A representative from the ACHP attributed the problems to the Corps' delay in developing the information on effects and alternatives.

Despite the problems, as of March 1980, efforts were continuing toward reaching agreement on how best to fulfill

the Corps' compliance responsibilities under the circumstances.

The costs involved include about \$1.2 and \$1.7 million in survey and mitigation contracts, respectively, which the Corps had awarded by November 1979. At that time, the Corps was also planning additional work.

The Granite Reef Aqueduct Project

After construction had started, WPRS' environmental staff discovered that the aqueduct's alignment had been changed from the alignment previously surveyed. This discrepancy, up to 3 miles from the original alignment, occurred along the entire 190-mile length of the aqueduct and nullified the original survey.

A WPRS official said the probable cause of the discrepancy was poor communication between the agency's engineering and environmental groups. To resolve the discrepancy and stay on construction schedule, WPRS decided to conduct cultural survey and mitigation activities simultaneously along the realignment and to use noncompetitive, sole-source contracting procedures. The contractor for the survey and mitigation work said that a reduced amount of mitigation along the realignment may have been possible if the entire alignment had been surveyed as a basis for deciding the extent of mitigation work needed. WPRS awarded contracts for survey and mitigation work valued at about \$483,000.

ARTIFACT RECOVERY

When construction will destroy a valuable archeological site, the valuable information is supposed to be recovered so that it may be preserved for future study. According to ACHP's experience, this almost never requires complete, systematic excavation of an archeological site. At the Bonneville Second Powerhouse Project, the Corps completely excavated such a site (see top photograph, p. 29,), significantly increasing project costs. 1/

The university which surveyed the project's resources for the National Park Service recommended a minimum recovery of 20 percent of the historic artifacts of a Native American

1/The site included both historic and prehistoric artifacts. The Corps limited its recovery of prehistoric artifacts (those dated before the arrival of caucasians) at the site to a sample.

village discovered at the site. The university proposed a 30-percent recovery sample in its bid submitted to the Corps for the mitigation contract work. The Corps rejected the university's bid as being nonresponsive in favor of a bidder who proposed 100-percent recovery of the historic artifacts. The university's bid was about \$164,000 less than the other bid received.

The Washington State Historic Preservation Office and a representative of the Interagency Archeological Services told us that the Corps' 100-percent recovery of the historic artifacts was without apparent justification and would result in costs far beyond those required to adequately mitigate the site. Both sources complained that the Corps did not coordinate the recovery plans with their agencies. Coordination with the State was required in a memorandum of agreement ACHP approved.

Corps representatives said they did attempt to coordinate with both agencies, but neither one responded to letters sent them. They indicated that further attempts might have delayed construction.

Statements made to us by Corps officials indicated that the Corps' judgment to do no less than 100-percent mitigation was based in large part on a concern that a lesser percentage might lead to late artifact discoveries, thus triggering a resumption of recovery operations which would delay construction. The mitigation site was generally considered quite valuable and it was situated in the area to be excavated for the powerhouse channel (see map on p. 7).

From seven aboriginal plank houses and several other structures that were excavated, the Corps recovered about 1.5 million artifacts ranging from bones to centuries-old stone tools to metal buttons and bottles from the mid-1800s. Excavation of one plank house is shown in the bottom photograph on page 29. The mitigation activities, excluding artifact storage but including cataloging, cost over \$1.2 million as of April 1980.

ARTIFACT STORAGE

The Corps and the Washington State historic preservation officer have been unable to locate an institution within the State willing to accept the artifacts recovered from the Bonneville Project. These institutions reportedly lack the space, labor, and funding to do so. Corps

representatives said storage facilities must be found soon because some of the artifacts, such as pieces of cloth and clay pipes, will rapidly deteriorate outside of a controlled environment.

Recognizing the critical nature of the problem, the State Office of Archeology and Historic Preservation tried to establish a centralized, statewide artifact repository and research unit. The State proposed that Federal agencies help finance the new repository by paying up to an additional 15 percent of the cost for each Federal archeological mitigation contract covering work in the State.

As of April 1980, the Corps' North Pacific Division was considering the State's proposal. If the Corps accepts, its share for storing the Bonneville artifacts would be almost \$200,000.

A representative from the Interagency Archeological Service said that suitable artifact storage should have been located and arranged before mitigation occurred. To do so later, we believe, could have weakened the Government's position for negotiating a fair storage price. Such actions tend to leave insufficient leadtime to consider all alternatives and surrender bargaining leverage--the Governments' willingness to do the mitigation work if the State will take the artifacts.

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Commenting on matters discussed in this chapter, ACHP stated:

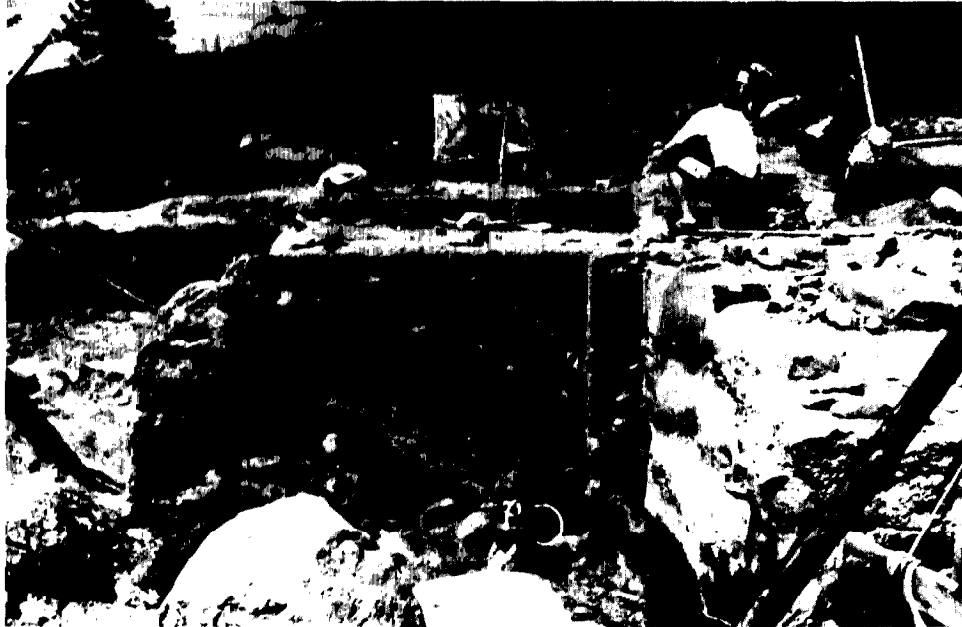
"Most of the findings* * *are true and stem from a lack of compliance during the planning process. No matter how well compliance is carried out during the planning process, however, cases such as these will continue to arise. The Council has been working with the Federal agencies to improve the regulatory compliance process so as to eliminate, or at least minimize, these problems when they arise."

ACHP said that suitably detailed agency procedures are necessary in order for regulatory compliance to be accomplished efficiently (see p. 65).



CORPS PHOTOGRAPH

MITIGATED ARCHEOLOGICAL SITE AT BONNEVILLE SECOND POWERHOUSE PROJECT. POWERHOUSE CONSTRUCTION UPSTREAM FROM THE SITE AND THE RESULTING DOWNSTREAM TAILRACE (SHOWN IN BACKGROUND) NECESSITATED THIS EXCAVATION.



CORPS PHOTOGRAPH

EXCAVATION OF ONE OF SEVEN ABORIGINAL PLANK HOUSES AT SECOND POWERHOUSE ARCHEOLOGICAL SITE. DARK LINES IN THE EARTH INDICATE VARIOUS TIMES AT WHICH PLANK HOUSE WAS INHABITED.

CHAPTER 5

CONTRACTORS NEEDED MORE ADVICE

FOR EMPLOYING WOMEN IN CONSTRUCTION

In each of four contracts we reviewed, contractors did not meet women-in-construction employment goals. They maintained they did not adequately understand what compliance efforts were expected because their questions and problems received very little attention from jurisdictional authorities. As a result, inefficiency in compliance efforts, inequities between contractors, and loss of respect toward the agencies or their regulations can occur. 1/

WOMEN-IN-CONSTRUCTION REGULATIONS

Section 201 of Executive Order 11246, as amended, provides that the Secretary of Labor shall adopt rules, regulations, and orders to carry out the Executive order's policy to prohibit Federal contractors from discriminating against any employee or applicant for employment based on race, color, religion, sex, or national origin. The Secretary's employment goals and time frames for using women in Federal and federally assisted construction projects were published in the May 5, 1978, Federal Register, as follows:

<u>Time frames</u>	<u>Employment goals</u> (percent)
April 1, 1978, to March 31, 1979	3.1
April 1, 1979, to March 31, 1980	5.0
April 1, 1980, to March 31, 1981	6.9

Federal construction agencies include these goals and time frames as provisions of construction contracts. The goals apply to the number of hours women worked in each construction craft as compared to the total number of hours all employees worked in each craft.

1/For difficulties in employing minorities in construction, see our report "Federal Efforts to Increase Minority Opportunities in Skilled Construction Craft Unions Have Had Little Success," (HRD-79-13, Mar. 15, 1979).

With the reorganization that was effective October 1978, the Department of Labor's Office of Federal Contract compliance Programs (OFCCP) assumed total compliance monitoring responsibilities under Executive Order 11246. OFCCP also initiates enforcement action against contractors who do not comply.

CHARACTERISTICS OF SELECTED CONTRACTORS

Three large contractors and one small contractor were selected from among the three projects to determine the administrative burdens which the women-in-construction regulations impose on complying parties. These contractors were involved in project construction and in hiring women for their work force at the time of our study. In total, the four used nine different construction crafts--laborers, operating engineers, carpenters, teamsters, cement masons, ironworkers, electricians, pipefitters, and boilermakers.

DIFFICULTIES IN MEETING EMPLOYMENT GOALS

Three of the four contractors did not consistently achieve the goals for any of the construction crafts they used. The fourth contractor, the one for the Second Powerhouse Project, was able to consistently meet the goals in only one craft of the seven used. Generally, the contractors contended that insufficient qualified women were available for recruiting to achieve the goals.

All four contractors were able to partially meet the employment goals in some crafts, but their success was generally quite limited. To illustrate, the following table shows the degree of success by craft achieved by the Second Powerhouse Project contractor, apparently the most successful at employing women of the four contractors selected.

	<u>No. of months craft was used</u>	<u>No. of months women were employed</u>	<u>No. of months employment goals were achieved</u>	<u>Average percent of women employed between</u>	
				<u>7/78-3/79</u> (3.1% goal)	<u>4/79-12/79</u> (5% goal)
Laborers	18	18	18	5.2	5.7
Operating engineers	18	16		1.5	1.7
Carpenters	18	17		1.9	1.5
Teamsters	18	17		1.6	2.6
Ironworkers	18	5			0.5
Cement masons	12	4	2		2.8
Boiler- makers	6				

The table shows that even this contractor's success at achieving the goals was limited to one craft, laborers. For other crafts, the contractor's achievements were very limited.

ADMINISTRATIVE BREAKDOWNS OCCUR
IN THREE COMPLIANCE STAGES

There are three stages when good administration of the women-in-construction regulations is particularly important. Problems occurred in each of these stages.

Preconstruction stage

Before contracting, construction agencies conduct conferences with prospective contractors to review the female employment goals and the procedures necessary to achieve them. Construction agency representatives acknowledge that they do not know enough about the women-in-construction regulations to answer specific questions received at these conferences and that this frustrates contractors.

OFCCP representatives told us they seldom attend these conferences. OFCCP's general policy is that staff resources should not be allocated for participation in

preconstruction conferences unless there are measurable benefits to be gained. OFCCP's position is that contracting agencies are responsible for informing contractors of their compliance responsibilities at these conferences. (See p 73.)

In an attempt to resolve this problem on the Granite Reef Project, WPRS and OFCCP agreed that WPRS would notify OFCCP of contractors to whom bids were awarded. OFCCP was to send these contractors an equal employment opportunity information packet, including women-in-construction compliance material. OFCCP received the notification, but did not send packets because of what they termed "a failure in communication."

Construction stage

OFCCP regulations specify that contractors' efforts to employ women must comply with 16 "good faith" steps and that contractors must document their attempts to comply with each step. Contractors maintain that their efforts are hampered because OFCCP has not advised them on what must be done to demonstrate good faith. OFCCP believes that its guidance in this respect is clear (see pp. 72 to 74).

The contractor on the Second Powerhouse Project characterized his efforts to demonstrate good faith as nothing more than a "paperwork mill," because so much documentation is required and the efforts are frequently unsuccessful.

In an attempt to provide additional assistance, OFCCP's Phoenix Area Office prepared a list of criteria which contractors had to follow to demonstrate compliance with each of the 16 good faith steps and included this good faith demonstration criteria in the information packet provided to contractors during the preconstruction conferences. However, those criteria are no longer provided to contractors because, as noted above, OFCCP no longer attends the preconstruction conferences and the alternative contractor-notification arrangement between WPRS and OFCCP broke down. The three large contractors told us that criteria of this type would help them comply because they would know what is required.

OFCCP told us that they are developing a standard information packet to be available at all area offices by early 1981 which will provide assistance to contractors.

Review stage

As part of its regulatory responsibilities, OFCCP is to review contractors' monthly compliance reports and audit both a contractor's compliance with the employment goals and, in the event the goals are not met, a contractor's record of good faith compliance efforts.

As of March 1980, OFCCP had not discussed the results of its review of compliance reports with the four contractors. OFCCP does not provide contractors feedback on these reports. However, the contractors said they would welcome feedback because ideas might be expressed that could help them meet their goals and, simultaneously, control their own administrative burden.

OFCCP told us that monthly reports are used to select contractors for review, but the volume is too great to respond to every report. OFCCP is considering developing a form letter to be sent automatically by computer to contractors not achieving their goals suggesting further action and offering technical assistance for doing so.

By March 1980, OFCCP had not completed a compliance review for the contracts selected despite the contractors' limited success in achieving the goals. ^{1/} A compliance review for the Second Powerhouse Project had been started in March and one for the small contractor was scheduled to begin the same month. An OFCCP official told us that budgetary restrictions make it difficult for the agency to accomplish all necessary compliance reviews on a timely basis.

OFCCP notified the Second Powerhouse contractor in October 1979 that a review was to be conducted but delayed it until March 1980, reportedly due to staff shortages. According to an OFCCP representative, the review will allow the contractor and OFCCP to agree on the steps which must be taken to achieve the employment goals and the amount of time available to demonstrate compliance.

The contractor told us he hoped the review would help alleviate his administrative frustrations by communicating more fully Federal expectations for good faith compliance. He also said that such reviews help eliminate compliance inconsistencies or inequities between contractors. It was

^{1/}In March 1979, OFCCP completed a compliance review of one of the Granite Reef contractors covering two construction contracts not selected for our review.

our impression that the contractor had tried to meet the goals, was concerned that he was not successful, and wanted to know what else to try.

For the Second Powerhouse Project, on May 29, 1979, the Corps' North Pacific Division signed an agreement with OFCCP whereby resident engineers of Corps projects would monitor contractors' efforts to achieve the female employment goals, observe contractors' attempts to comply with the good faith steps, and review contractors' monthly compliance reports. In addition, the resident engineer would submit a monthly report to OFCCP stating whether or not the contractors appear to be in compliance with the regulations.

According to OFCCP, this agreement was abrogated by their Seattle Regional Office (see p. 74). OFCCP officials explained that OFCCP has no policy or procedures for delegating its compliance responsibilities to another entity. They said that resident engineers can, of course, observe the apparent use of women and minorities in construction and notify the OFCCP area office of their observations. However, the goals are achieved in the contractors aggregate work force on all projects in the covered area, including Federal, federally assisted, and non-Federal. Therefore, the engineers would not have knowledge of the contractor's minority or female work force use on other projects.

According to OFCCP, the Corps is still interested in establishing an arrangement for notifying the OFCCP area office of their observations concerning their contractors' use of women and minorities at the Bonneville Dam Project.

We believe that such arrangements could help considerably. They can open communication channels between construction and regulatory officials, thereby enabling contractors to receive the information they need for understanding how to achieve the employment goals. Making such arrangements for both Corps and WPRS projects makes sense in that officials of these agencies have a continual onsite presence and supervision of construction activities which allows them to readily identify and understand contractors' needs and problems. Also, these construction agency officials often have broad experience in dealing with similar contractor problems on other contracts and projects. Through such arrangements, contractors may be able to reduce their administrative burdens associated with determining the best compliance approaches, OFCCP may be able to reduce their compliance monitoring time and costs, and more women may be able to find and keep employment in construction.

CHAPTER 6

REGULATORY EVALUATION IS

CHALLENGING BUT NOT IMPOSSIBLE

Previous chapters of this report indicate an inconsistency. In taking compliance actions, Federal agencies do not obtain enough information to evaluate compliance alternatives, even though agency officials are very concerned about compliance costs and administrative burdens. Several factors undoubtedly account for this apparent inconsistency, but one of the most important is the difficulty of evaluating the costs, benefits, risks, and alternatives involved in regulatory compliance.

Although regulatory evaluations can be difficult and the state of the art is not far advanced, some progress is being achieved and a rudimentary but useful form of regulatory compliance evaluation (discussed below) is already possible. In addition to using this form of evaluation, agencies need to develop advanced techniques to help compliance decisions be less subjective.

THE THEORY AND PROBLEMS OF REGULATORY EVALUATION

In Government, regulatory evaluation is a process by which Federal agencies consider costs, benefits, and alternatives in deciding the appropriate measures for achieving social or environmental objectives. Regulatory evaluation can be approached in two ways:

- Encourage regulatory agencies to evaluate proposed or existing regulations for the purpose of reconfirming, rewriting, consolidating, or eliminating them.
- Encourage complying parties, such as construction agencies, to evaluate compliance alternatives for the purpose of selecting economical and efficient ways for achieving regulatory objectives within the framework of existing regulations.

Most attempts at regulatory evaluation fall into the first category. Our literature search and interviews with

organizations involved in evaluation indicated that the second approach has received less attention. Both methods present many conceptual difficulties and data collection problems. 1/

Conceptual problems in regulatory evaluation include difficulties not only in determining what costs and benefits are involved but also how they can be measured or estimated. In addition, many costs, benefits, and alternatives do not lend themselves to comparative analysis. For instance, it is difficult to compare the benefit of protecting a historical site with the cost of delaying a major flood control project. The risk factor of different compliance alternatives is also important. It is not easy to decide the point at which risks to historic values, the environment, or human life become acceptable.

Data collection problems relate to the lack of reliable and sufficient cost and benefit information. Cumulative compliance costs are difficult to estimate. At present, the Federal water resources construction agencies do not record regulatory compliance costs separately in project budgets and do not require contractors to bid separately on compliance costs. Without this information, even relatively uncomplicated regulatory evaluations become difficult.

REGULATORY EVALUATION IS RELATIVELY UNDEVELOPED

Regulatory evaluation is in its infancy, but some encouraging efforts in this field have been made. Most efforts are directed toward evaluating regulations rather than compliance alternatives. A literature search did not disclose any techniques or guidelines which would enable Federal agencies to evaluate regulatory compliance alternatives. Neither the Corps nor WPRS has compliance evaluation techniques or guidelines for its own use and neither agency is specifically required to perform compliance evaluations comparing the objectives of regulations to the costs, benefits, and alternatives of compliance measures.

A policy representative of the Water Resources Council, an interagency group chaired by the Secretary of the

1/See Julius W. Allen, "Estimating the Cost of Federal Regulation: Review of Problems and Accomplishments to Date," Congressional Research Service, Sept. 26, 1978.

Interior, told us that compliance evaluation guidelines do not yet exist although they believe such guidelines are needed.

Actions initiated

In recent years, the Federal Government has taken actions to improve the regulatory system and eliminate unnecessary regulation. An important Executive Order-- 12044--was signed in 1978, requiring agencies to evaluate the cost and burden of new and existing regulations.

Two major regulatory reform bills were considered by the Congress: the "Regulation Reform Act of 1980" and the "Regulatory Flexibility and Administrative Reform Act." These bills would encourage agencies to write more effective regulations and to review and analyze existing regulations. Complying parties are to be given the opportunity to comment on agencies' preliminary regulatory analyses but are not directed to pursue regulatory evaluation themselves. However, neither bill was enacted during the 96th Congress.

Several groups are involved in regulatory evaluation

Executive Order 12044, extended by Executive Order 12221 until April 30, 1981, placed most of the Federal Government's regulatory evaluation and reform responsibilities on Federal agencies which write regulations. Three major groups are aiding this effort: two new oversight groups-- the Regulatory Council and the Regulatory Analysis Review Group--and the Office of Management and Budget. In addition, other groups from both the public and private sectors are involved in regulatory evaluation or reform activities.

The Regulatory Council has examined 138 regulatory reform activities that have taken place during the last 2 years and concluded that regulatory agencies have made advances in planning and managing regulatory efforts. The Regulatory Analysis Review Group is primarily concerned with ensuring that regulations represent the most efficient means of achieving regulatory objectives. The Office of Management and Budget watches agency regulatory actions to ensure that compliance and paperwork burdens are minimized. In addition, it evaluates (1) the clarity of regulations, (2) the opportunities for public comment, (3) the agencies' consideration of alternative approaches to the design and enforcement of regulations, and (4) the agencies' preparation of regulatory analyses.

The President's Council on Wage and Price Stability has issued over 300 reports on various regulations. The Council generally limits its review to new, rather than existing, regulations and concentrates on what regulations cost, what they achieve, and what alternatives are available.

Private organizations such as the Public Interest Economics Center have also been involved in regulatory evaluation. The Center has done consulting work for various Federal agencies and has issued several publications dealing with the difficulties of conducting regulatory evaluations.

An extensive private study on regulatory costs was commissioned by the Business Roundtable, a nonprofit business interest group. In 1978 they contracted with Arthur Andersen and Company, an accounting firm, to study the costs of complying with the regulations of selected Federal agencies. Forty-eight of the Business Roundtable's 192 member companies participated in the project, and six regulatory areas were chosen for analysis. The study helped both to identify a number of particularly costly regulations and to measure regulatory costs.

Efforts such as those above are encouraging even though many Government organizations, business concerns, and public interest groups involved in regulatory evaluation agree that the state of the art is not far advanced. Generally, these parties believe that further efforts are warranted to advance these evaluation techniques and thus help future compliance decisions to be less subjective.

A FORM OF EVALUATION IS ALREADY PRACTICAL

Despite the difficulties involved, managers can evaluate compliance alternatives in day-to-day decisionmaking by gathering the best available information on costs and benefits, identifying and considering alternatives, and making informed comparisons and judgments. A practical approach is discussed below.

Step one: identifying regulatory goals and affected resources

A practical regulatory evaluation could begin with information on goals and affected resources. For example, the goal of historical preservation regulations at the Bonneville Project was to provide cultural information on the Chinook Indians. Artifacts which are rare or provide new information would usually be more significant than common or duplicative artifacts. Although identifying

which artifacts are significant may not be easy, this step is necessary for deciding how many and what type of artifacts should be recovered. These considerations suggest that on the Bonneville Project only a representative sample of the artifacts in the construction area had to be recovered. Similarly, for planning wildlife mitigation measures at the Granite Reef Project it would be necessary to know the type, number, and habits of animals affected by construction.

Step two: identifying and evaluating alternatives

A range of reasonable alternatives for achieving regulatory objectives is sometimes available. For example, at the Bonneville Project either 100 percent or various sized samples of the artifacts could be excavated and removed. Similarly, for protecting deer at the Granite Reef Project, alternatives include fencing the canal, providing bridges or underpasses, constructing canal escape devices, building oases to lure deer away from the canal, or a combination of these.

For each reasonable alternative identified, available cost and benefit data could be gathered. A realistic estimate of direct costs is often possible, and benefits, while seldom quantifiable in financial terms, can at least be described or quantified numerically.

Step three: comparing alternatives to reach decisions

The final step in a practical regulatory evaluation would be to compare the costs and benefits of the alternatives and decide which alternative is the most efficient, economical, and effective. In comparing alternatives, the factor of risk should be considered. For example, in evaluating alternatives at Bonneville, it may be worthwhile to risk 30 percent artifact mitigation. At Granite Reef, the risk of partial fencing instead of complete fencing may be worth taking, considering costs and potential deer loss. Like benefits, risks often cannot be quantified, but recognizing them is essential for comparative analysis.

Considerations and conclusions for each step could be recorded

All important considerations and conclusions could be recorded for each step of the evaluation. This should enable decisionmakers and subsequent reviewers to have a

clear understanding of the basis for compliance decisions. This practice could encourage better selection of alternatives and more effective control over the selection process.

CHAPTER 7

CONCLUSIONS AND RECOMMENDATIONS

The Corps and WPRS often comply with social and environmental regulations in an uneconomical and ineffective manner because they do not perform evaluations to determine the most appropriate way to achieve regulatory compliance. This conclusion is based on findings from three sources:

1. The views of knowledgeable construction agency and contractor officials (ch. 2). These persons, having firsthand field knowledge and ultimate responsibility for compliance actions, believe that the cumulative economic impact of regulations is excessive and that not enough attention is being given to evaluating the costs, burdens, and benefits of compliance alternatives.
2. Case studies of regulatory compliance practices used in constructing water projects (chs. 3, 4, and 5). These case studies reflect a number of the concerns which construction officials expressed and consistently show that agency officials lacked sufficient, timely information on costs, burdens, benefits, and risks to justify pursuing compliance alternatives.
3. A study of the state of regulatory evaluation methods and techniques (ch. 6). The study generally shows that Federal policies and guidelines for promoting regulatory evaluation by agencies which comply with regulations are underdeveloped or nonexistent.

To achieve compliance more economically and effectively, construction agencies need to evaluate compliance alternatives, need more time for conducting the evaluations, and need more guidance in the form of policies, criteria, and incentives.

COMPLIANCE EVALUATION IS NEEDED

A compelling argument for obtaining sufficient information to evaluate compliance alternatives is the widespread concern being voiced by construction officials about the cost and burden of regulations. Many officials of construction agencies and both large and small contractor organizations

share this concern. It has arisen because regulatory impacts now occur frequently and produce, in their opinion, a significant cumulative effect. Their concern is consistent with the public concern about the Nation's economy, the cost of Government, and the burden of regulations. It is not inconsistent with a concern to maintain the important social and environmental gains of recent years. Indeed, the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.) provides for the consideration of alternatives to proposed Federal actions.

Presently, construction agencies have too little information for reaching informed judgments. Thus, it is difficult for them to control regulatory costs and burdens or to maximize social and environmental values.

Two matters seem especially important to remember when evaluating compliance alternatives:

- Although objectivity should be pursued as a goal, subjective judgments are essential in practical evaluations. Subjectivity should not be used as an excuse for restricting the evaluation. So long as any subjective or unmeasurable elements are clearly recognized and disclosed, they can be reconsidered in the process of reviewing proposals for compliance actions.
- Administrative burdens are easy to ignore because their cost impacts often seem minor. However, these burdens, by imposing on the limited time and energies of construction supervisors and managers at all levels, affect contractors' motivations to compete for government work, taxpayers' attitudes toward regulations, and the general climate of relations between government and business.

TIME AND GUIDANCE MUST BE PROVIDED

To facilitate regulatory evaluation of compliance alternatives, we believe that construction agencies need to start that process as early as practicable during project development and provide more guidance in the form of evaluation policies, criteria, and incentives.

The time factor was especially critical in many of the cases studied. For example, timing problems caused compliance with wildlife regulations to lag far behind construction progress in one project and created construction pressures that forced establishment of a special task force on the other project. Similarly, all three projects studied for cultural protection actions were affected by timing problems. On one, cultural survey and mitigation plans were incomplete before reservoir filling; on the second project, cultural survey and mitigation activities were conducted simultaneously to stay on construction schedule; and, on the third project, extensive artifact excavation occurred to prevent late artifact discoveries from affecting construction progress.

Generally, construction officials reacted to such timing problems in two ways. In some cases they took the least controversial compliance measures regardless of cost. An example of this approach is their decision to build the longer bridge which one fishery official suggested, even though data justifying the additional \$150,000 cost was not obtained. In other cases compliance was allowed to lag behind construction. An example of this approach is the project where wildlife mitigation proposals were not expected to be made until 10 years into construction. The first approach adds to construction cost to save time. The other approach controls construction costs and time but delays regulatory compliance and can preempt consideration of alternative compliance measures. Construction officials understandably select such approaches when faced with the exigencies of construction and the relative insignificance of individual regulatory costs and burdens compared with overall project costs and benefits.

A common characteristic of both approaches was the circumstance that construction was imminent or already underway before the agencies decided how to meet their compliance responsibilities. Compliance planning, including coordination and evaluation, can be too time consuming for such late decisionmaking. There are too many regulatory actions, agencies, levels within agencies, and ambiguities as to authority and flexibility for rapid coordination and evaluation.

The disadvantages of both approaches to meeting compliance responsibilities can be avoided to a large extent by earlier planning and coordination to relieve compliance time pressures. Time limitations are not nearly so critical during the project planning and design stages. This is often especially true with large water resources projects

which may take several years from inception to actual construction.

The advantage of planning compliance measures during these earlier stages (before construction) is the opportunity it provides for integrating the compliance evaluation process into the overall project development process. With such an integrated approach, compliance planning can be done without causing crisis management; available information can be gathered to consider compliance benefits, costs, and alternatives; the assistance of regulatory agencies can be sought and obtained in a timely manner; and the best compliance method available can be used without redoing project plans or designs and without threatening construction delays.

Earlier compliance planning should also help construction agency officials anticipate and respond to contractors' regulatory concerns. For example, the agencies could then distribute the OFCCP information packets to contractors and explain the 16 good faith efforts for employing women in construction (ch. 5).

The Department of Labor believes that construction agencies, in addition to distributing OFCCP information packets and explaining good faith efforts to contractors, should plan for the recruitment, training, access, and accommodation of women and minorities in construction. (See Labor's comments on p. 69.)

For such planning to take place, our audit indicated that construction and regulatory agencies need to further define their respective responsibilities in compliance matters. This was apparent from both the case studies and general interviews. The case studies, for example, showed breakdowns in attempts to have the Corps help OFCCP monitor contractor use of women in construction on the Bonneville Project and in attempts to have the Corps satisfy ACHP's efforts to obtain enough information for evaluating mitigation alternatives on the Truman Project. The interviews showed that many construction officials are uncertain about the extent of their compliance flexibility, authority, and responsibility for social and environmental regulations in general.

Even though such early planning and coordination should greatly facilitate the evaluation of compliance alternatives, we believe it is important to recognize that some compliance problems will probably continue to

arise during construction. This may occur, for example, when new regulatory requirements are established or new information is discovered between the time a project is planned and construction takes place. In fact, water projects seem particularly susceptible to such occurrences because of the long period of time which often elapses between project planning and construction. With such occurrences, construction time pressures may continue to threaten premature foreclosure of compliance alternatives. The agency guidance provided for evaluating compliance alternatives should include arrangements for construction officials to deal with such occurrences.

STEPS TO CONSIDER FOR PROVIDING MORE TIME AND GUIDANCE

To evaluate compliance alternatives before construction progress forecloses alternatives, construction agencies need

- policies requiring officials at all levels to weigh costs, benefits, burdens, and risks in selecting regulatory compliance measures;
- understandings with regulatory agencies on the extent of flexibility, authority, and responsibility that construction agencies have in compliance matters;
- practical criteria and procedures for construction officials to use in evaluating compliance alternatives;
- incentives, including financial rewards, for construction contractors and agency personnel to explore compliance alternatives;
- procedures for measuring and disclosing regulatory compliance costs; and
- increased efforts to analyze compliance alternatives before construction forecloses the alternatives.

Construction agencies need to be given high-level support in these efforts. A significant step, we believe, would be to develop uniform methods and techniques to guide agencies in evaluating regulatory compliance alternatives. Regulatory evaluation is challenging, and the state of the art is slow in developing. Water resources agencies, particularly the Water Resources Council, have pioneered the development of cost-benefit evaluation techniques for

justifying construction projects. Guidance for evaluating compliance alternatives would help future compliance decisions be less subjective and would tend to set a leadership example for other Federal, State, or local agencies.

RECOMMENDATION TO THE SECRETARIES
OF THE ARMY AND THE INTERIOR

To help ensure that the objectives of social and environmental regulations are achieved more economically, efficiently, and effectively in the construction of Federal water resources projects, we recommend that the Secretary of the Army direct the Chief of Engineers and that the Secretary of the Interior direct the Commissioner, WPRS, to evaluate alternative methods of compliance with regulations in construction and initiate action for doing so which satisfies the needs listed above.

RECOMMENDATION TO THE DIRECTOR, U.S.
WATER RESOURCES COUNCIL

To help advance the state of regulatory evaluation, we recommend that the Director, Water Resources Council, develop methods and techniques which construction agencies can use in evaluating alternative means of compliance with social and environmental regulations and consider sharing them with other Federal, State, or local agencies that might benefit from such information.

AGENCY COMMENTS AND OUR EVALUATION

A draft of this report was sent to the Departments of Agriculture, the Army, Defense, the Interior, and Labor; the Advisory Council on Historic Preservation; the Environmental Protection Agency; the Office of Management and Budget; and the Water Resources Council. All responded in time to have their comments considered in finalizing the draft. Agriculture wrote us that it has no comments on the draft.

Generally, all commenters agreed with the major thrust of the report--that construction agencies should evaluate alternative means of regulatory compliance to help control regulatory costs and burdens. Also, they agreed that such evaluations should be done much earlier during project development, before construction forecloses alternatives.

Because the draft elicited many comments of varying perspectives and detail, only the more substantive views and issues raised were summarized and evaluated in this

section. The agencies' comments and our responses to each are in in appendixes III to IX.

An issue raised about the draft concerned our recommendation to the Water Resources Council. We had recommended that the Council develop methods and techniques for construction agencies to use in evaluating alternative methods of compliance with social and environmental regulations and consider sharing them with Federal, State, or local agencies that might benefit from such information.

The Water Resources Council, the Advisory Council on Historic Preservation, and the Departments of the Army and the Interior suggested that existing efforts have satisfied or will satisfy that recommendation. The efforts they mentioned were the Water Resources Council's Principles and Standards and Procedures for planning water resource developments. They cited recent revisions to these guidelines which resulted from the President's 1978 water policy message that the Council improve implementation of these guidelines and prepare a manual which ensures that benefits and costs are calculated using the best techniques.

The Water Resources Council explained the nature of these recent revisions and urged us to reconsider our recommendation to it in light of the "framework and process" for evaluation which the revisions provide (see app. IX). We believe these revisions could help significantly if additional guidance for considering relative costs and benefits of compliance alternatives were provided.

The recent revisions to the Principals and Standards and Procedures apply to evaluations of water resource development alternatives during the planning stage of construction projects. As a result, the direct application of the revisions to evaluations of compliance alternatives may be difficult. Difficulties could arise, for example, in using the revisions to estimate costs, benefits, and burdens of environmental and social measures. The revisions provide for identifying and describing social and environmental impacts as a basis for deciding compliance measures, but do not provide for translating that information to estimates of costs and benefits for evaluating compliance alternatives. We recognize the difficulty of such translations, but believe

they should be attempted, at least subjectively, to encourage cost consciousness in the regulatory compliance process.

Considering the early stage of development and implementation of the revised guidelines, we are not sure to what extent they will help satisfy our recommendation. From our review of the revised guidelines, we did not find any specific guidance for evaluating the costs and benefits of regulatory compliance alternatives. Our review clearly established a need for such guidance in the cases we studied (chs. 3, 4, and 5).

The Water Resources Council also commented that, if we feel monitoring is needed, our recommendations might be more appropriately assigned to the Office of Management and Budget or others. The Office of Management and Budget is planning to consider ways to deal with the problems of compliance evaluation (see app. VIII) which should help along with Council guidelines to bring high-level support for a very difficult challenge facing construction officials--evaluating compliance alternatives with very little information available on costs, benefits, risks, or burdens. However, our recommendation is addressed to the Water Resources Council because the Council helped pioneer the development of cost-benefit analysis techniques for justifying water projects. We recognize the task is exceptionally difficult; however, it seems to us that the Council, because of its past experience and successes in this field, would be in the best position to develop the kind of guidelines we are recommending.

Other substantive comments are summarized on the following pages.

Department of the Army (app. III)

The Department of the Army, replying for the Secretary of Defense, stated that it has recently directed extensive management attention toward incorporating regulatory compliance measures into the planning and design phases of project development to avoid having compliance problems, like the ones discussed in our case studies, arise during construction. To the extent such problems do arise during construction, the Army will, it said, stress the value of systematic evaluations of alternatives as time allows. The Army also plans to continue stressing the value of this discipline in the training of Corps personnel.

Department of the Interior (app. IV)

Interior concurred with the position that every effort should be made to evaluate alternative methods of regulatory

compliance. Interior said it is placing more emphasis on alternative analysis in current planning.

While acknowledging that construction agencies should evaluate alternative compliance methods, Interior cautioned that regulatory agencies must also be mindful of their responsibilities for economic prudence in carrying out social and environmental objectives. We concur with that philosophy. It underlies our conclusions on coordination and the second step listed on page 46. That step, if implemented, should develop understandings between construction and regulatory agencies on the part each plays in evaluating less costly compliance alternatives.

Advisory Council on Historic Preservation (app. V)

ACHP considered the draft report an important document and the findings generally consistent with their experience. ACHP's major concern was whether the findings would be used to constructively correct the "long-standing" regulatory compliance problems uncovered by our review. Corrective action, ACHP said (and we concur) lies in recognizing the potential compliance problems and identifying solutions during the agency planning process.

ACHP described two efforts they are making relative to the thrust of our recommendations: (1) developing guidance for agency treatment of archeological properties and (2) moving agencies to develop procedures which integrate historic preservation requirements with overall agency programs and requirements. Documents which ACHP enclosed with their comments showed that those efforts are intended to achieve economy and efficiency in regulatory compliance practices for historic preservation purposes.

Department of Labor (app. VI)

The Department of Labor agreed with our conclusion that earlier compliance planning should help construction agency officials anticipate and respond to contractors' regulatory concerns. However, the Department stated that such planning should go well beyond notifying contractors of affirmative action requirements, into such additional matters as recruiting, training, and site accommodations for women in construction, especially on rural projects that are considerable distances from urban centers.

We believe that better agency planning and follow through on all these matters would help contractors, but that the responsibility of construction agencies to do so (vis-a-vis regulatory agencies) needs clarification. This matter is discussed further on page 45.

Environmental Protection Agency (app. VII)

The Environmental Protection Agency (EPA) endorsed the concept of examining alternative methods of regulatory compliance. Like the other commenters, EPA attributed the excessive cost of some regulations to a failure to consider compliance needs early in the planning process.

Office of Management and Budget (app. VIII)

The Office of Management and Budget recognized that additional regulatory evaluation is needed to "address programs or projects where many individual rules come together to generate rather substantial economic impacts." It acknowledged that such impacts involve both administrative burdens and costs. It plans to soon consider ways to deal with the problems agencies face in evaluating compliance alternatives, including both their individual and cumulative impacts.

PRIMARY ORGANIZATIONSINVOLVED IN OUR REVIEW

Federal Construction Agencies

Corps of Engineers, Department of the Army
Chief of Engineers, Washington, D.C.
North Pacific Division, Portland, Oregon
Kansas City District, Kansas City, Missouri
Portland District, Portland, Oregon
Bonneville Area Office, North Bonneville, Washington

Water and Power Resources Service, Department of the Interior

WPRS Headquarters, Washington, D.C.
Engineering Research Center, Denver, Colorado
Arizona Projects Office, Phoenix, Arizona
Field Engineering Office, Phoenix, Arizona

Federal Regulatory Agencies

Advisory Council on Historic Preservation
Washington, D.C.
Denver, Colorado

Fish and Wildlife Service, Department of the Interior
Region I, Portland, Oregon
Arizona Area Office, Phoenix, Arizona

Heritage Conservation and Recreation Service - Interagency
Archeological Services, Department of the Interior
Denver, Colorado
San Francisco, California

Office of Federal Contract Compliance Programs, Department of Labor

Branch of National Programs for Contract Compliance,
Washington, D.C.
Branch of Sanction Review, Washington, D.C.
Kansas City Area Office, Kansas City, Missouri
Phoenix Area Office, Phoenix, Arizona
Portland Area Office, Portland Oregon

State Agencies

Department of Conservation, Columbia, Missouri
Washington Department of Game, Olympia, Washington
Office of Historic Preservation:
Olympia, Washington
Phoenix, Arizona

Construction Contractors

Ball, Ball, and Brosamer, Inc., Phoenix Office, Phoenix,
Arizona
Groves-Kiewit-Granite, North Bonneville, Washington
Guy F. Atkinson Company, Phoenix Area Office, Phoenix,
Arizona
United Construction Company, Inc., Kansas City, Missouri

Contractor Associations

Associated General Contractors of America
National Headquarters, Washington, D.C.
Arizona Chapter, Phoenix, Arizona
Missouri Chapter, Jefferson City, Missouri
Oregon-Columbia Chapter, Portland, Oregon

Land Improvement Contractors of America, Maywood, Illinois

ORGANIZATIONAL RESPONSIBILITIES AND PURPOSES OFMAJOR SOCIAL AND ENVIRONMENTAL REGULATIONSAFFECTING CONSTRUCTION OF FEDERAL WATER RESOURCES PROJECTS (note a)

<u>Subject</u>	<u>Objective</u>	<u>Authority</u>	<u>Agency</u>
Noise abatement	Reduce environmental noise pollution and protect the hearing of those in the vicinity of construction work.	Public Law 92-574, 10-27-72, as amended.	EPA
Water quality	Restore and maintain the integrity of the Nation's waters by preventing the discharge of pollutants into navigable waters.	Public Law 92-500, 10-18-72, as amended.	EPA
Air quality	Protect public health by controlling or preventing air pollution.	Public Law 90-148, 11-21-67, as amended.	EPA
Solid waste	Prevent unnecessary pollution by adequately managing disposal of solid waste.	Public Law 94-580, 10-21-76, as amended.	EPA
Constructing facilities for the physically handicapped	Allow the physically handicapped to have ready access to and use of Federal facilities.	Public Law 94-541, 10-18-76.	b/GSA
Equal employment opportunity	Promote employment without regard to race, color, religion, sex, or national origin.	Executive Orders 11246, 9-24-65, and 11375, 10-13-67, implementing Title VII of Public Law 88-352, 7-2-64, as amended.	OFCCP
Safety and health	Protect the health and well being of workers by assuring that their workplace provides a safe environment.	Public Law 91-596, 12-29-70.	c/OSHA

<u>Subject</u>	<u>Objective</u>	<u>Authority</u>	<u>Agency</u>
Protecting threatened and endangered species	Keep threatened and endangered species from becoming extinct.	Public Law 93-205, 12-28-73, as amended.	FWS
Conserving fish and wildlife	Assure that fish and wildlife are equally considered in water resources development programs.	Public Law 85-624, 8-12-58.	FWS
Archeological, historical, and cultural preservation	Prevent the loss or destruction of significant historical, archeological, or scientific data.	Public Law 89-665, 10-15-66 and 93-291, 5-24-74.	ACHP HCRS
Small business set-asides	Increase small business participation in Government procurement.	Public Law 85-536, 7-18-58, as amended.	d/SBA
Minority business subcontracting	Provide minority businesses opportunity to participate in performing Government contracts.	Executive Order 11625, 10-13-71.	SBA
Esthetics	Minimize adverse effects on natural beauty and design projects that will harmonize with their environment.	Construction agency policy statements of various dates	Construction agency
Freedom of information	Provide to the public information concerning an agency's operations and activities.	Public Law 90-23, 6-5-67, and 93-502, 11-21-74.	Construction agency

a/A policy and procedural directive underlying many of the subjects and objectives set forth in this appendix is the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.). The act applies to all Federal agencies.

b/General Services Administration.

c/Occupational Safety and Health Administration.

d/Small Business Administration



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20310

REPLY TO
ATTENTION OF

5 NOV 1980

Mr. Henry Eschwege
Director, Community and Economic
Development Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Eschwege:

This is in reply to your letter to the Secretary of Defense of October 3, 1980, regarding your draft report on "Social and Environmental Objectives Can Be Achieved More Economically and Effectively in the Construction of Federal Water Resources Projects," OSD Case #5547, GAO Code 080490.

The subject report focuses on efficiency and effectiveness in complying with regulatory requirements during the construction phase of Federal water resources project development. Nevertheless, as is evident from some of the problems discussed in the three case histories, the report implicitly recognizes that the most appropriate point at which to evaluate regulatory compliance measures, including the consideration of alternatives, is in the planning and design phases. Recently, extensive management attention appropriately has been, and is currently, directed at incorporating regulatory compliance measures into the planning and design phases of project implementation. We believe that this focus on regulatory compliance during planning and design has reduced, and will continue to reduce, regulatory compliance problems during construction. Management has, therefore, placed heavy emphasis on resolution of regulatory requirements prior to construction. Of particular significance are the standard planning procedures that require the systematic evaluation of alternatives along the lines suggested in the report, as reflected in the Water Resources Council's Principles and Standards and Procedures for Level C planning, as well as in the National Environmental Policy Act (NEPA) itself and the Council on Environmental Quality and Corps' NEPA regulations.

[GAO COMMENT: See page 48 for a discussion of this issue.]

Despite effective planning, however, regulatory compliance problems can arise during the construction stage because new regulatory requirements may have to be implemented and/or new information may be discovered. When these situations arise, as the report recognizes, compliance decisions are difficult, and the potential for delay of construction, which may increase construction costs in several ways, must be considered. Delay could also result in a loss of national benefits when beneficial returns for expenditures already committed are postponed. We believe, however,

that such problems will be substantially minimized as improved planning procedures are fully implemented.

[GAO COMMENT: We agree, as reflected in the report.]

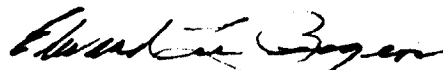
To the extent that such problems continue to arise, however, the question is how can efficiency and effectiveness in complying with regulatory requirements during construction be attained. The answer, we believe, lies in the recognition on the part of the decision-maker that standard planning procedures -- that is, the systematic evaluation of alternatives -- are applicable within the time and information constraints that exist during the construction stage. Water resources development decision-making is replete with consideration of the costs and benefits of alternatives. We will continue to stress the value of this discipline in the management and training of Corps' personnel as it relates to regulatory compliance decisions during all phases of water project implementation.

[GAO COMMENT: We generally agree, but recommend all the steps on page 46.]

To turn to another point, we believe the report would be more complete and consistent in describing major social and environmental regulations and provide a better rationale for including the 14 listed social and environmental regulatory subjects and objectives if the NEPA of 1969 were included in Appendix II. An entry should be added which would include as the subject the human environment, as the objective the protection of the human environment, and under agency the CEQ, EPA, and all other Federal agencies. It may well be appropriate to exclude the Environmental Impact Statement (EIS) procedural preparation requirements as noted on page 7. It is not, in our view, however, appropriate to omit NEPA from a list purporting to cover the major social and environmental regulations affecting construction of Federal water projects, inasmuch as NEPA's policy and procedural directives underly or buttress the responsibilities of Federal agencies with regard to many of the subjects and objectives set forth in the list and are applicable (even when EISs are not necessary, except for EIS procedural requirements) to all Federal actions, plans, functions, programs and resources. See Sections 101 and 102 of NEPA.

[GAO COMMENT: The suggested entry was added by footnote to appendix II.]

Sincerely,



Edward Lee Rogers
Deputy Assistant Secretary of the Army
(Civil Works)



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

NOV 4 1980

Mr. Henry Eschwege
Director, Community and Economic
Development Division
General Accounting Office
Washington, DC 20548

Dear Mr. Eschwege:

We have reviewed the proposed draft report transmitted by your letter of October 3, 1980, and offer the following comments.

The recommendations are based on concerns of construction agency and contractor officials that regulatory costs are too high. The report does not present conclusive evidence to support these claims. Examples are given that indicate high costs, but no examples of lower cost alternatives are presented. Furthermore, no indication is given regarding the relationship of the environmental/social costs in comparison with total project costs. The ratio is probably quite small.

[GAO COMMENT: Our recommendations (and conclusions) are primarily based on three sources of evidence, as summarized on page 42. The report was not intended to present conclusive evidence of excessive regulatory costs, recognizing, as the examples do in chapters 3 and 4, that information was lacking for the agencies and us to evaluate compliance alternatives. The examples show that lower cost alternatives were available but not evaluated. The relationship of environmental/social costs to total project costs was discussed in the draft (see pp. 14 and 44). The ratio is apparently quite small for most individual compliance actions but the total costs for all compliance actions can be very large.]

The list of social and environmental regulations affecting construction of Federal water projects shown in Appendix II reflects the concerns of Congress in protecting the environment, including the natural resources, and the health and well-being of the human inhabitants. The regulations for fulfilling the intent of the long list of public laws often entail expensive measures even when the most economical approach is followed.

[GAO COMMENT: None required.]

We concur with the proposition that every effort should be made to achieve the most economical and effective methods of compliance with regulatory objectives. However, we do not feel that this can be achieved only by directing the construction agencies to evaluate alternative methods of compliance with social and environmental regulations. The regulatory agencies must also be mindful of their responsibility for economic prudence in carrying out social and environmental objectives.

[GAO COMMENT: See page 50 for a discussion of this issue.]

The regulatory agencies not only write the regulations but often are directly involved in their implementation. The Fish and Wildlife Coordination Act is a good example. The Fish and Wildlife Service (FWS) is responsible, along with the construction agencies, for implementing the act. FWS determines possible damage to wildlife resulting from proposed Federal water projects and recommends prevention, mitigation, and improvement measures to the construction agencies. According to the act, construction agencies then determine the justification of the measures in order to obtain maximum overall project benefits. Improvements in water resources planning directed by the President in his water policy reforms of 1978 now require the participation of the advisory and regulatory agencies with the construction agencies in the selection and development of mitigation alternatives. This requirement will facilitate the efforts of the construction agencies in determining and evaluating alternatives.

[GAO COMMENT: We agree.]

The recommendation that the Chairman of the Water Resources Council (WRC) develop methods and techniques for construction agencies to use in evaluating alternative methods of compliance with social and environmental regulations, seems to indicate a complete lack of appreciation for the work that has been going on since the President's 1978 Water Policy Message to Congress. In that message, the President directed WRC to improve the implementation of the Principles and Standards for Planning Water and Related Land Resources. In addition, WRC was directed to prepare a manual which ensures that benefits and costs are calculated using the best techniques.

[GAO COMMENT: See page 48 for a discussion of this issue.]

These directives have resulted in revisions to the Principles and Standards as well as a complete redrafting for the sake of clarity and development of a manual of procedures. These documents have been published in the Federal Register as rules and regulations. Environmental quality evaluation procedures published on September 29, 1980, establish the process for identification and description of beneficial and adverse effects of alternative plans on significant natural resources, and historic and cultural properties.

[GAO COMMENT: See page 48 for a discussion of these revisions.]

The recommendations on page 47 of the GAO Report would appear to be best implemented in the planning stages. The last paragraph on page 44 alludes to this aspect.

[GAO COMMENT: We generally agree, but see page 45 for further discussion.]

As reflected in the Principles and Standards, we are placing more and more emphasis on alternative analysis in our current planning and it would help to alleviate some of the problems cited if the environmental and social costs for alternatives were studied and available when selecting a preferred alternative.

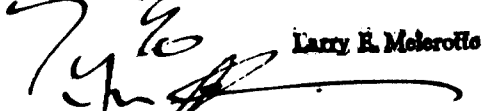
In the past we have seen examples where cultural resource surveys and/or wildlife mitigation recommendation resolution lag behind the other planning steps and then we try to catch up on these items in the postauthorization planning stage. Negotiations on compliance alternatives are limited at this later stage, and we have a tendency to settle for what we can get rather than what might be most cost-effective, because we are negotiating on a preferred alternative.

[GAO COMMENT: Pages 17 and 18 illustrate such a lag.]

Careful implementation of the Principles and Standards and procedures for evaluation should alleviate this problem.

[GAO COMMENT: See page 48 for a discussion on this issue.]

Sincerely,



Larry E. Meleroff

Assistant Secretary -
Policy, Budget, and Administration



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

NOV 4 1980

Mr. Henry Eschwege
Director, Community and Economic
Development Division
General Accounting Office
Washington, D.C. 20548

Dear Mr. Eschwege:

Enclosed are comments that have been forwarded to us by the Advisory Council on Historic Preservation on your draft report "Social and Environmental Objectives Can Be Achieved More Economically and Efficiently in the Construction of Federal Water Resources Projects". The Department's comments have been forwarded under separate cover.

Sincerely,

Assistant Secretary - Policy,
Budget and Administration

Enclosures

Advisory Council On Historic Preservation

1522 K Street, NW
Washington, DC 20005

October 23, 1980

Mr. William D. Bettenberg
Director of Budget
Office of the Secretary
Department of the Interior
Washington, DC 20240

Dear Mr. Bettenberg:

Thank you for forwarding a copy of the General Accounting Office's Draft Report, "Social and Environmental Objectives Can Be Achieved More Economically and Efficiently in the Construction of Federal Water Resources Projects," for our review and comment. As the Federal agency charged with coordinating the activities of the Federal Government as they concern historic and cultural properties, the Council offers the following comments.

The draft report is an important document from the Council's viewpoint and we find it to be generally consistent with our experience. Much of the thrust of the report's recommendations relates directly to two efforts which are currently underway at the Council. The first of these efforts concerns what the report terms developing "practical criteria and procedures for...use in evaluating compliance alternatives." In this area the Council has developed guidance for the treatment of archeological properties. A copy of this draft guidance is enclosed for your information. As the cover memorandum indicates, the Council expects to publish this as supplementary guidance in the Federal Register during the month of November.

Our other effort concerns, in the words of the report, "steps to consider for providing more time and guidance." In a memorandum dated July 12, 1978, the President directed the Council to develop regulations for Section 106 of the National Historic Preservation Act (Act). The President's memorandum titled, "Environmental Quality and Water Resources Management" further directed all "Federal agencies with consultative responsibilities under the Act" to develop procedures to implement the provisions of the Council's regulations. The President further directed that such agency procedures must be reviewed by the Chairman of the Council for consistency with our 36 CFR 800 regulations. The Council has used this directive to move agencies in the direction the report suggests, building on the past experiences of the agency and the Council to develop procedures which integrate the requirements of historic preservation law with the overall authority and administrative requirements of each particular agency. We have attempted in this effort to match the intent of historic preservation law with the nature and scope of each agency's programs and processing requirements while, at the same time, striving for general consistency

between program types across the agencies. Another attempt has been to move agencies in the direction of clearly delineating who within each agency is responsible for regulatory compliance and by providing specific frameworks in which compliance can take place. In short, our intent is to develop the most economically efficient and expeditious means for a given agency and a given Federal program to meet the intent of historic preservation law. This requires a willingness on the part of the agency to seriously review its programs and past performance for each program it administers and to work with us to accomplish this goal. It also requires a great deal of staff time on our part; our experience to date indicates about double that of the agency's effort. Unfortunately, we have not had the resources to devote this level of effort to all of the affected Federal agencies so it is perhaps well that the natural human tendency to put things off has been operative on the part of some agencies in carrying out this directive.

The Council's efforts to obtain agency compliance with this directive is, however, proceeding and a draft copy of our latest status report is enclosed for your information. You may be interested to note that neither of the two construction agencies used as case studies in the report have met the directive of the President, although we have had discussions concerning the development of procedures with both agencies.

[GAO COMMENT: Page 50 mentions these efforts. The enclosures are excluded from this report.]

By way of general comment, we have several suggestions concerning the terminology employed in the report.

For clarity's sake, we recommend use of the term "cultural properties," or "historic and cultural properties," instead of "cultural resources" throughout the report. The report deals with tangible places and items, in other words, properties; "cultural resources" is a broader term which may be taken to include such intangible resources as social institutions, folkways, arts, crafts, etc. Although "cultural resources" has become a term of art in some quarters to mean "archeological sites," we object to this, and the Council seeks to discourage its use.

[GAO COMMENT: Suggested change was made:]

In a similar vein, the word "recovering" should not be used in the title of Chapter 4. One cannot "recover" cultural resources, archeological sites, or historic properties; one can recover data from them, but the chapter is actually about the whole process of historic and cultural property identification, consideration, preservation, and salvage. The term "protecting" might be a more appropriate title for Chapter 4 of the report.

[GAO COMMENT: Suggested change was made.]

Throughout the report, the use of the terms "costs and benefits" in reference to the comparison of alternative methods of regulatory compliance is misleading, especially in light of the fact that the report recognizes the difficulty of doing an economic cost/benefit analysis of such alternative methods. Given that difficulty and what we see as the intent of the discussion to which the terms are applied, we recommend the use of more subjective and less confusing terms such as benefits and detriments or advantages and disadvantages.

[GAO COMMENT: We understand the concern but believe our intent could be more easily misinterpreted by such a change. We favor at least subjective judgments, using the best information available on costs and benefits.]

Our final general comment concerns the accuracy of one finding of the report, namely that most regulatory compliance problems originate from the attempt to reach regulatory compliance too late in the agency process.

This finding is consistent with our experience and represents the bulk of the "problem" compliance cases that the Council must grapple with each year. Our general feeling, however, is that this finding does not receive the prominence nor the discussion in the report that it deserves. Most agencies have a fairly lengthy decisionmaking process which ultimately leads to some action on the part of the Federal Government. This is especially true with respect to large water resource projects which often take several years from inception to actual construction. This fact does not come through in the report. In fact, the report implies that agencies have so little time to consider regulatory compliance matters that it is necessary to carry this out just prior to construction. This is not the case.

[GAO COMMENT: Report was changed to reflect these and other considerations, especially page 44 and 45.]

Further, given that the intent of many of the environmental requirements is to foster better decisions on the part of the Federal Government, and this is especially true of the National Environmental Policy Act and the National Historic Preservation Act, the fact that a great many of the Federal agencies do not make regulatory compliance a part of their overall decisionmaking process is perversion of the process envisioned by the Congress. Rather than the consideration of historic and cultural properties, or any other legislatively recognized value, being treated during the agency's decision-making process (i.e., planning process) along with other project considerations such as engineering and construction costs, the agency most often views regulatory compliance as a procedural hurdle to overcome so that the project may go forward as previously planned. If the Federal agencies would carry out such regulatory responsibilities as part of their overall decisionmaking process, projects would be better designed and result in considerable overall cost savings to the taxpayer, both in terms of compliance costs and other project costs. If the regulatory compliance process was better integrated into each agency's planning processes, in our opinion the problems of regulatory compliance would be significantly reduced.

[GAO COMMENT: We agree that such integration of processes should help considerably to reduce compliance problems. The report was clarified to reflect this concept.]

We question the recommendation contained on page iv and page 42 since this appears to be the purpose of the Water Resources Council's efforts to revise the "Principles and Standards." We see no reason why the recommendations of the report should not be specifically directed toward improvement of the "Principles and Standards" rather than directed toward a separate effort on the part of the Water Resources Council. On this same topic, one thrust of the report's recommendation seems to suggest the establishment of yet another regulatory framework to evaluate regulatory compliance. This is contradictory and in our view counter-productive. The promulgation of yet another regulatory scheme for evaluation will only serve to further exacerbate the problems cited in this report.

[GAO COMMENT: See page 48 for a discussion of this issue.]

The "Examples of compliance measures" on page 11 with respect to the category "Archeological, historic, and cultural properties" is incorrect. An appropriate example would be the identification of historic and cultural properties within the area of potential environmental impact.

[GAO COMMENT: Description changed to "Examples of construction effects."]

On page 12, the statement made that, "[t]he compliance measures listed on page 11 are examples of ones that can require large labor and material costs," is clearly incorrect. Surely, it is rare when the requirements of equal employment opportunity and Freedom of Information Act requirements substantially add to the overall cost of a large water resources development project. Further, many of the other requirements cited would not normally result in significant escalation of costs as a result of regulatory compliance. Thus, for many of the requirements cited, substantial increases in costs would seem to be the exception rather than the rule.

[GAO COMMENT: Statement reworded to avoid incorrect implications.]

We recommend that the discussion under the heading "Vague regulations also have impacts" be expanded to include a discussion concerning the need for suitably detailed agency procedures in order for regulatory compliance to be accomplished efficiently. In many cases, the agency has no interpretive procedures for regulatory compliance as it affects its activities and operations or the procedures are too "vague" or contradictory to be of much assistance in accomplishing regulatory compliance. This would be a good section to include a discussion of those issues raised in our last general comment.

[GAO COMMENT: That section represents construction officials' views. The recommended discussion was added to page 28.]

The discussion under the heading, "The cumulative cost of regulations is excessive" is misleading, as is the heading itself. While we can sympathize with the plight of the construction officials interviewed in this report, in order to be fair you should point out that reason why the construction official got stuck with a compliance issue is really the fault of the construction agency and not the regulations or the regulatory agency. As we pointed out in our earlier general comment, in virtually all cases, Federal agencies have ample time in their planning processes to accomplish regulatory compliance. In those rare cases where time is a limiting factor, regulatory agencies are usually most willing to establish a review process to accommodate the agency's needs. By the time a project is scheduled for construction, the compliance issues should have been resolved and the construction officials should only need to be concerned with carrying out those measures which are a result of the regulatory compliance conducted during the agency's decisionmaking process.

[GAO COMMENT: The discussion under that heading reflects the views of construction officials. See pages 44 and 45 for further discussion of this issue.]

We fail to understand how the footnote on page 13 supports the conclusions drawn in the text. While your statement is true in many cases, in many cases it is false. Many regulatory agency personnel are concerned with the reasonable implementation of the regulatory requirements that they are responsible for, but they are often frustrated by their inability to secure the necessary cooperation from the line agency to address their concerns. After all, the regulatory agency personnel cannot force a line agency to do a good job of addressing the issues raised in this report. Such an effort requires joint cooperation between both types of agencies. In the final analysis, it is the line agency that controls the quality of its efforts toward regulatory compliance, not the regulatory agency.

[GAO COMMENT: We agree and eliminated the footnote.]

Most of the findings listed on page 23 of the report are true and stem from a lack of compliance during the planning process. No matter how well compliance is carried out during the planning process, however, cases such as these will continue to arise. The Council has been working with the Federal agencies to improve the regulatory compliance process so as to eliminate, or at least minimize, these problems when they arise.

[GAO COMMENT: These comments were added on page 28.]

Contrary to the statement on page 24, the Council's regulations do not "require that systematic surveys be conducted." The regulations require that historic and cultural properties be identified. Where the project's area of potential environmental impact has not been surveyed in the past, this identification usually cannot be done without a systematic survey, but the regulations do not require surveys per se. It would be appropriate to say: "...require identification of all properties included in or eligible for the National Register of Historic Places; this often requires that a systematic survey be conducted..."

[GAO COMMENT: We clarified the statement as suggested.]

It is not correct to say, as on page 26, that "a sample is supposed to be recovered from the artifacts to be lost." The general thrust of both the National Historic Preservation Act and the Archeological and Historic Preservation Act is to recover whatever significant information will be lost as a result of construction projects; this may mean recovery of a sample of artifacts, and many other kinds of information-bearing phenomena, or it may, in some cases, require complete recovery. It would be appropriate to say: "...the valuable information in the site is supposed to be recovered so that it may be preserved for future study. According to the experience of the Council, this almost never requires complete, systematic excavation of an archeological site. At the Bonneville Second Powerhouse Project, the Corps completely excavated such a site, significantly increasing project costs."

[GAO COMMENT: We clarified the statement as suggested.]

The discussion contained on page 36 of the draft relates back to a couple of issues raised in our earlier comments. Again, we see no necessity to evaluate alternatives in a strictly "cost/benefit" analysis, recognizing the fact (as the report does) of the inherent difficulties in conducting such an evaluation. While we are supportive of the need to conduct an evaluation of alternative measures for regulatory compliance, the proper time to conduct many of these evaluations is during the agency's development of its internal procedures to carry out regulatory compliance and the method is usually much more subjective than is indicated by this discussion. The evaluation can easily be conducted in cooperation with the regulatory agency and be based upon the past experiences of both agencies. Where the evaluation of specific alternatives is not possible at the procedural development stage, a framework should be established so that the planning process will offer sufficient time to accomplish the consideration of alternative measures for regulatory compliance. Finally, as we pointed out earlier, the suggestion that a solution to this problem is yet another level of regulations to evaluate regulatory compliance alternatives fails to address the issues identified in this report. The solution offered is too simplistic and will worsen rather than alleviate the problems identified.

[GAO COMMENT: We are recommending guidelines but not necessarily another level of regulation. See pages 43 and 45 for a discussion of the other issues.]

We agree with the importance of the two items set forth on page 43 and again draw your attention to the fact that "construction supervisors and managers" should not be the agency officials involved in compliance at the level discussed in the report. Regulatory compliance for the project should have occurred during the planning process and should have been completed by the point that these individuals are involved in the project. Similarly, the statement made in the next to last sentence on page 40 is incorrect. Planning of some sort always precedes construction.

[GAO COMMENT: Wording changed to "construction agency supervisors and managers." We did not intend to exclude agency planners. The last paragraph on page 43 was revised to clarify the advantages of early planning for compliance purposes.]

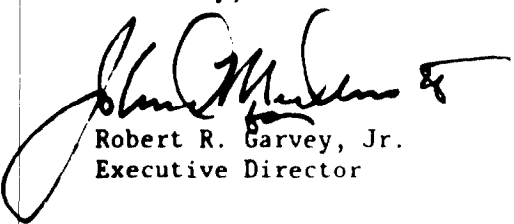
In general, we are pleased with the quality of the report. Our major concern is that the findings of the report will not be used to constructively correct the problems uncovered by the investigation. These problems of regulatory compliance are long-standing and will not be easily solved. However, recognition of the problems and identification of reasonable solutions which could redirect the effort of regulatory compliance to the appropriate decisionmaking level in the agency planning process and thus relieve the burden presently placed on the construction official will, in our opinion, do the most to correct this situation.

[GAO COMMENT: None required. These views were added to the report on page 50.]

Thank you for the opportunity to comment. We stand ready to assist in any way that we can with the development of the final version of the report.

If you have any questions or if you would desire further information concerning our activities and efforts in these areas, please do not hesitate to contact me.

Sincerely,



Robert R. Garvey, Jr.
Executive Director

U.S. Department of Labor

Office of Inspector General
Washington, D.C. 20210



Reply to the Attention of:

OCT 31 1980

Mr. Gregory J. Ahart
Director
Human Resources Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Ahart:

This is in reply to your letter to the Secretary requesting comments on the draft GAO report entitled, "Social and Environmental Objectives Can Be Achieved More Economically and Effectively in the Construction of Federal Water Resources Projects."

The Department's response is enclosed.

The Department appreciates the opportunity to comment on this report.

Sincerely,

Ronald Goldstock
Acting Inspector General

Enclosure

U.S. Department of Labor's Response To
The Draft General Accounting Office
Report Entitled

Social and Environmental Objectives
Can Be Achieved More Economically
and Effectively in the Construction
of Federal Water Resources Projects

Implied Recommendation (page 45): "Earlier compliance planning should also help construction agency officials anticipate and respond to contractors' regulatory concerns. For example, the agencies could then distribute the OFCCP information packets to contractors and explain the 16 "good faith" efforts for employing women in construction (chapter 5)."

Response: The Department agrees with the recommendation that earlier planning would be helpful to contracting agencies and contractors.

However, such planning should go well beyond that of notifying contractors of affirmative action requirements. To assure that minority and female utilization goals are achieved, particularly on projects located away from urban centers, long-range comprehensive planning is needed which includes recruitment, training and facilitating access to, and accommodation at, the project site, especially for women.

It should be noted that the most successful project for utilizing women was the Second Powerhouse/Bonneville Dam project which is located only 42 miles from Portland, Oregon. The Truman project is 94 miles from Kansas City, and the Granite Reef project is a considerable distance from Phoenix.

Since most of the existing recruitment and training services are located in center cities, the outreach is focused on those areas and, generally, the referrals are to local projects. To successfully recruit women for rural projects would require a coordinated planning effort similar to the White House Rural Initiatives Program, or some of the other models which were effective in utilizing women craft workers, such as the Alaskan pipeline and the shipbuilding industry. The Apprenticeship and Non-Traditional Employment for Women (ANEW) program in Seattle, recently announced by ESA, is a further example of the

kind of cooperative effort by Federal, State and local governments, as well as the private sector, which is needed to expand employment and training opportunities for women in the construction trades.

The OFCCP Special Studies Section has initiated an assessment of the state-of-the-art of women in the construction industry. The focus of the study will be on determining what factors or strategies have been successful in increasing participation of women in the construction trades and what factors have impeded their progress. The results of the study will be considered in the decision on what the appropriate goals for women should be after March 1981.

[GAO COMMENT: Labor's view that compliance planning in OFCCP matters should go beyond the example we cited was added to the text and discussed on page 45. We concur in the concept, but believe that responsibilities for such matters need clarification through joint understandings between agencies.]

ADDITIONAL COMMENTS BY THE OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS (OFCCP)

Page 13, The phrase in the first sentence,
"...the contractor shall make a good faith effort to employ
minorities and women evenly on each of its projects..."

Comment: This phrase is not vague when taken in the context of the regulation in which it appears 41 CFR 60-4.2(d), (see Appendix 1 for copy of regulations). This requirement in the notice is intended to assure that the contractor will not assign minorities and women only to certain projects, such as to only Federal or federally-assisted projects, as is often done. Minorities and women must be utilized on all of the contractor's projects.

[GAO COMMENT: This statement is attributed to construction officials we interviewed. They considered the CFR vague in a number of respects for determining the efforts they should make.]

Page 30, The phrase in the second sentence concerning the contractors, "They did not understand what compliance efforts were expected of them..."

Comment: This statement is inaccurate since the affirmative action steps in the regulations (41 CFR 60-4.3) clearly specify the actions contractors must take to demonstrate a "good faith effort". The regulations are distributed to Federal agencies and should be provided to contractors by the contracting agency at the time of contract award. The area offices involved have responded to all appropriate inquiries from contractors; however, the burden of taking the required affirmative actions rests with the contractor. It should be noted that the utilization goals are goals, not quotas, and the standard for evaluating the contractor is a good faith effort. There are no inequities between contractors since all contractors must make the same good faith effort to comply.

[GAO COMMENT: Phrase revised to attribute this statement to the contractors.]

Page 30, The phrase in the second sentence,
"on federally-assisted construction projects".

Comment: Delete the word "on" and substitute the words "by Federal and ". The goals for women apply also to a covered contractor's nonfederal projects.

[GAO COMMENT: Suggested change was made.]

Page 31, The phrase "was given responsibility for enforcing Executive Order 11246 and for prescribing the female employment goals, establishing procedures contractors use for employing women...".

Comment: Delete the words, "was given responsibility for enforcement" and substitute, "assumed total compliance monitoring responsibility under". Delete the phrase, "and for prescribing the female employment goals, establishing procedures contractors use for employing women".

OFCCP always had authority to enforce the Executive Order, but assumed total monitoring responsibility with the consolidation of the program. The female goals were promulgated prior to consolidation, and the procedures also were established previously.

[GAO COMMENT: Suggested change was made.]

Page 32, The last sentence, "OFCCP representatives told us they seldom attend these conferences for lack of available time and staff."

Comment: Delete this sentence. It is the general policy of OFCCP that staff resources should not be allocated for participation in preconstruction conferences unless there are measurable benefits to be gained from such participation, e.g., a large-scale project with significant employment opportunities, a large number of contractors attending, and the conference is to be conducted in close proximity to the area office.

It is OFCCP's position that it is the contracting agencies' responsibility to inform contractors of their EEO responsibilities at the preconstruction conference. We have conducted several seminars for contracting agencies to instruct agencies on their responsibilities, as well as the responsibilities of their contractors and grantees, for equal employment opportunity requirements. We have provided agencies with information packages including goals, regulations, etc. The particular guidance relevant to the geographic area of the project is furnished by the area office when the office is notified of a contract award or upon request from a contractor. We have also instructed contracting agencies to advise contractors to contact the area office for technical assistance.

We are planning to conduct several seminars for construction contractors in various regions to inform contractors of their affirmative action responsibilities and to discuss the compliance process as it relates to construction.

[GAO COMMENT: We deleted "for lack of available time and staff" and added the above statement of OFCCP policy and position on page 33.]

Page 33, The phrase in the last sentence, "...the field representative had not been told to do so."

Comment: Delete this phrase and substitute, "of a failure in communication.". It is the standard procedure for area offices to send information to a contractor upon notice of a contract award. If they were not sent in this case, it was an individual instance. This procedure will be stated more specifically in the revision of the Federal Contract Compliance Manual-Chapter 4 which deals with construction.

[GAO COMMENT: Suggested change was made.]

Page 33, The last sentence, "Contractors maintain that their efforts are hampered because OFCCP has not advised them what must be done to demonstrate "good faith"."

Comment: Delete this sentence. The regulations and the Federal Contract Compliance Manual (both available to contractors) clearly and specifically set forth the actions that must be taken by a contractor to demonstrate a good faith effort. Essentially, the 16 affirmative action steps have been in existence for several years and should be well known by contractors doing work on federally-involved construction projects. The Compliance Manual also identifies the specific documentation required to evidence the good faith effort. (See Appendix II for the compliance review format contained in the manual.)

The only paperwork required is to send a written notice of employment opportunities to known recruitment sources in the community and/or to labor unions and to keep a copy of the letter, or call and keep a record of the telephone call. If the effort is unsuccessful, it does not diminish the value of the effort.

[GAO COMMENT: No change. We believe this statement fairly represents the views of contractor officials with whom we discussed the 16 action steps relative to the women-in-construction program.]

Page 33, The second sentence, "However, those criteria are no longer provided to contractors because, as noted above, OFCCP no longer attends the preconstruction conferences and the alternative contractor-notification arrangement between WPRS and OFCCP broke down."

Comment: Delete this sentence. The 16 steps, as well as the kind of documentation required, are set forth in the regulations. The issuance of the regulations constitutes notice to the contractor. The packet is only additional assistance and does not govern a contractor's affirmative action obligations.

[GAO COMMENT: Sentence not deleted. Our point is that whether or not it was governing, this additional assistance was wanted but is no longer provided.]

To provide as much assistance to contractors as possible, we are developing a standard information packet which will be available to contractors at all area offices by early 1981. Failure to receive the packet, however, will not excuse a contractor's nonperformance.

[GAO COMMENT: Mention of this action was added to the discussion on page 33.]

Page 34, "As of March 1980 OFCCP had not discussed the results of its review of compliance reports with the four contractors. OFCCP does not provide contractors feedback on these reports. They believe this would be redundant since the contractors prepare the reports. Contractors said they would welcome feedback because ideas might be expressed that could help them meet their goals and, simultaneously, control their own administrative burden."

Comment: Delete this paragraph. Monthly compliance reports are reviewed and used as a basis for selection of contractors for review. The volume of monthly reports is too numerous to enable preparation of a feedback response to every contractor submitting a report. We are considering developing a form letter which could be sent to contractors not achieving their goals automatically by the computer whenever a contractor is not selected for review. The letter will suggest further actions to meet goals and offer technical assistance to the contractor.

[GAO COMMENT: Only the third sentence was deleted and another paragraph was added to page 34 to reflect the additional information mentioned here by OFCCP.]

Page 34, The phrase in the first sentence, "a compliance audit."

Comment: The correct terminology is a compliance review rather than a compliance audit. A compliance review of one of the contractors on the Bonneville Dam project, Grover-Kiewit-Granite Construction Company, is in progress by the Portland Area Office.

[GAO COMMENT: Terminology was corrected. The review had been mentioned although it was called an audit.]

Under current compliance review procedures, OFCCP does not review all contractors who are working on a project. One or more contractors may be selected for review on the basis of a number of factors including the size of the contractor's workforce. Priority is given to contractors reporting 8000 or more total hours for the month and who have not met their minority and/or female goals. The area office has selected other contractors not on this project for review because of their higher priority.

[GAO COMMENT: This contractor, who had from 700 to 1,200 employees for a substantial period of time met this selection criteria.]

Page 34, "The contractor told us he hoped the audit would help alleviate his administrative frustrations by communicating Federal compliance expectations for "good faith" compliance. He also said that such audits would help eliminate compliance inconsistencies or inequities between contractors."

comment: This paragraph should be deleted. The regulations are the proper means by which a contractor is apprised of the good faith effort requirements. There should not be a suggestion that you cannot comply until or unless you have had a compliance review.

[GAO COMMENT: Not deleted. We added a sentence to help clarify the contractors concern.

Page 35, "For the Second Powerhouse Project, on May 29, 1979, the Corps' North Pacific Division signed an agreement with OFCCP whereby resident engineers of Corps projects would monitor contractors' efforts to achieve the female employment goals, observe contractors' attempts to comply with the "good faith" steps, and review contractors' monthly compliance reports. In addition, the resident engineer would submit a monthly report to OFCCP stating whether or not the contractors appear to be in compliance with the regulations. The agreement took effect on the Second Powerhouse Project about February 1980."

Comment: The agreement referred to has been abrogated by the OFCCP Seattle Regional Office.

OFCCP has no policy or procedure for delegating its compliance responsibilities to another entity. Only OFCCP or approved Hometown Plan administrative committees can receive and review monthly employment reports. Resident engineers can, of course, observe the apparent utilization of minorities and/or women on a construction project and notify the OFCCP area office of their observations. However, the goals are achieved in the

contractor's aggregate workforce on all projects in the covered area, including Federal, federally assisted and nonfederal. The engineer would not have knowledge of the contractor's minority or female workforce utilization on other projects.

The Corps of Engineers is still interested in establishing an arrangement for notifying the OFCCP area office of their observations concerning the utilization of minorities and women by contractors on the Bonneville Dam project.

[GAO COMMENT: This information was added to page 35.]

Page 35: "We believe such action could help contractors understand their compliance responsibilities. It may still be difficult, however, for contractors to achieve the employment goals. Many contractors and agency officials maintain that women are not willingly seeking employment in some construction crafts."

Comment: In view of the above, it is unclear what action is being referenced which would help contractors understand equal employment opportunity requirements.

OFCCP agrees that technical assistance is a useful adjunct to the compliance process; however, it should not be a substitute for enforcement. Such assistance will be provided in the most efficient manner and to the extent that it does not diminish our resources for enforcement.

A further comment on the above paragraph is that it is inappropriate for any agency official to imply that women are not willing to seek employment in some construction crafts since it is not an accurate statement.

[GAO COMMENT: The last two sentences of this paragraph were deleted and the thought in the first sentence was expanded to clarify our position.]



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

3 NOV 1980

OFFICE OF
PLANNING AND MANAGEMENT

Mr. Henry Eschwege
Director, Community & Economic Development Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Eschwege:

The Environmental Protection Agency (EPA) has reviewed the General Accounting Office (GAO) draft report entitled "Social and Environmental Objectives Can Be Achieved More Economically and Effectively in the Construction of Federal Water Resource Projects". While EPA endorses the concept of examining alternative methods of regulatory compliance, we do have some problems with the analysis presented in the report. Following are our comments.

The National Environmental Policy Act (NEPA), through the environmental impact statement process, provides for the consideration of alternatives, which is a procedure recommended by GAO. This NEPA process deserves more emphasis than the footnote on page 10 of the report.

[GAO COMMENT: We agree and added such emphasis to chapter 7.]

We believe that the report presents an inaccurate picture of the "cost of compliance" of social and environmental regulation by considering gross costs rather than net costs. The report fails to adequately consider the benefits of the various regulatory requirements examined. For example, Chapter 3 makes no attempt to quantify the benefits of improved recreation and water quality, accrued from fish and wildlife mitigation measures.

[GAO COMMENT: In several places the report recognized that benefits as well as costs need to be considered (e.g. on the cover, pages iii, 13, etc.)]

The Agency recommends that the section entitled Sometimes regulations save construction costs on page 13 of the report be expanded. Consideration of environmental and social regulations often results in considerable project savings (such as long term economic benefits from preservation of wetlands, water quality, and fish and wildlife habitat).


[GAO COMMENT: The expansion would not be appropriate because the section addressed only savings in construction costs, as the title states.]

Finally, the point should be made that the excessive cost of some environmental regulations often stems not from the regulations themselves but from the failure of construction officials to consider them early in the planning process. This is evident on page 14 of the report where construction officials are "tacking on" costly mitigation measures instead of having designed the project to meet environmental objectives from the beginning. Early consideration of environmental impacts will reduce the cost of compliance with environmental regulations.

[GAO COMMENT: The conclusions dealt with this point. We agree it is important.]

We appreciate the opportunity to comment on the report prior to its issuance to Congress.

Sincerely yours,



for William Drayton, Jr.
Assistant Administrator for
Planning and Management



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

NOV 19 1980

Mr. William J. Anderson
General Government Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

The Office of Management and Budget is pleased to report with our comments on your proposed draft report entitled "Social and Environmental Objections Can Be Achieved More Economically and Efficiently in the Construction of Federal Water Resources Projects."

We have two major comments:

1. Problems of Regulatory Compliance Evaluation

Chapter 6 suggests that many of the problems and inconsistencies encountered in the several case studies of water project construction (Chapters 3-5) could be remedied by more attention to regulatory compliance evaluation. Chapter 6 further elaborates on the move toward regulatory evaluation under Executive Order 12044 (12221) "Improving Government Regulations" and describes several steps toward a more effective evaluation process affecting construction of water projects.

While we believe that many of the deficiencies in evaluation could be remedied by effective agency implementation of revised Principles and Standards being promulgated by the Water Resources Council (see below), certain deficiencies may remain.

In particular, the draft report raises issues that have been of growing concern in the implementation of Executive Order 12044 (12221). That Order, particularly the regulatory analysis provisions of Section 3, requires a thorough analysis of alternatives in the development of major regulations as well as consideration of the costs, benefits and other effects associated with these alternatives. However, while the Executive Order has had substantial impact in improving the analysis of individual rules, it was not designed to address programs or projects where many individual rules come together to generate rather substantial economic impacts. We recognize that additional work is needed in this area.

In addition, individual rules promulgated by a number of agencies may generate substantial administrative burdens that may have a collectively large and unanticipated impact on the cost of projects. The case studies in the draft report serve to highlight this problem at the various stages of project construction and review.

In our upcoming evaluation of the Executive Order, we will give particular consideration to ways in which to deal more adequately with problem of compliance evaluation. This could include:

- a more thorough consideration of compliance alternatives and the impacts of these alternatives in program and project implementation.
- procedures for assessing the cumulative impact of individual rules, including administrative burdens that may have unanticipated effects on project costs as well as government programs generally.

GAO COMMENT: This view and advice was added to page 51. We believe such action by OMB could be very helpful for encouraging agency compliance evaluation efforts./

2. The Current State of Evaluation Procedures Affecting Water Resources Projects

While we agree with many of the insights developed in the draft report, we find it deficient in its treatment of the current state of evaluation procedures affecting water resources projects. Nowhere in the report is there a discussion of the techniques for cost-benefit evaluation that have been developed over many years, culminating in the recent revisions that have been promulgated by the Water Resources Council. We refer in particular to the revised economic evaluation procedures published by the Council on December 14, 1979 and the supplementary environmental evaluation procedures published on September 30, 1979. We believe that more familiarity with the problems that have been encountered in the development of such procedures would improve the content of the recommendations for "practical regulatory evaluation" set forth in Chapter 6.

GAO COMMENT: A discussion of the Water Resources Council's guidelines was added to pages 48 and 49.

Finally, we regret our comments were not available on November 3. We hope that GAO will be able to consider them in the preparation of the final report.

Sincerely,



Wayne G. Granquist
Associate Director for
Management and Regulatory Policy



UNITED STATES WATER RESOURCES COUNCIL

SUITE 800 • 2120 L STREET, NW WASHINGTON, DC 20037

DEC 17 1980

Mr. Henry Eschwege
 Director
 Community and Economic
 Development Division
 General Accounting Office
 Washington, DC 20548

Dear Mr. Eschwege:

I am responding to your October 3, 1980 letter concerning the General Accounting Office's (GAO) proposed draft report to the Congress entitled "Social and Environmental Objectives Can be Achieved More Economically and Efficiently in the Construction of Federal Water Resources Projects."

On July 12, 1978, the President issued a memorandum titled "Improvements in the Planning and Evaluation of Federal Water Resources Programs and Projects." In addition to noting problems related to economic evaluations, the memorandum stated that too little attention has been paid to environmental values in past planning and review of water resources projects. The memorandum directed the Water Resources Council (WRC) to carry out a thorough evaluation of current agency practices for making benefit and cost calculations and to publish a planning manual that will ensure that benefits and costs are estimated using the best current techniques, and are calculated accurately, consistently, and in compliance with the Principles and Standards and other applicable requirements.

WRC undertook work to carry out the President's directive in a three-phased program. In Phase I, which was initiated in August 1978, the Procedures for Evaluation of National Economic Development (NED) Benefits and Costs in Water Resources Planning (Level C) were developed and published as a final rule (18 CFR Part 713) in the December 14, 1979 Federal Register. Also in Phase I, the Principles and Standards of 1973 were revised to reflect the full integration of water conservation into project and program planning and review, and to require the preparation and inclusion of a primarily nonstructural plan as one alternative whenever structural project or program alternatives are considered. These revisions were published as a notice in the December 14, 1979 Federal Register (44 FR 72978-72990).

MEMBERS: SECRETARIES OF AGRICULTURE, ARMY, COMMERCE, ENERGY, HOUSING AND URBAN DEVELOPMENT, INTERIOR, TRANSPORTATION; ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY-OBSERVERS: ATTORNEY GENERAL; DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET; CHAIRMEN, COUNCIL ON ENVIRONMENTAL QUALITY; TENNESSEE VALLEY AUTHORITY; BASIN INTERAGENCY COMMITTEES; CHAIRMEN AND VICE CHAIRMEN, RIVER BASIN COMMISSIONS

Phase II, which was initiated in August 1979, was undertaken to revise the Principles and Standards for clarity and conciseness and integration of the requirements of Urban and Community Impact Analysis (Executive Order 12074), NEPA, and the CEQ NEPA regulations (40 CFR Parts 1500-1508) into the Principles and Standards.

On September 29, 1980, WRC issued as final rules its Principles and Standards for Level C studies. The purpose and scope of these rules are outlined in 18 CFR 711.1(a) as follows:

"These Principles and Standards establish uniform requirements to be followed by Federal agencies in formulating and evaluating alternative plans for Level C Implementation Studies. They also provide the basic policy for Level C Procedures included or to be included as Parts 712 through 716 of this chapter."

Also published at the same time was WRC's Environmental Quality Evaluation Procedures for Level C Water Resources Planning. The purpose of these procedures is explained at 18 CFR 714.100 as follows:

"The Principles and Standards for Water and Related Land Resources Planning (P&S) (Part 711 of this chapter) establish the basic policy for planning Level C Federal and Federally assisted water and related land resources (referred to hereinafter as water resources) programs and projects.

Operational guidance on how to implement the basic P&S policy is provided in a set of procedures included or to be included as Parts 712 through 716 of this chapter. This part (18 CFR Part 714) gives the procedures to be used for evaluating the effects of alternative water resources plans on environmental quality (EQ). The purpose of these procedures is to:

(a) Establish the process for identification and description of beneficial and adverse effects of alternative plans on significant natural resources and historic and cultural properties (referred to hereinafter as natural and cultural resources).

(b) Assist agencies in meeting the requirements of the National Environmental Policy Act of 1969, as amended (NEPA; Pub. L. 91-90; 42 U.S.C. 4321, et. seq.), as specified in the CEQ NEPA regulations (40 CFR 1500-1508), with respect to the EQ account. Relationships between the CEQ NEPA regulations and these procedures are noted in the text. Appendix B lists relationships that may aid in the preparation of an EIS.

Provide a basic analytical framework for focusing the concurrent integration of other related review, coordination, and consultation requirements into the planning process. These other related requirements include those mandated by the Fish and Wildlife Coordination Act of 1958, as amended (Pub. L. 85-824; 16 U.S.C. 661, et seq.); the National Historic Preservation Act of 1968, as amended (Pub. L. 89-855, 16 U.S.C. 470, et seq.); the Endangered Species Act of 1973, as amended (Pub. L. 93-205; 16 U.S.C. 1531, et seq.); and the Coastal Zone Management Act of 1972, as amended (Pub. L. 92-583, 16 U.S.C. 1451, et seq.). These procedures for EQ evaluation are intended to rely on and make use of, rather than duplicate, analyses and documentation already used by agencies for compliance with such other requirements."

Phase III is scheduled to be initiated in late 1980, and will focus on development of the following for publication as final rules:

(1) Principles, Standards, and Procedures for Water and Related Land Resources Planning--Level B (18 CFR Part 710) scheduled to be published in 1982.

(2) Procedures for Level C Water Resources Planning (18 CFR Part 712) scheduled to be published in late 1983.

(3) Regional Economic Development Evaluation Procedures for Level C Water Resources Planning (18 CFR Part 715) scheduled to be published in late 1983.

(4) Other Social Effects Evaluation Procedures for Level C Water Resources Planning (18 CFR Part 716) scheduled to be published in full in late 1983.

WRC believes that the Principles, Standards, and Procedures published during FY 80 substantially accomplish the task your report recommends for the Council. The Principles, Standards, and Procedures do not address evaluation of alternatives for compliance with specific social and environmental requirements but do provide a systematic framework and process for formulating, evaluating, and selecting alternative measures and plans. Alternative plans are either to be in compliance with existing statutes, administrative regulations, and established common law; or to propose necessary changes in such statutes, regulations, or common law. Thus, the range of alternatives (and measures) evaluated should present an array of alternative means to solve the specified problem or take advantage of an opportunity and, at the same time, show the array of economic and environmental beneficial and adverse effects of implementing the various alternatives.

[GAO COMMENT: See pages 48 and 49 for a discussion of this issue.]

The GAO draft report mentions on pages 33 and 34 that WRC has a 3-year program plan which contains the development of compliance evaluation guidelines. This is in error. Following the publication of the Environmental Quality Evaluation Procedures (EQEP) as final rules, WRC is presently undertaking an intensive 3-year effort to develop measurement and evaluation methods which will provide for the systematic and consistent implementation of EQEP. This effort differs from that mentioned in the GAO report. WRC has no program either in progress or under development which would develop compliance evaluation guidelines.

[GAO COMMENT: Cited statement eliminated from the report.]

WRC considers that its rules prescribe criteria and steps for the formulation of alternatives and for the selection of management plans. These rules require well thought out plans that consider environmental and social impacts. Following these rules should minimize later problems, such as those described in your report.

[GAO COMMENT: See page 49 for a discussion of why our recommendation is addressed to the Council.]

In light of the above, WRC strongly urges that GAO reevaluate its recommendations. If GAO feels additional monitoring is needed, the task assigned by the report to WRC would be more appropriately assigned to the Regulatory Analysis Review Group which according to your draft report "is primarily concerned with ensuring that regulations represent the most efficient means of achieving regulatory objectives," or the Office of Management and Budget which oversees regulatory agencies "to ensure that compliance and paperwork burdens are minimized," as well as evaluates "alternative approaches to the design and enforcement of regulations." We feel these agencies may be more appropriate for your purposes.

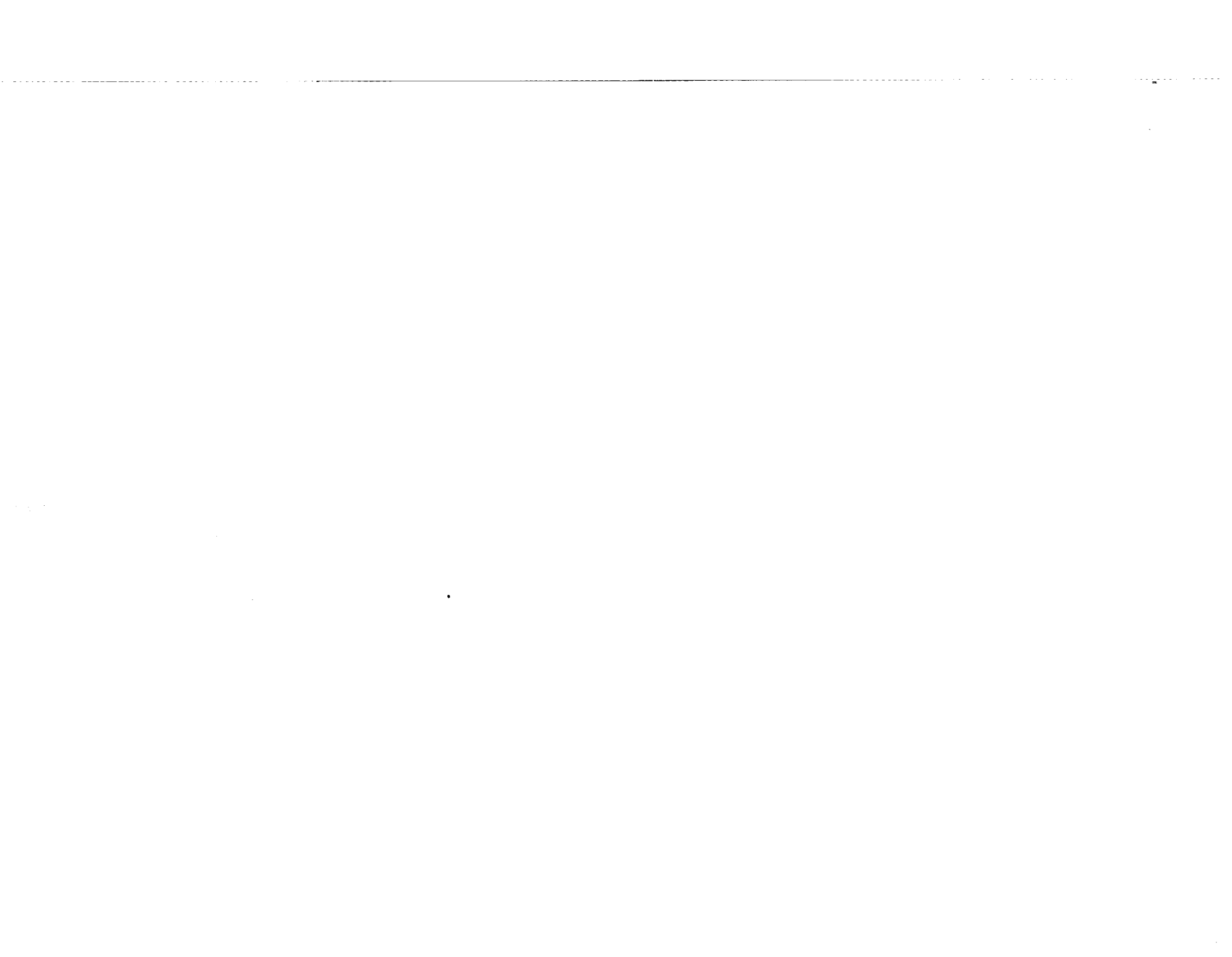
[GAO COMMENT: See page 48 for a discussion of this issue.]

We appreciate this opportunity to review the draft report and hope our comments prove useful to you.

Sincerely,



Gerald D. Seinwill
Acting Director



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