LATE 232

Idaho Cattle Association

ICA

May 24, 2000

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

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

On behalf of the Idaho Cattle Association, I submit the following comments. ICA is a non-profit association representing nearly 1,500 beef producers, feeders, and related business members. Our membership includes many stakeholders of interests in lands managed by the Bureau of Land Management and the United States Forest Service.

We are concerned about the proposed policy because it threatens to usurp authority from the states. It is the policy of Congress that the authority of each state to allocate quantities of water within its jurisdiction shall not be superceded. Congress has long deferred to the states in decisions concerning the allocation of water and its many uses. Any problems are more properly addressed at the local level. It is at the grassroots level that people are fully aware of the site specific condition, historical contexts, resource availability, legal entitlements, and other determinative factors upon which wise management decisions are made.

Our apprehension about this policy also stems from the fact that it has not been authorized by Congress. Watershed protection is not found in the Federal Land Policy Management Act, Public Range Improvement Act, or the Multiple Use Sustained Yield Act. It appears as though the agencies are overstepping their legislative duties and
boundaries in their attempts to manage the lands on a watershed basis. Congress has extensive authority of federal lands and the water within those federal lands. Before the agencies reach the point of promulgating rules

CAET RECEIVED
MAY 25 2000

2120 AIRPORT WAY • P.O. BOX 15397 • BOISE, IDAHO 83715 • 208 / 343-1615 • FAX 208 / 344-6695

associated with this proposed policy, the BLM and USFS should consult with Congress. Congress enacted the Clean Water Act, the act that these agencies rely upon in formulating this unified watershed policy.

Before implementing this policy, the agencies should determine the extent of private water rights that may be affected by the proposed watershed policy. Many of these water rights predate the reservation of federal land. In order for the watershed policy to work, the agencies must know the extent of what is involved. Otherwise, the agencies' unified watershed policy could lead to a negative impact on these water rights and result in a Takings claim under the Fifth Amendment or some other legal consequence. Also, before a watershed protection program can be established, the extent of water rights and the effect of this proposed policy on private property must be evaluated. As mentioned above, many private water rights exist on federal land. There is also a possibility that this proposal may affect water rights on private land. The responsible agencies must determine the extent of these water rights and the impact this policy will have on private water rights before implementing this policy.

In addition to determining the impact of this policy on water rights, the agency should conduct an economic analysis of the proposed unified watershed policy. The costs associated with this policy could impact or eliminate jobs, recreation opportunities, economic development, and the livelihoods and economic interests of those who rely on federal lands (i.e. grazing, recreation, mining, timber, oil, and gas). Moreover, the agencies are required to identify the potential economic impact of proposed and final rules on small entities that will be subject to the rule's requirements.

In addition to the above concerns, the content of this policy should also include flexible and site-specific approaches to watershed management. Moreover, the plan should include an emphasis on the utilization of sound science before any implementation of any program, a cost evaluation, statutory authority behind the policy, and the impacts on states and counties. Also, the proposed policy should also include an assessment or analysis of this policy with other ongoing agency initiatives.

We offer these comments in the hope that the agencies will consider and address our concerns.

Sincerely,

Greg Garatea, President
Idaho Cattle Association