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April 20, 2000

USDA Forest Service
Content Analysis Enterprise Tem
Attn: UFP, Building 2, Suite 295
5500Amelia Earhart Drive
Salt Lake City, Utah 84116

Dear Sir/Madam:

Following are the comments of Billings County, North Dakota on the "Unified Federal Policy for Ensuring a Watershed Approach to Federal Land and Resource Management" published for comment in the federal register on February 22, 2000. The Billings County Board of Commissioners and the Billings County Water Resource District are responsible for the protection of natural resources, including water quality and quantity, stabilizing farming and ranching, and protection of the tax base within the county.

The Commissioners and Water Resource board members strongly support watershed planning to achieve natural resource goals and objectives. The State of North Dakota Department of Health was designated by the Legislature as the primary environmental agency in 1987. The Department of Health originated as the Territorial Board of Health in 1885. In 1889, following statehood, the State Board of Health was established. In 1995 the Department of Health was designated with several sections. The Environmental Health Section's primary goal is to safeguard the quality of North Dakota's air, land and water resources, maintain control of federal environmental programs and ensure that programs and activities comply with state environmental statutes. The Division of Water Quality ensures that North Dakota's water resources are kept safe and clean and operates under the guidelines of the federal Clean Water Act of 1972. Even before the Clean Water Act, however, North Dakota recognized its own law to protect water resources - the North Dakota Water Pollution Control Act of 1967. The State of North Dakota and Billings County already have in place numerous controls for water quality.

In addition, the North Dakota Water Users Association, the State Water Commission, North Dakota Water Coalition, the Little Missouri Scenic River Commission and the North Dakota Association of Soil Conservation Districts all oversee the quality of the water.

There is also an intensive educational program in North Dakota. Projects include the North Dakota Water magazine, annual summer water tours, a state water resources map, an annual detailed executive briefing on specific water issues and the Water Education for Teachers Program. Also in 2000 North Dakota will hold it's first Envirothon sponsored by the Coalition of Conservation and Environmental Education.

Billings County's comments are based on a review of the policy coupled with information obtained from the public meeting held in Denver, Colorado on March 13, 2000.

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It does not appear the "need" for this federal action has been identified pursuant to the National Environmental Policy Act nor has any further NEPA analysis been conducted. The policy is vague, lacking specifics, and completely ignores the primacy of Congress and the state authorities. The "Policy" only addresses federal lands, however, most watersheds involve federal, state and private lands, usually intermingled. It is therefore impossible not to impact private and state land in a watershed approach to planning and management.

Specific comments on the Policy:

Principle A. "Use a consistent and scientific approach to managing federal lands and resources and to assess, protect, and restore watersheds. "

Comments: The different federal agencies have management goals for similar issues, sometimes resulting in duplication and in other instances there is no consistency. Some of the agencies seem reluctant to use proven scientific practices and do not take advantage of studies that have already been completed

Principle B. "Identify specific watersheds in which to focus our bugetary and other resources and accelerate improvements in water quality and watershed condition".

Comments: Coordination with State and local governments could save a tremendous amount of time and taxpayer dollars. It would also concentrate efforts on problem areas more likely to be known by local people and agencies.

Principle C. "Use the results of watershed assessments to guide planning and management activities in accordance with applicable authorities and procedures".

Comments: Again, coordination with State and local agencies would prevent conflicts with applicable authorities and procedures.

Principle D. "Work closely with States, tribes, local governments, and stakeholders to implement this policy."

Comments: Actions and activities related to water quality and resource management have already been initiated by state and local governments.

Principle E. "Meet our Clean Water Act responsibility to adhere to Federal, State, Tribal, interstate, and local water quality requirements to the same extent as non-governmental entities".

Comments: Federal agencies have a backlog of maintenance projects, many of them water quality related. The States have water quality standards that the federal agencies have not complied with. The federal agencies should be as committed to adhering to water quality standards as any other entity or individual. Anyone else would be fined and required to comply with present laws and regulations.

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Principal F. "Take steps to ensure that Federal land and resource management actions are consistent with Federal, State, Tribal, and, where appropriate, local government water quality management programs" .

Comments: The language "where appropriate" is a concern. Although the agencies purport to want to coordinate, they do not follow provisions of NEPA which provide that where state and local governments have jurisdiction by law or special expertise, they should be granted cooperating agency status on federal land management planning activities. If the intent and mandate of NEPA were followed, local field personnel could participate in locally initiated watershed planning efforts to accomplish this "principal."

Page 8837: II. Agency Objectives: 1st paragraph states: "to accomplish these policy goals,...All agencies will implement this policy as individual agency laws, missions, and fiscal and budgetary authorities and resources permit."

Comment: These goals and actions should be developed prior to issuing this policy to ensure they are permissible under individual agency laws and missions and that fiscal resources would be available. This language indicates that there may be some conflicts or limitations that exist between the intent and goals of the policy and current authorities.

Section A. 2. a through d: states: "We will conduct watershed assessments for watersheds that have significant Federal lands and resources."

Comments: "Significant" federal lands in Billings County are intermingled with state and private" lands. Therefore the impact on non-federal lands will be significant. The policy and interpretations by federal personnel stress that there will be no effect to private property. Obviously this is untrue. **The Clean Water Act states "It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administration in the exercise of his authority under this Act."** If the agencies truly intend for this policy to affect only federal lands it should apply to those watersheds which include only federal lands. In most instances this obviously would defeat the purpose of a watershed approach. The policy fails to recognize local conditions and authorities. The words "significant" and "resources" are not defined in the policy leaving the decisions to be made after the policy is enacted. Classifications are: a) not meeting clean water or other natural resource goals; b) needing action to sustain current water quality; c) pristine and sensitive; d) needing more information. It is purported that there are no waters that are acceptable. Assessments of existing and potential conditions and classifications, using good science, should have been accomplished before the proposed policy was issued.

Section B. 1. a through b. 6 states: "We will work collaboratively to identify priority watersheds. "

Comments: This section lists six criteria for determining priority watershed, however, not one is

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directly related to scientific data to indicate water quality . Water quality should have been determined before this policy is implemented by cooperating with state and local entities, many which already have data collected.

Section B. I. b. (3) states: "Magnitude of water quality impairment, impacts to aquatic resources, and/or changes to flow regime."

Changes to flow regime were reserved to the States by the Clean Water Act by the following: **"It is the policy of Congress that the authority of each State to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this Act. It is the further policy of Congress that nothing in this Act shall be construed to supersede or abrogate rights to quantities of water, which have been established by any State."** Magnitude of water quality impairment seems to indicate all water is impaired before assessments are completed. Again, assessments should have been conducted before, with the cooperation of local entities.

Section B. l.b. (5) states: "Vulnerability of the watershed to degradation."

Comments: There is no criteria for agencies to determine a watershed's vulnerability to degradation. Cooperation with state and local agencies would be indicated.

Page 8838: B. 2. Through its entiretv to section C.

Comments: This section discusses nonpoint source pollution, implementation of Best Management Practices, total maximum daily loads, complying with state water quality standards, etc. These efforts are already occurring in various forms under Forest and BLM planning processes for grazing strategies, timber management, and coordination with states on water quality standards. This section makes it unclear as to why the policy is necessary since these efforts are already committed by federal agencies.

Page 8838: section C.

Comments: It appears throughout this section that changes in multiple use would result by implementation of this policy. Multiple use is essential to the grasslands in Billings County.

Section D. "We will enhance collaboration."

D. 3. b. states: "Provide opportunities for interested stakeholders to participate in monitoring and assessing watershed conditions and im implementing watershed restoration projects."

Comments: There is no mention of qualifications needed by "stakeholders" for these "opportunities". Monitoring and assessing conditions needs to be accomplished with proven scientific practices.

D. 3. d. states: "Seek early feedback on key decisions affecting watershed management through

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the Watershed Forum process called for in the Clean Water Action Plan and carefully consider this feedback in agency decision making. "

Comments: The Clean Water Action Plan has not been subjected to Congressional review. Public input processes for federal planning activities are governed by NEPA, Administrative Procedures Act and other federal laws. The policy sets up a "new process" which has not been authorized. The Plan indicates a **"...Forum will be convened to provide a coordinating mechanism for the development of watershed assessment, restoration, and protection efforts. The Forum will include a total of about 20 members, including representatives of: federal agencies, state agencies, tribal governments, local governments, other stakeholder organizations, and watershed partnerships and citizens."** This Forum needs to be at the local level within the affected watershed. Private landowners will have to be included since it is obvious this policy will affect private property if all land in a watershed is included. In western North Dakota the Little Missouri watershed includes Wyoming, South Dakota and Montana and will affect state and private property .

D. 4. states: We will expand opportunities for dialogue with private landholders in priority watersheds with a mix of Federal and private lands, we will work with private sector landholders to involve them in the watershed management process. We will work closely to ensure that Federally funded projects involving private cost-share partners fully consider watershed management objectives for both public and private lands."

Comments: The proposed policy does not address the affect to private property until the very end. Then, apparently as an afterthought, it becomes a concern. Private landowners are not included in any of the process of assessing, monitoring, prioritizing/categorizing, development or implementation of management practices. Obviously private lands will be affected. Private landowners need to be acknowledged as part of the planning process and federal agencies should cooperate with state and local entities for all of the above.

D. 5. & 6.: related to water quality monitoring and training

Comments: The State of North Dakota has programs in place with qualified personnel to monitor water quality. There are training programs for personnel, teachers and the public. Cooperation with State and local entities would save considerable time and expense and should be the basis of this policy.

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Thank you for the opportunity to comment.

Sincerely,

Billings County Board of Commissioners

Jerry Redmond

Jerry Redmond, Chairman

Philip Malkowski

Philip Malkowski, Board Member

Wesley D. Schuhrke

Wesley D. Schuhrke, Board Member

cc: Governor Edward Schafer
Senator Byron Dorgan
Senator Kent Conrad
Congressman Earl Pomeroy
Larry Dawson, Forest Service, Dakota Prairie Grasslands
Roger Johnson, North Dakota Department of Agriculture
Golden Valley/Billings Soil Conservation District
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North Dakota State Bureau of Land Management Director
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National Association of Conservation Districts
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