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Subject: Fw: Please take a few minutes today in input comments on water policy plans
Sender: dbcaz /Internet (dbcaz@theriver.com)
Attached Date: 04/25/00 07:07
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Sensitivity: normal
Importance: normal

Part 1

FROM: dbcaz / Internet
DDT1=RFC-822; DDV1=dbcaz@theriver.com;

TO: cleanwater / wo, caet-slc

Part 2

ARPA MESSAGE HEADER

Part 3

.>
>April 24, 2000
>
>USDA Forest Service
>Content Analysis Enterprise Tem
>Attn: UFP, Building 2, Suite 295
>5500 Amelia Earhart Drive
>Salt Lake City, UT 84116
>cleanwater/wo_caet-slc@fs.fed.us
>
>
>Dear Sir/Madam:
>
>Below are my comments 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.
>
>I am opposed to the "Unified Federal Policy for Ensuring a Watershed
>Approach to Federal
>Land and Resource Management".
>
>Watershed planning to achieve natural resource goals and objectives should
>be accomplished at the state and local level utilizing accurate science.
>The planning should be done by personnel who have to live long term with
the
>consequences.
>
>GENERAL COMMENTS:
>
>There are several substantial concerns with the intent and purpose of this
>policy. These concerns are based on several factors, including, but not
>limited to the following:
>
>1. The Wyoming Association of Conservation Districts, along with 67 other
>individuals/ organizations, filed suit in June 1999 against the US
>Environmental Protection Agency, et. al. over the Administration's Clean
>Water Action Plan. The basis of this suit includes numerous violations of
>various federal laws. The WACD, other organizations and individuals
>endorses and promotes natural resource management on a watershed basis,
they
>opposes this policy. The purpose, outcome, and decisions related to this
>policy were predetermined upon the publication of the Clean Water Action
>Plan. In addition, the intent and affects of this policy were not
>collectively analyzed for cumulative impact collectively with the other 110
>"key actions" contained in the plan. Further, the agency has not, pursuant
>to the National Environmental Policy Act, identified what the "need" may be
>for this federal action nor conducted any further NEPA analysis.

>
>2. The narrative language contained in the Clean Water Action Plan prefacing
>this particular key action, contains the following statement: "Activities
>such as road building, logging, mining, grazing, hydrologic modification, or
>excessive recreational use can degrade the integrity of these watershed and
>require actions to reduce their harm." (Clean Water Action Plan, page 30).
>
>Comment: Based on the above language it is apparent that the purpose for
>this policy has been determined. The intent is obviously based on the notion
>that virtually all land use activities are
>degrading the watershed, regardless of the method in which they are
>conducted. The states develop Best Management Practices to ensure that all
>of the above activities are conducted in a manner so as to protect the
>resource while meeting multiple use objectives. The above language indicates
>that regardless of how the activity occurs it must be degrading the
>watershed. The focus of the policy is clearly geared toward elimination of
>multiple use activities.
>
>3. The policy is extremely vague. In reading the policy, one would question
>why it has even been published it is so lacking in specifics. This is an
>issue that could have likely been addressed had adequate NEPA analysis been
>conducted to identify and define the specific issues.
>
>4. The policy is calling for actions and processes to be completed that are
>redundant to initiatives already being mandated by EPA through "authority"
>directed by the Clean Water Action Plan. More specific comments will be
>provided under the applicable section of the proposed policy.
>
>5. The policy completely ignores the primacy of state's that have delegated
>authority for implementing the Clean Water Act. Again, it appears the policy
>is yet another attempt, as can be seen in the proposed TMDL regulations, to
>circumvent the role and primacy Congress intended for the states in
>implementing the provisions of the Clean Water Act.
>
>6. The policy appears to substantially modify the management approach to
>federal lands.
>
>Specific comments on the policy:
>
>1) Page 8837; Introduction The introduction states "Implementation of the
>following proposed policy will improve water quality and aquatic ecosystems
>on Federal lands and will further the use of a watershed approach to federal
>land and resource management activities."
>
>Comment: It is troublesome that the introduction repeatedly refers to the
>Clean Water Action Plan as if it was a law that was enacted, investing
>additional authorities to the federal agencies. If the intent is truly to
>address resource planning and management on a watershed basis, then it is
>incomprehensible why the policy ignores the fact that it is highly unlikely
>that watersheds contain only federal resources and this watershed approach
>can be applied strictly to federal lands and still
>accomplish the intent of watershed planning. This leads to the next concern,
>which is the impact to private lands. The public has been reassured that
>the policy has no affect on private lands. After reviewing the policy, it is
>obvious that it will affect private landowners.
>
>2) Page 8837; Policy Goals - The policy refers to the "managing the Federal
>lands, resources, and facilities in our care".
>
>

>Comment: The glossary section does not provide a definition of "resources".
>In order to clearly understand the intent and application of this proposed
>policy it is necessary that a definition be provided.
>
>The policy goals recognize that there are existing programs for watershed
>protection and improvement currently underway and the policy is intended to
>enhance these programs. The policy goes on to identify guiding principals
to
>achieve the two identified goals.
>
>Principle A. "Use a consistent and scientific approach to managing federal
>lands and resources and to assess, protect, and restore watersheds."
>
>Comment: The policy is completely lacking in any specific detail on how
this
>will be accomplished. If
>the policy is truly intended to bring consistency among the federal
agencies
>that the agencies incorporate the following:
>A. Watershed Assessments: One of the basic fundamental challenges in
efforts
>to pursue watershed assessments is the lack of consistency between local,
>state and federal entities on the level of science being collected for
>determination of watershed health. In addition, the federal agency
>monitoring process does not appear to consider geology, climate, soils,
>hydrology, stream succession, etc. Nor are the protocols, and ultimately
the
>analysis of resource health, consistently applied. In addition, both
>the Forest Service and BLM monitoring activities are lacking in adequate
>science to determine water quality. The Bureau of Land Management tends to
>make determinations on water quality without any water quality data (Proper
>Functioning Condition). They utilize subjective physical information
>solely. The collection and use of information should not be misapplied to
>make water quality
>determinations or watershed health assessments.
>
>B. Resources for collection of credible data - The agencies should provide
>adequate resources, if necessary redirected from other redundant programs,
>to allow their personnel to actively collect the necessary science for land
>and water resource management.
>
>The policy goals state that there two basic goals to promote a watershed
>approach to prevent and reduce water pollution from federal land and
>resource management activities and accomplish this in a unified and
>cost-effective manner. The above comments should be given serious
>consideration if the agencies intend to remotely come close to achieving
the
>above goals.
>
>In addition, it is questionable why the process of evaluating, categorizing
>and prioritization for the focus of resources and actions will occur long
>before any effort is made to collect data and information. Based on the
>method proposed there will be no effort or activity to collect data until 5
>years into the process.
>
>Principal B: "Identify specific watersheds in which to focus our budgetary
>and other resources and accelerate improvements in water quality and
>watershed condition."
>
>Comments: EPA directed states in May 1999 to complete "Unified Watershed
>Assessments". These assessments, as described in EPA's memos and
directives,
>mirror the assessments described in the draft policy. Based upon the
>Association's review of various western states' Unified Watershed
>Assessments, the states included federal agency personnel. Obviously, based
>upon a sampling of these assessments the process was conducted regardless
of
>jurisdictional boundaries.

>
>The policy does not define the size of watersheds being discussed. It is
>assumed that the specific scale will be determined at the state level.
>There is a major problem with inconsistency from one agency to the next as
>to the size of the watershed. It is assumed that given this effort was
>initiated, and has been in the process for over a year, that this policy
>would recognize that existing approach.
>
>Principle C. "Use the results of watershed assessments to guide planning
and
>management activities in accordance with applicable authorities and
>procedures."
>
>Comments: The ultimate actions that may be taken as a result of this policy
>may pose conflicts between applicable authorities and procedures.
>
>Principle D. "Work closely with states, tribes, local governments, and
>stakeholders to implement this policy.
>
>Comments: Again, it is questionable that this policy is even necessary
given
>the actions and activities related to water quality and resource management
>on a watershed basis that have been initiated either by state or 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: It is obvious that the federal agencies clearly need to address
>their contribution to water quality impairments. However, it is unclear how
>this particular policy will result in federal agencies adhering to water
>quality standards. One example, the Yellowstone National Park has been
>issued notices of violations from the Wyoming DEQ for water quality
>violations as a result of sewage spills into surface waters in the park.
>These spills occur due to outdated and dilapidated treatment facilities,
>however the state can do nothing more than issue a notice of violation. The
>state cannot assess any
>monetary penalties against the federal government. The Association would
>recommend that if agencies are as committed to adhering to water quality
>standards as any other individual or entity would be, then the state's
>should be allowed to assess penalties just as they would to any other
>individual or entity.
>
>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."
>
>Comment: It is unclear why the policy is necessary to achieve this means.
>Several local conservation districts and other local and state governments
>have attempted to be involved in federal land management planning
>activities. Vice versa, local governments, where federal lands are within
>a watershed, invite and involve federal agency personnel. It is
continually
>frustrating that although the agencies purport to want to coordinate, they
>consistently ignore 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. Merely following the intent and mandate of NEPA, coupled with
>encouragement and empowerment of local field personnel to participate in
>locally initiated watershed planning efforts would accomplish this
>"principal."
>
>As well, the language "where appropriate" is vague and if the policy is
>adopted it should be clarified.
>

>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: It would seem logical that prior to developing and issuing this
>policy the agencies would have ensured that the goals and actions proposed
>in the policy were permissible under individual agency laws, missions, and
>fiscal resources were sufficient. The mere fact that this language is in
>the policy 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."
>
>Comment: The term "significant" is not defined in the glossary provided.
>Unless "significant" is defined as solely federal lands there will be an
>impact on private property. It is assumed that in watersheds that are
>identified as "impaired", "high priority", or some other category
indicating
>water
>quality impairments, that some map or delineation will be published. If the
>federal agencies even categorize a watershed as priority and there are
>private lands within that watershed, then this policy does affect private
>lands. It is unfathomable how the agencies could even begin to suggest that
>there would be no affect on private property. In Arizona, nearly all of the
>watersheds will contain mixed ownership. Therefore, if the agencies truly
>intend for this policy to affect only federal lands then it should apply to
>those watershed which include strictly federal lands. This approach
however,
>would obviously, in most instances defeat the purpose of a watershed
>approach. Therefore, suggest that the policy be withdrawn. A commitment
>should be made by the agencies to watershed planning efforts initiated by
>state and local governments. The necessary resources to accomplish these
>watershed-based efforts are provided to the state and local governments,
>without the top down edicts, which fail to
>recognize local conditions. This would truly reflect what Congress intended
>to occur in the implementation of the Clean Water Act. This is supported
>with the language in the CWA at §§ 101(b) which 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.
>
>Section B. 1 a through b.6; states: "We will work collaboratively to
>identify priority watersheds"
>
>Comment: This section goes on to provide a list of criteria or the process
>in which the agencies will determine priority watersheds. It is interesting
>to note that of the six criteria listed for determining priority
watersheds,
>not one is directly related to accurate scientific data indicating water
>quality degradation. Even though the goal of the policy is for federal
>agencies to comply with the Clean Water Act. Specifically one of the
>policy's goal state: "use a watershed approach to prevent and reduce water
>pollution resulting from federal land.."
>
>Section B. 1. b. (3) states: "Magnitude of water quality impairment,
impacts
>to aquatic resources, and/or changes to flow regime."
>
>Comment: It is unclear what the intent is of the federal agencies to
include
>flow regime. However the
>Clean Water Act states the following: §§ 101(g): "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."
>
>If the intent is to affect in any way, legally appropriated water rights,
>then this language should be deleted.
>
>Section B. 1. b. (4) This language was addressed above in comments related
>to duplication of watershed assessments being conducted by state and local
>governments.
>
>Section B. 1. b. (5) states "Vulnerability of the watershed to
degradation".
>
>Comment: How will the agencies determine a watershed's vulnerability to
>degradation.
>
>Page 8838; B. 2. Through its entirety to section C.
>
>Comment: Again, it is unclear, and this section solidifies this
uncertainty,
>as to why the policy is necessary. This section discusses addressing
>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 such
>as the large comprehensive Forest or BLM area planning processes, timber
>management, grazing strategies and management, coordination with states on
>water quality standards issues, etc. Recommend that the agencies merely
>make a commitment to watershed planning and involvement in such efforts.
>Page 8838; section C. in its entirety
>
>Comment: This section is too vague to even provide meaningful comment.
>However, it is apparent through this section that there are changes in
>multiple uses in store as a result of this policy. This is an assumption
>based on current agency trends to phase out uses and management practices
>such as timber harvesting, grazing, etc. and the language contained in the
>CWAP.
>
>Section D. "We will enhance collaboration".
>
>D. 3. b. states "Provide opportunities for interested stakeholders to
>participate in monitoring and assessing watershed conditions and in
>implementing watershed restoration projects.
>
>Comment: This statement clearly causes concern. On face value, given the
>lack of specifics contained in the policy, one can interpret this statement
>that any interested public will be invited and encouraged to monitor and
>assess watersheds. There is no mention, whatsoever, of any minimum
>qualifications for participation from stakeholders. Again, it is imperative
>that the federal agencies consult with and maintain consistency with the
>state's approach. Clearly, there must be some threshold established for the
>level of expertise necessary for stakeholders to be involved in the
>collection of scientific data.
>
>D. 3. d. states: "Seek early feedback on key decisions affecting watershed
>management through the Watershed Forum process called for in the Clean
Water
>Action Plan and carefully consider this feedback in agency decision
making."
>
>Comment: This statement is a prime example of how the agencies are treating
>the Clean Water Action Plan as an authorizing law, rule or regulation. The
>public input processes for federal planning activities are clearly governed
>by the NEPA, Administrative Procedures Act, and other
>federal laws. Yet, the policy sets forth that a "new" process will be
>followed. One contained in a Plan that was not even subjected to
>Congressional review. The Clean Water Action Plan discusses the National

>Watershed forum and 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." (Clean Water Action Plan, page 87)
>
>There is no discussion of these reviews and/or decisions being made at the
>local level within the affected watershed. Further, there is no mention of
>private landowners serving on this Forum. Given that fact that this policy
>will impact private lands, it is necessary to involve landowners.
>
>D. 4. States: "We will expand opportunities for dialogue with private
>landholders in priority watershed 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."
>
>Comment: There was a the meeting held in Denver on this issue where agency
>representatives strongly assured attendees that the policy DOES NOT AFFECT
>PRIVATE LAND. (emphasis
>added) This was presented surely in anticipation of concern over a federal
>dictate of private land management. This concern is well founded based on
>the above. This policy will obviously affect private landowners. It is
>ironic that the policy does not discuss involving private landowners
>untilthe end of the policy. In addition, landowners are involved after the
>process of monitoring, assessing, prioritizing/categorizing, development
and
>implementation of management practices, and collaboration with
stakeholders.
>This demonstrates the clear lack of understanding and recognition that the
>federal agencies who prepared the policy, have of private property rights
>and working with private landowners voluntarily and cooperatively on
>resource management activities.
>
>There are numerous examples throughout the west, where the majority of
>federal lands are located, that demonstrates private landowner commitment
to
>sustainable resource management. This section sends a clear message that
>private landowners are an afterthought.
>
>If the federal land management agencies are truly interested in resource
>management on a watershed basis, then a sincere commitment needs to be
made
>to work with state and local governments. The federal agencies must
>recognize the primacy of states in implementing the Clean Water Act, and
>most importantly recognize and respect the rights of those landowners with
>property located within these
>watersheds.
>
>Sincerely,
>
>Della E. Bales
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Elgin, AZ 85611
>
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>