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MONTANANS
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April 15, 2000

USDA - Forest Service
Content Analysis Enterprise Team
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We write in response to the Notice of proposed policy; request for public comment published in the Federal Register on February 22, 2000, Volume 65, No. 35, proposed policy and its associated pages 8834 - 8840. Deadline April 24, 2000.

Montanans For Multiple Use is a grassroots organization representing approximately 300 members living contiguous to National Forest which comprises about 80% of the County in which located. Many members are, or have been, connected to the local National Forests for many generations and are having their custom and culture dramatically changed due to the refusal of the U.S. Forest Service to continue to activity managed the National Forest according to applicable laws and regulations such as the Organic Act, "NFMA", "FLPMA", "MUSYA", and "NEPA".

In addition, the surrounding communities and residents are having their health and safety jeopardized due to the imminent danger of possible wildfire due to insect and disease (forest health) and the accumulation of excessive fuel loadings on the forest floor. Forest roads are being decommissioned (destroyed) as called for in the Clean Water Action Plan (CWAP). Thus, forestry and forest management for any of the prescribed purposes according to law is ignored. The receipts to the 25% fund for County Roads and Schools.

The Clean Water Action Plan hereby referred to as CWAP was issued under the direction of Vice President Albert Gore on February 14, 1999.

We wish to remind you that CWAP was issued <u>in violation</u> of:

----The National Environmental Policy Act (NEPA) as it fails to complete an Environmental Impact Statement (EIS) or Environmental Analysis (EA) for an action significantly affecting the quality of the human environment. NEPA documentation is required to show "cumulative impacts" both direct and indirect and connected actions of which there are untold potential impacts with CWAP's proposed 111 "Key Actions". The majority of the key actions are mandatory, not discretionary in nature. As mandatory actions, there is nothing left to the decision-making authority of the agencies, rendering a consideration of the environment useless. The NEPA process would be frustrated. For example, the Forest Service <u>shall</u> decommission or obliterate 5,000 miles of roads by the year 2002 and <u>shall</u> place a "temporary moratorium on new road construction in roadless areas greater than 5,000 acres.

----The Intergovernmental Cooperation Act (ICA) for the purpose of "Strengthen State and local government, county, and improve relations between those governments and the federal government through closer cooperation and coordination of policies and activities. This was never considered before implementation. On December 4, 1998, the EPA issued a memorandum to States to complete the Unified Watershed Assessments assessing the health of each watershed within each State.

----The Regulatory Flexibility Act (RFA) for the purpose of all agencies of the federal government to analyze their proposed actions for any significant impact on small entities and businesses. This never occurred. However, based on CWAP, on Dec. 4, 1998 the EPA issued a memorandum requiring states to complete Unified Watershed Assessments (UWA's) assessing the health of each watershed within each state. The memorandum does not cite to any statutory authority for the implementation of UWA. The EPA has subsequently withheld funding appropriated by Congress for failing to comply.

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----The Unfunded Mandates Act (UMA) states that each agency shall, unless otherwise prohibited by law, assess the effects of federal regulatory actions on state, local and tribal governments, and the private sector.

----The Violation of the Fifth Amendment of the U.S. Constitution's Prohibition On The Taking Of Private Property. One of the key actions mandates the EPA, the BLM, and the Forest Service to "implement a strategy...in watershed-based assessments and actions where urban-rural interactions threaten forest health and water quality". Consequently, CWAP will effect private property contiguous to public property. When CWAP was instituted, consideration was not given to Fifth Amendment Rights as required.

----Violation of the Clean Water Act (CWA). The Congress of the United States passed, in 1948, the Water Pollution Control Act with later amendments in 1972 resulting in the Clean Water Act. CWAP expands the EPA's authority under the CWA, in violation of the CWA and the Administrative Procedures Act. Examples being the establishment of the Unified Watershed Assessments (UWA) and Regulation of Polluted Runoff (Nonpoint Source Pollution).

----Violation of Congressional Mandates For Public/Federal Lands Management. Congress has regulated the management of federal and public lands, including BLM and U.S. Forest Service Lands, or federally managed lands through FLPMA, MUSYA, and NFMA. These Acts, passed by the U.S. Congress established detailed planning procedures (land use plans) for federally managed lands management and require that federally managed lands be managed pursuant to the principles of multiple use and sustained yield.

The CWAP attempts to challenge how federally managed lands are governed and used under the above statutes. CWAP mandates that all federally managed lands must be managed according to a "Unified Federal Policy" for watershed management, consistent with the dictates of the CWAP. CWAP significantly modifies federal wetlands policy. The goal of CWAP is to achieve a net increase of 100,000 acres of wetlands per year by the year 2005. Wetlands programs must be expanded, and new wetlands created.

Grazing and other permit issuance and renewal on federal lands would be changed with mandates of CWAP. Permitting would be greatly reduced with CWAP regulations which violate previously passed laws.

Through CWAP, the Forest Service and BLM road policies through CWAP will significantly impact the individuals and communities which depend upon roads located on federally managed land. The CWAP requires the BLM and Forest Service to: (1) relocate over 2000 miles of roads and trails by year 2005; (2) decommission or obliterate 5000 miles of roads by year 2002; (3) in 1998, mandate an 18 month moratorium on new road construction in national fores, and; (4) in 1999, mandate that the EPA consider requiring Clean Water Act permits for public roads, including the development of a pilot program.

----Violation of State of Montana Water Laws and Rights and Controls. Undoubtably, CWAP overrules and overrides many other States laws, rights, and responsibilities.

----The Clean Water Action Plan ("CWAP") was issued to Vice President Albert Gore, Jr. on February 14, 1998.

----Although the EPA and DOA issued a "Notice of Intent" to develop the Plan in the Federal Register on November 10, 1997, the CWAP was not subject to the rulemaking requirements under the Administrative Procedures Act, the public comment requirements under the National Environmental Policy Act, the state and local government cooperation requirements under the Intergovernmental Cooperation Act or other statutory and regulatory requirements.

----The public was never allowed to review a draft Plan or comment on any parts of the Plan before it was adopted and implemented.

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----The proposed policy, already in effect, has currently and potentially impacted all private, state, and local government lands.

The opportunity to comment on this proposal is appreciated and taken it very seriously.

But at the same time, appalled at the apparent sheer arrogance of officials and the agencies involved to call for "public comments" after Plan implementation.

The "Notice of proposed policy; request for public comment" is viewed as a flagrant attempt to legitimize a plan that has long since been initiated and in effect and considered "not legal". It is also viewed as "not about clean water".

The Plan (CWAP) and its implementation circumvents the U.S. Congress, Constitution of the United States, many State Laws and Regulations, and established Statutory Requirements as listed above.

The fact that the "Peoples Representative Form of Government" has been ignored and bypassed is viewed as a threat to individual freedoms and an attempt by federal agencies to gain power and control over the waters, lands, and citizens of the United States. It is greatly resented and viewed as a grave danger to the Constitution of the United States and individual civil rights.

We respectfully request that the currently Plan (CWAP), in addition to the proposals as listed in the Federal Register, Vol. 65, No. 35 /February 22,2000/Notices, be withdrawn.

Respectfully:

Clarence Taber

Clarence Taber
President

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cc: Senator Conrad Burns, MT
Senator Max Baucus, MT
U.S. Representive Rick Hill, MT
USFS Chief, Mike Dombeck

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