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USDA Forest Service
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Salt Lake City, UT 84116
Phone: 801-517-1020 Fax: 801-517-1021

Response letter

Wednesday, April 26, 2000

Sharon Buccino
1200 New York Ave, NW
Washington, DC 20005

Dear Ms. Buccino:

Thank you for your interest in the Unified Federal Policy for Ensuring a Watershed Approach to Federal Lands and Resources.

We have received your letter dated April 24, 2000.

Again, thank you for your comments.

Leslie Watson
Content Analysis Enterprise Team

NATURAL
RESOURCES
DEFENSE
COUNCIL

121

Via Federal Express

April 24, 2000

USDA-Forest Service,
Content Analysis Enterprise Team
ATTN: UFP
Building 2, Suite 295
5500 Amelia Earhart Drive
Salt Lake City, UT 84116

Dear Ms. Solari:

I have enclosed comments by the Natural Resources Defense Council on the Unified Federal Policy for Ensuring a Watershed Approach to Federal Land and Resource Management. I would appreciate receiving an acknowledgment of receipt in the enclosed self-addressed, stamped envelope.

Sincerely,

Sharon Buccino
Senior Attorney

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Comments concerning Unified Federal Policy for Ensuring a Watershed Approach to Federal Land and Resource Management

65 Fed. Reg. 8834 (February 22, 2000)

April 24, 2000

Submitted by:
Sharon Buccino, Senior Attorney
Natural Resources Defense Council
1200 New York Avenue, NW, Suite 400
Washington, DC 20005
202-289-6868

Johanna Wald, Senior Attorney
Natural Resources Defense Council
71 Stevenson Street, #1825
San Francisco, CA 94105

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Introduction

NRDC applauds efforts by the Department of Interior and the Department of Agriculture to ensure that federal land managers take the steps necessary to guarantee that their activities protect and restore water quality. Over the past 30 years, significant progress has been made in delivering the Clean Water Act (CWA)'s promise of making the water of all the nation's streams and lakes fishable and drinkable. Despite the progress, more needs to be done. Almost 40 percent of the nation's waters assessed by states still do not meet water quality standards. If we are to succeed in cleaning up these remaining waters, federal land managers must meet the same, if not higher, standards required of states and the private sector.

Unfortunately, in many areas federal land management activities contribute to water pollution. Forty-one states have water bodies on federal lands that violate water quality standards. Many water bodies on non-federal lands are affected by activities that occur on nearby federal lands. For example, federally authorized logging and grazing on public land causes erosion and sedimentation of numerous rivers and streams. In addition, activities undertaken by federal land managers themselves, like road construction, degrade water quality.

NRDC hopes that this unified federal policy will provide mechanisms for preventing water pollution from federal land management activities and also for enhancing water quality. While the proposed policy generally sets the right goals, NRDC believes that it lacks three key prerequisites for maximum effectiveness: (1) adequate resources; (2) strong public participation; and (3) a sufficiently "high bar" for measuring success.

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In addition to raising the overall bar for performance, the policy should include a "hold harmless" provision which guarantees that current efforts to improve water quality, some of which are system wide, will not (1) be replaced by "targeted programs" or (2) lose resources to new initiatives. For example, the Bureau of Land Management (BLM) is implementing a riparian restoration program throughout riparian areas on grazing lands under its management. Baseline—and necessary—restoration measures like these on degraded federal lands should continue. The unified federal policy should enhance water quality by targeting resources to designated priority watersheds without lessening nationwide baseline programs.

NRDC believes that the unified federal policy can help effectively implement current agency programs and enhance these programs to ensure that they deliver clean water in federal watersheds. NRDC suggests the following changes to the proposed policy to ensure that it produces meaningful results.

Specific Recommendations

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The policy should set ambitious goals. The policy commits to "meet[ing] applicable state and tribal water quality requirements under the Clean Water Act." The policy should set an explicit, loftier goal such as: (1) attaining water quality standards in all degraded watersheds under federal control by a date certain; and (2) assuring protection for high quality/ sensitive watersheds in all federally managed or impacted lands by a date certain. In addition, language should be added specifying that it is the policy of federal land managers to "reduce or halt the expansion or initiation of those activities likely to impair water quality." While more ambitiously framed than

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2. Policy Should Include Presumption Against Activities that Impair Water Quality.

Despite significant progress in addressing point sources of pollution, polluted runoff from various land uses such as logging and grazing continues to cause significant water pollution. Approximately 90 percent of the waters listed by states as impaired fail to meet water quality standards at least in part as a result of polluted runoff from diffuse or non-point sources. Public and private land use decisions are causing widespread, incremental degradation of the nation's watersheds. These incremental reductions in water quality add up to significant water pollution in many areas in violation of the CWA's mandate against further degradation.

For example, grazing management practices permitted by federal land management agencies can interfere with attainment of water quality standards. See, e.g., Department of the Interior, Bureau of Land Management, and Department of Agriculture, Forest Service, Rangeland Reform '94—Draft Environmental Impact Statement, pp. 3-36 -3-37. It is also clear that grazing is adversely affecting water resources on public lands throughout the west, including in California. For example, the Final Report to Congress of the Sierra Nevada Ecosystem Project, Status of the Sierra Nevada, describes the adverse impacts grazing can have, and has had, on soils, water temperature and water quality. See Volume II, pp. 899-90. The Report notes specifically that "[h]igh levels of coliform and other bacteria have been found in streams heavily used by livestock" in Sierra forests. Id. at 890. See also, Department of the Interior, Bureau of Land

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In those rare instances where circumstances may justify a reduction in water quality, the public should be provided the opportunity to participate in the decision and the agency responsible for the decision must make the specific findings required by federal antidegradation regulations. The regulations require that the agency find that "lowering water quality is necessary to accommodate important economic and social development." 40 C.F.R. § 131.12(a)(2). "Necessary" means that no other alternatives are available. "Important" means that failure to allow the activity will result in significant economic hardship to the local community. *See* EPA, Economic Guidance for Water Quality Standards Workbook, EPA 823(b) 95-002 (March 1995). EPA's guidance

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3. Priority Watersheds Should be Considered Outstanding National Resource Waters.

Once a watershed has been identified as a priority watershed, it should be considered an outstanding national resource water (ONRW). Federal regulations provide for the designation of highly valuable waters as an outstanding national resource. 40 C.F.R. § 131.12(a)(3). States are given the authority to designate outstanding national resource waters. The policy should include a mechanism for federal land managers to recommend to the relevant state or tribe that priority watersheds be classified as outstanding national resource waters. This could be done as part of each state's triennial review of its water quality standards. EPA's triennial review of state standards provides a regular periodic means for ensuring that state use classifications are upgraded as appropriate to reflect watershed priority designations.

The policy should instruct federal land managers to treat priority watersheds as ONRWs even before official state designation as an outstanding national resource water. Federal antidegradation regulations require that the water quality of ONRWs "shall be maintained and protected." 40 C.F.R. § 131.12(a)(3). The purpose of the antidegradation

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The policy should prohibit reductions in water quality once a watershed has been identified as a priority watershed. A watershed is identified as a priority because of its importance as habitat, for recreational uses, for drinking water supplies or for other values. If the public and federal land managers have decided a watershed is a priority for addressing current causes of water pollution, it only makes sense to ensure further reductions in water quality do not occur. It will be much easier to address current water pollution if the problem is not allowed to get worse in the meantime.

4. Policy Should Require Broad Application of State-of-the-Art BMPs.

Currently, federal agencies rely primarily on best management practices (BMPs) to address pollution caused by diffuse, non-point sources such as erosion from clearcut forests and heavily grazed lands. Despite their name, some of these BMPs are out-dated and fail to represent state-of-the-art practices currently available. The policy should commit federal agencies to reviewing and revising BMPs on a regular schedule.

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5. Policy Should Include Commitment to Monitor and Evaluate Effectiveness and Compliance with BMPs.

Monitoring is critical to ensuring that BMPs are actually doing the job in protecting water quality. Monitoring is essential both to ensure that BMPs are effective and that private and public activities on federal lands comply with the BMPs. The policy should include a commitment by federal agencies to monitor regularly compliance and the effectiveness of BMPs. The results of this monitoring should be used to review and revise BMPs on a regular schedule.

In order to assess the effectiveness of BMPs, monitoring of baseline conditions must be done first. More resources need to be invested in this kind of work. In California, for example, few public grazing lands are being monitored to determine water quality conditions. After significant public pressure and a decision by the local water control board to restrict grazing, ranchers have agreed to keep cows out of a 11,000-acre area on national forest land near Lake Tahoe this summer to conduct water quality and fecal coliform monitoring. Bourelle, A. "Meiss Meadows won't have cows this summer." Tahoe Daily Tribune (April 18, 2000). Only by determining baseline conditions without cows, can federal land managers analyze the impact of the cows on water quality and the effectiveness of BMPs in addressing the impacts. This kind of

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monitoring should be a prerequisite before federal land managers permit grazing on federal land.

6. Selection of Watersheds for Priority Targeting Should Include Explicit Mechanism for Public Participation.

Non-governmental organizations have a great deal to contribute to establishment of criteria and selection of priority watersheds. Members of the public have valuable expertise to supplement that of federal agencies. In addition, the validity and acceptance of the priorities selected depend on allowing the public to have input in the selection. For these reasons, the policy should include an explicit mechanism for citizens to propose selection criteria and to nominate watersheds for priority targeting.

[redacted]

whether a single agency, such as the Council on Environmental Quality, will have ultimate responsibility for selection of priority watersheds. Giving each federal agency the ability to designate priority watersheds makes sense as long as the public has a clear and defined role in the process.

The current language discussing involvement of stakeholders is inadequate. Citizens need an explicit opportunity to initiate selection, rather than simply react to government initiatives. In addition, explicit timelines should be added to the policy for completing different tasks, such as: developing and implementing "interagency

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guidelines for the delineation of watershed boundaries" (II.A.1.a); identifying priority watersheds (II.B.1); and reviewing "policies and processes that may affect land and water uses and water quality" (II.C.3).

7. Data from Water Quality Assessments Should be Collected in Format for Use in Management and Regulatory Decisions.

The policy should include a specific commitment to collect information in a format and with a focus that will enable key management and regulatory decisions to be made based on the data collected. In particular, the policy should explicitly provide that information gathered by and for federal agencies as part of watershed assessments will be systematically integrated into water quality reporting and assessment programs under the Clean Water Act, such as requirements under §§ 303(d), 305(b), and 319. This would require effective methods of sharing information between federal agencies and the states that are primarily responsible for water quality reporting under CWA programs.

Federal lands should become models for collaborative data gathering, analysis and information-based decision making. There is an ongoing effort to harmonize federal, state, tribal and private data gathering under the auspices of the Advisory Committee on Water Information (ACWI) and its subsidiary National Water Quality Monitoring Committee. More should be done in this policy to endorse and support those efforts.

The policy's ten-year assessment cycle does not satisfy the CWA's biennial reporting requirements and should be changed. The CWA requires states to provide water quality assessments every two years. 33 U.S.C. § 1315(b). A lot happens in ten years. Regular monitoring and evaluation should be required to ensure that actions taken to protect water quality are effective. Federal land management agencies cannot, and

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should not, establish a policy that endorses a more leisurely pace for water quality assessment than the law allows. The policy recognizes the need to treat federal entities and non-federal entities alike. Having consistent reporting requirements is necessary to provide equal treatment.

8. Policy Should Include Commitment of Resources.

Given all that is needed to ensure that federal land managers are meeting their responsibilities under the Clean Water Act, it is inappropriate to hold this policy to existing budgets. The policy should include a commitment from participating agencies to assess what increases will be needed to achieve the policy's goals and then to request additional funds. For example, new funds will be needed for increased monitoring, as well as increases in implementation costs for BMPs on lands controlled by agencies without established watershed programs. This assessment should occur in time to be included in the President's budget request for FY02 submitted to Congress in February 2001.

Conclusion

Ensuring that federal land managers do their share is critical to the success of the Clean Water Act. Many of the nation's waters are located on federal lands or are impacted by activities on federal lands. NRDC applauds the efforts of the Department of Interior and Department of Agriculture to ensure that federal land managers take the steps necessary to guarantee that their activities protect and restore water quality. Federal land managers can, and should, lead the nation in protection and restoration of aquatic ecosystems. NRDC hopes the Departments will adopt the changes suggested herein so that the unified federal policy will produce meaningful results.

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NATURAL RESOURCES DEFENSE COUNCIL

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To: Karen Solari

Fax: 801 517 1021

From: Sharon Buccino, Senior Attorney
Phone: (202) 289-6868
Fax: (202) 289-1060

Date: April 24 2000

Number of Pages Including Cover Sheet: 13

Re:

Comment: had trouble with the email – so am faxing

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monitoring should be a prerequisite before federal land managers permit grazing on federal land.

6. Selection of Watersheds for Priority Targeting Should Include Explicit Mechanism for Public Participation.

Non-governmental organizations have a great deal to contribute to establishment of criteria and selection of priority watersheds. Members of the public have valuable expertise to supplement that of federal agencies. In addition, the validity and acceptance of the priorities selected depend on allowing the public to have input in the selection. For these reasons, the policy should include an explicit mechanism for citizens to propose selection criteria and to nominate watersheds for priority targeting.

The policy should create a clear and straightforward petition process which cuts across the agencies to enable citizens to petition for the selection of watersheds in need of special protection or restoration. A protocol is needed, including mechanisms for (1) the governing federal agency and the affected states or tribes to respond to the petition, and (2) timely decision from the decision-making authority. It is unclear from the proposal whether a single agency, such as the Council on Environmental Quality, will have ultimate responsibility for selection of priority watersheds. Giving each federal agency the ability to designate priority watersheds makes sense as long as the public has a clear and defined role in the process.

The current language discussing involvement of stakeholders is inadequate. Citizens need an explicit opportunity to initiate selection, rather than simply react to government initiatives. In addition, explicit timelines should be added to the policy for completing different tasks, such as: developing and implementing "interagency

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guidelines for the delineation of watershed boundaries" (II.A.1.a); identifying priority watersheds (II.B.1); and reviewing "policies and processes that may affect land and water uses and water quality" (II.C.3).

7. Data from Water Quality Assessments Should be Collected in Format for Use in Management and Regulatory Decisions.

The policy should include a specific commitment to collect information in a format and with a focus that will enable key management and regulatory decisions to be made based on the data collected. In particular, the policy should explicitly provide that information gathered by and for federal agencies as part of watershed assessments will be systematically integrated into water quality reporting and assessment programs under the Clean Water Act, such as requirements under §§ 303(d), 305(b), and 319. This would require effective methods of sharing information between federal agencies and the states that are primarily responsible for water quality reporting under CWA programs.

Federal lands should become models for collaborative data gathering, analysis and information-based decision making. There is an ongoing effort to harmonize federal, state, tribal and private data gathering under the auspices of the Advisory Committee on Water Information (ACWI) and its subsidiary National Water Quality Monitoring Committee. More should be done in this policy to endorse and support those efforts.

The policy's ten-year assessment cycle does not satisfy the CWA's biennial reporting requirements and should be changed. The CWA requires states to provide water quality assessments every two years. 33 U.S.C. § 1315(b). A lot happens in ten years. Regular monitoring and evaluation should be required to ensure that actions taken to protect water quality are effective. Federal land management agencies cannot, and

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should not, establish a policy that endorses a more leisurely pace for water quality assessment than the law allows. The policy recognizes the need to treat federal entities and non-federal entities alike. Having consistent reporting requirements is necessary to provide equal treatment.

8. Policy Should Include Commitment of Resources.

Given all that is needed to ensure that federal land managers are meeting their responsibilities under the Clean Water Act, it is inappropriate to hold this policy to existing budgets. The policy should include a commitment from participating agencies to assess what increases will be needed to achieve the policy's goals and then to request additional funds. For example, new funds will be needed for increased monitoring, as well as increases in implementation costs for BMPs on lands controlled by agencies without established watershed programs. This assessment should occur in time to be included in the President's budget request for FY02 submitted to Congress in February 2001.

Conclusion

Ensuring that federal land managers do their share is critical to the success of the Clean Water Act. Many of the nation's waters are located on federal lands or are impacted by activities on federal lands. NRDC applauds the efforts of the Department of Interior and Department of Agriculture to ensure that federal land managers take the steps necessary to guarantee that their activities protect and restore water quality. Federal land managers can, and should, lead the nation in protection and restoration of aquatic ecosystems. NRDC hopes the Departments will adopt the changes suggested herein so that the unified federal policy will produce meaningful results.

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