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ROBERT S. LYNCH
ASSISTANT SECRETARY-TREASURER

TELECOPIED AND MAILED
(Fax no.: 801-517-1021)

May 24, 2000

CAET RECEIVED
MAY 25 2000

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

Re: Unified Federal Policy for Ensuring a Watershed Approach to Federal Land and Resource Management

We thank you for the opportunity to comment on such an important issue. The Clean Water Action Plan has yet to find Congressional support. Nevertheless, agencies continue to put forward programs without any clear understanding of the relationship of these programs to existing law. Our comments address the proposed Unified Federal Policy as listed in the Federal Register, February 22, 2000. Were the necessary clarity included, we could be supportive of the policy's goals and principles. However, absent that clarity, the goals and principles contained therein are flawed. Please note our two primary objections below.

1. Existing Interests (State, Tribal, Local, And Contractual) In Water Use Must Be Specifically Recognized And Their Institutions, Laws, Procedures And Rights Honored.

Utilizing a watershed approach may provide a sound methodological assessment in water quality protection. However, federal watershed management provides a convenient avenue for various federal agencies to ignore state primacy in the management of water and, in most cases, water quality programs. For this reason, it is essential that the proposed policy specifically reflect the rights and interests of existing water users.

On page 8835, the notice states that "[N]othing in the proposed policy is intended to adjudicate, determine, or otherwise affect water rights." We strongly support such a declaration. However, the lack of clarity in the policy provides little that would assure the stated intent.

For instance, the proposed policy notes that "flow regime" can impact the criteria for priority watersheds. Yet, no mention is made of state water allocation and permitting systems and the water rights acquired through them. Thus, in practice, it seems possible that federal agencies would have the power to alter water rights, thereby avoiding the accepted states' water process.

Moreover, the glossary of terms defines "watershed conditions" with a reference to "water flow characteristics and processes." Also, reference is made to a review of policies that "affect land and water uses and water quality." However, in both instances the proposed policy fails to recognize existing rights and restraints. Where "water flow" and "water uses" are referred to, it must be made clear that federal agencies will honor state allocation systems and other established rights, such as consumptive use requirements.

The proposed policy rightly encourages cooperation by federal representatives and state and local efforts. By definition, cooperation necessitates respect for all parties in interest. Thus, the policy must reflect true cooperation by specifically addressing and ensuring that existing rights, programs and interests will be recognized and honored.

2. <u>The Proposed Policy Lacks Adequate Clarity In Terminology As Well As Detail.</u>

The proposed policy is literally filled with language that spawns more questions. If the purpose of such broad language is to leave variance for site-specific conditions and local determinations, then that purpose should be explicitly stated. Nevertheless, questions remain as listed below.

Perhaps most apparent, watershed assessment will be analyzed via a "common science-based approach." Suffice it to say that this

term leaves room for a plethora of important factors and issues to be considered.

Also, the policy references "classifying" the conditions of the watershed. Yet, the policy makes no mention of what the classifications will be, nor does it explain the criteria for such classifications.

Similarly, in establishing priority watersheds, the policy references "issues the federal agencies identify, including possible adverse effects on water quality," and "change[s] to flow regime." However, the policy does not explain what kinds of "issues" are contemplated. The answer to this question could have significant impact on state and private water rights. Also, there is only a mention of water-bodies that will warrant "special protection." The policy must be changed to include a definition of "protection" and identify who will provide such protection.

Finally, it is stated that federal agencies will utilize TMDL results in watershed planning and resource management activities. This brings two questions to mind. First, it is unclear how utilization of these results will be accomplished. Second, given the questionable statutory authority as illustrated by the Department of Agriculture's recent comments on EPA's proposed TMDL rule, it is faulty rationale to establish a policy in hopes that the statutory authority exists to implement it.

Again, thank you for the opportunity to comment and we encourage the continuing effort to seek the participation of interested stakeholders in watershed management decisions.

Sincerely,

Robert S. Lynch
Asst. Secretary/Treasurer

RSL:psr
cc: Hon. Jane Dee Hull, Governor of Arizona
Arizona Congressional Delegation
Rita Pearson, Director, Arizona Dept. of Water Resources

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