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People for the USA

April 21, 2000

USDA - Forest Service/CAET
RE: Unified Federal Policy for Watersheds
Building 2, Suite 295
5500 West Amelia Earhart Drive
Salt Lake City, UT 84116

To Whom It May Concern:

These comments reflect the questions and concerns of ***People for the USA***, a national grassroots organization dedicated to the protection of private property rights and public lands multiple use. We are responding to the draft policy printed in the Federal Register on February 22, 2000. This draft policy is one of the 111 actions mentioned in the Clean Water Action Plan (February, 1998). ***People for the USA*** is a party (along with 65 other organizations and individuals) to the litigation filed by the Wyoming Association of Conservation Districts in June, 1999, to stop implementation of the CWAP. We are OPPOSED to this specific policy proposal and believe that the States and Tribes, not the Federal Government, have the primary authority for carrying out the goals of the Clean Water Act.

Please feel free to contact me if you have any questions.

Sincerely,

Jeffrey P. Harris
Executive Director

cc: Wyoming Association of Conservation Districts

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Lack of Public Notice/No Evidence of Broad Support

Once again the Administration proposes action that will significantly affect a whole host of stakeholders across the country, yet only sees fit to schedule four public meetings. Please rest assured that public "quiet" relative to this proposal, as opposed to other just as substantial initiatives, does not mean that the public wholeheartedly supports this latest set of guidelines. More likely, it is fatigue, exasperation, and a deliberate avoidance of the issue in anticipation of a change after the November election. Likewise, the fact that your working draft sent out previously to States and Federally recognized Tribes only resulted in comments back from six state agencies and four tribes does not indicate broad approval.

It is almost comical that you propose to use "The extent of public interest" (p. 8838 – B.1.b.6) as a factor identifying priority watersheds. How will this be gauged? How will you discern real interest from a manufactured one, or weigh local concern versus outside concern. All the more reason this entire topic should be left to the states for implementation!

Ignoring Litigation

What is most telling is the decision by the Administration to go forward with this even as legal action challenging the validity of the CWAP is making its way through the judicial system and you were specifically requested by a state agency to suspend further implementation of the CWAP. We agree with that state agency – no further implementation of the CWAP should be done until serious legal questions are settled.

No Explanation of the Need or Reason Why Congress Has Been Circumvented

Goals as stated are: to accelerate the progress in improving water quality and aquatic ecosystems; to reduce water pollution; and to foster a unified approach (pp. 8835, 8837). Other than the one potential goal which might have an administrative value (to foster a unified approach), there is no justification requiring this new set of guidelines. Your own policy states that "existing programs for watershed protection and improvement are currently underway and are producing positive results." (I. Policy Goals) Obviously, land managers have been able to apply legislative and administrative mandates for water quality as forest plans and activity plans have been developed. What's wrong with the existing situation? How would this proposal change or replace the existing plans?

Even if one were to argue that something is wrong or deficient with the Clean Water Act, it would then be the responsibility of Congress to make the necessary changes. This Administration has consistently refused to work through the Congressional process. Congress has not seen a need to change the CWA. No compelling reason has been provided to initiate this policy proposal.

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Lack of Information

The lack of definitions for new terms leaves the entire proposal unusable. What does "significant resources" mean, as in the "watersheds that have significant Federal lands and resources?" (p. 8837 – II.A.1.d. and 2) What does "vulnerability to degradation" mean? (p. 8837 – B.1.b.5) What are your "desired conditions"? (p. 8838 – II.B.5)

What are the relative values assigned to the factors affecting priority watersheds? (p. 8837 – II.B.1.b) Which factors have the most importance?

Where are the indicators of improvement? Does this draft policy assume that any improvement in water quality or restoration is desirable, no matter the cost?

Would new permitting requirements cause negative consequences where time delays impede rapid response (i.e. after a fire or flood)?

Where is an estimated cost for implementation?

Since identification of "priority watersheds" appears to be the basis for taking remedial action, how will the public have a chance to comment before the Federal agencies identify the problem watersheds and take action? There is no explanation of the "process and guidelines" mentioned in II.B.2, yet these critical items will determine which "waters or watersheds" deserve "designation" and "a need for special protection." This omission of the details fails the NEPA requirement for full disclosure to the public. There is no way any adequate analysis and comparison can be made without the proposed information. Federal agencies already have numerous ways to identify waters and watersheds and take remedial action. What new evaluation or decision making criteria are you proposing?

Using Faulty Definition of "Pollutant"

Besides the lack of definitions previously noted, this policy will rely on some definitions found in the Clean Water Action Plan. We do not agree with the definition presented for "pollutant" (naturally occurring sediment) because it fails to distinguish between man made versus natural causes and could require mitigation for "Mother Nature!" The definition ignores the fact that in some areas with steep mountainous terrain and loose rock structure (prevalent in the Western portion of the country), high sediment loads are entirely natural and not associated with any human activity in the watershed. To then restrict human activity unfairly penalizes residents or land users of those areas.

No Reference to Multiple Use

"We will review our policies and processes that may affect land and water uses…" (p. 8838 – II.C.3) The descriptive language seems to place a high priority on "preservation" or "restoration" of watersheds but gives no direction with regards preserving existing multiple use activities. This lack of recognition of the importance and diversity of uses that will be affected is troubling. How will multiple use continue if water quality and quantity become the highest priorities? One could argue that the new emphasis would preclude swimming, fishing, boating, gold panning, and other water-related recreation activities as well as the resource-based uses that are found near waterways. Shouldn't any proposed

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language include a "cost vs. benefit" analysis to determine if the suggested change (most likely elimination of multiple use activities) would truly bring about a significant improvement?

We support the suggestion by Tribal representatives that "traditional (sic) knowledge" be used to broaden the science based approach. (p. 8835) Cultural and social information should always be considered in the context of a management decision.

Impacts on Private Lands and Interests

This draft policy may affect ownership of water rights where "restoration" or "function" of watersheds is concerned. It is conceivable that the final policy could seek a blanket federal reservation of water rights for all privately held waters in an ACEC (Area of Critical Environmental Concern), RNA (Research Natural Area), Experimental Forest, Wilderness, or other special designation. Another potential would make all special use permits dependent on some contrived "one size fits all" set of water quality factors (temperature, sediment, species diversity), regardless of the need or natural factors involved. We would oppose any arbitrary action and must insist that decisions affecting a property or permit owner's future use be locally based, using site specific conditions and meeting a verifiable need.

Additionally, we are concerned that you have not contacted all permit holders, property owners, and water users who may be directly or indirectly affected by this draft policy. These entities have a vested and economic interest that should not be harmed by federal action, and at the very least, all those owners should have been notified about this proposal.

Concurrence with WACD Comments

PFUSA concurs with the extensive comments on this draft policy submitted by the Wyoming Association of Conservation Districts. The points raised in our letter as well as numerous other valid points and questions raised in the WACD response should serve as red flags to the Administration. This draft Unified Federal Policy for Watersheds undermines appropriate State and Tribal authority, is unnecessary, vague, narrow in scope, and potentially harmful to thousands of land and water users across the country. The draft proposal must be withdrawn.

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