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Subject: Comment on Federal Watershed Policy
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Part 1

FROM: rutkowski / Internet
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CC: president / Internet
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Part 2

ARPA MESSAGE HEADER

Part 3

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

Dear USDA-Forest Service Content Analysis Enterprise Team:

I respectfully submit these comments on the February 22 draft version of the Unified Federal Policy for Ensuring a Watershed Approach to Federal Land and Resource Management. I genuinely feel this draft policy should: ensure that the federal government is held to the same standards as everyone else,
protect priority watersheds, allow adequate public partcipation, and allow for adequate resources to fulfill the goals of this policy.

The federal government should be held to the same standards as everyone else who has to comply with federal environmental regulations. In fact, the federal government should not only meet water quality standards as mandated by the Clean Water Act, they should serve as a model for the nation by setting loftier goals such as assuring protection of high quality and sensitive waters, and setting a date for compliance with water quality standards.

To comply with the antidegradation requirements of the Clean Water Act, activities on federal land must also not degrade water quality. Federal agencies should not allow an activity until they first determine that the permit will not degrade water quality. This is often ignored in land management decisions.

Best Managment Practices, though useful and a good idea, should be regularly reviewed and revised. The effect of BMPs on water quality is often not measured so their effectiveness is not known. The policy should also require monitoring of BMP compliance and effectiveness.

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I recommend that priority watersheds be considered Outstanding National Resource Waters (ONRWs). Federal agencies should recommend to state agencies that priority watersheds be designated as ONRWs. Even before this designation, state and federal land managers should treat priority watersheds as such.

Data collected from all waterbodies on federal lands should be used for water quality reporting under the Clean Water Act. The policy should explicitly provide that information gathered by and for federal agencies as part of watershed assessments will be used for Clean Water Act water quality reporting and assessment programs.

This policy allows federal agencies a 10 year water quality reporting schedule. Federal agencies should be held to the same 2 year reporting schedule state agencies have to comply with for the biennial review.

Citizens should be allowed to ask for the selection of watersheds in need of special protection through a public petition process. Current language about the involvement of stakeholders is inadequate and should include a mechanism for the federal agency and state or tribe to respond to a petition in a timely manner.

Finally, to achieve all these goals, each federal agency must commit to asking for adequate funding. Existing federal agency budgets do not contain sufficient funding to implement this policy. Without new funding and a commitment to this policy, the policy is ineffective.

Thank you offering an opportunity to submit comments on the Unified Federal Policy for Ensuring a Watershed Approach to Federal Land and Resource Management. hope you consider these comments as you finalize this new policy.

Sincerely,
Robert E. Rutkowski, Esq.

cc: John Podesta

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Attachment

Please consider these points.

1. The Federal Government Should Serve as a Model. Federal lands should meet the same, if not higher, standards required of states and the private sector when it comes to meeting water quality standards. The overall bar of performance of the federal government should serve as a model to states and the private sector and should include loftier goals such as: setting a date by which water quality standards in all degraded watersheds on federal land must be attained, and assuring protection of high quality/sensitive watersheds on all federal lands by a certain date.

2. Federal agencies should not engage in activities that degrade water quality. To comply with the antidegradation requirements of the Clean Water Act, federal agencies should not allow permits without determining first that the permit will protect water quality. This provision is often ignored in land management decisions.

3. Priority Watersheds should be considered an Outstanding National Resource Water (ONRW). When Federal agencies identify priority

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watersheds, there should be a mechanism to recommend to the state or tribe agency that the watershed be classified as an ONRW and even before this designation, federal land managers should treat priority watersheds as ONRWs.

4. The Policy should require monitoring of Best Management Practices (BMPs). Federal agencies should be required to regularly review and revise BMPs. The policy should also require the monitoring of BMP compliance and effectiveness.

5. A Public Petition Process should enable citizens to ask for the selection of watersheds in need of special protection. Current language about the involvement of stakeholders is inadequate and should include a mechanism for the federal agency and state or tribe to respond to a petition in a timely manner.

6. Data from Water Quality Assessments should be used for management and regulatory decisions. The policy should allow federal lands to become models for collaborative data gathering and analysis by providing that information gathered by federal agencies be integrated into water quality reporting under the Clean Water Act.

7. Federal agencies should not be allowed 10 years to satisfy CWA biennial reporting requirements. The policy's ten year cycle is not fair to states and tribes who are reporting water quality every 2 years. The Federal government should be under the same obligation.

8. Federal agencies must commit financial resources to this policy's goals. Without adequate funding, the policy is ineffective. Existing budgets cannot accomodate the new policy so participating agencies should request the funding needed to achieve the policy's goals.

Additional Comments
Unified Federal Policy to Enhance Watershed Management on Federal Lands

Introduction
I applaud efforts by the Department of Interior and the Department of Agriculture to insure that federal land managers take the steps necessary to guarantee that their activities protect and restore water quality. Over the past 30 years, significant progress has been made in delivering the Clean Water Act (CWA)?s promise of making the water of all the nation?s streams and lakes fishable and drinkable. Despite the progress, more needs to be done. Almost 40 percent of the nation?s waters assessed by states still do not meet water quality standards. If we are to succeed in cleaning up these remaining waters, federal land managers must meet the same, if not higher, standards required of states and the private sector.
Unfortunately, in many areas federal land management activities contribute to water pollution. [add # of impaired water bodies on federal lands or some other statistic to show extent of problem for which federal land managers are responsible]

I hope that this unified federal policy will provide mechanisms for preventing water pollution from federal land management activities and also for enhancing water quality. While the proposed policy generally sets the right goals, I believe that it lacks three key prerequisites for maximum effectiveness: (1) adequate resources; (2) strong public participation; and (3) a sufficiently "high bar" for measuring success.

In addition to raising the overall bar for performance, the policy should include a "hold harmless" provision which guarantees that current efforts to improve water quality, some of which are system wide, will not (1) be replaced by "targeted programs" or (2) lose resources to new

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initiatives. For example, BLM is implementing a riparian restoration program throughout riparian areas on grazing lands under its management. Baseline?and necessary?restoration measures like these on degraded federal lands should continue. The unified federal policy should enhance water quality by targeting resources to designated priority watersheds without lessening nationwide baseline programs.

I believe that the unified federal policy can help effectively implement current agency programs and enhance these programs to ensure that they deliver clean water in federal watersheds. I suggest the following changes to the proposed policy to ensure that it produces meaningful results.

Specific Recommendations

1. Goals Should Include Attainment of Water Quality Standards by Date Certain.

The policy should set ambitious goals. The policy commits to "meet[ing] applicable state and tribal water quality requirements under the Clean Water Act." The policy should set a explicit, loftier goal such as: (1) attaining water quality standards in all degraded watersheds under federal control by a date certain; and (2) assuring protection for high quality/ sensitive watersheds in all federally managed or impacted lands by a date certain. In addition, language should be added specifying that it is the policy of federal land managers to "reduce or halt the expansion or initiation of those activities likely to impair water quality." While more ambitiously framed than "meet[ing] water quality requirements," these proposed changes constitute nothing more than is mandated by the Clean Water Act.

2. Policy Should Include Presumption Against Activities that Impair Water Quality.

Despite significant progress in addressing point sources of pollution, polluted runoff from various land uses such as logging and grazing continues to cause significant water pollution. Approximately 90 percent of the waters listed by states as impaired fail to meet water quality standards at least in part as a result of polluted runoff from diffuse or non-point sources. Public and private land use decisions are causing widespread, incremental degradation of the nation?s watersheds. These incremental reductions in water quality add up to significant water pollution in many areas in violation of the CWA?s mandate against further degradation. The CWA act plainly states its purpose to both "restore and maintain the quality of the nation?s waters." 33 U.S.C. § 1251(a).

A single overriding principle must guide watershed management?first, do no harm. Federal agencies should not engage in activities themselves that degrade water quality. When permitting the activities of others, federal agencies should not issue a permit without finding that the proposed activity will protect existing water quality. This approach is consistent with the presumption against degradation of existing water quality which currently applies to all the nation?s waters, but which is frequently ignored in routine land management decisions.

In those rare instances where circumstances may justify a reduction in water quality, the public must be provided the opportunity to participate in the decision and the agency responsible for the decision must make the specific findings required by federal antidegradation regulations. The regulations require that the agency find that "lowering water quality is necessary to accommodate important economic and social development." 40 C.F.R. § 131.12(a)(2). "Necessary" means that no other alternatives are available. "Important" means that failure to allow the activity will result in significant economic hardship to the local community. See EPA, Economic Guidance for Water Quality Standards Workbook, EPA 823(b) 95-002 (March 1995). EPA?s guidance makes clear that "[t]he antidegradation policy is intended to protect current water quality; in only a limited set of cases can

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economic grounds be used to allow for a lowering of water quality." Id. Under no circumstances are reductions in water quality allowed where the reduction would interfere with existing uses of the water or the water is an outstanding national resource water. 40 C.F.R. § 131.12.

3. Priority Watersheds Should be Considered Outstanding National Resource Waters.

Once a watershed has been identified as a priority watershed, it should be considered an outstanding national resource water (ONRW). Federal regulations provide for the designation of highly valuable waters as an outstanding National resource. 40 C.F.R. § 131.12(a)(3). States are given the authority to designate outstanding national resource waters. The policy should include a mechanism for federal land managers to recommend to the relevant state or tribe that priority watersheds be classified as outstanding national resource waters. This could be done as part of each state?s triennial review of its water quality standards. EPA?s triennial review of state standards provides a regular periodic means for ensuring that state use classifications are upgraded as appropriate to reflect watershed priority designations.

Even before official state designation as an outstanding national resource water, federal land managers should treat priority watersheds as ONRWs. Federal antidegradation regulations require that the water quality of ONRWs "shall be maintained and protected." 40 C.F.R. § 131.12(a)(3). The purpose the antidegradation regulations is to fulfill the Clean Water Act?s goal of not only restoring water quality, but protecting those waters that have managed to stay clean. The antidegradation regulations provide for three tiers of review to maintain water quality. Tier I applies to all waters and prohibits lowering water quality below a level necessary to protect existing uses. Tier II applies to waters that exceed water quality standards and requires that a review of economic and social need, as well as other factors, be considered before allowing a reduction in water quality. Tier III applies to outstanding national resource waters and prohibits the reduction of water quality.

Once a watershed has been identified as a priority watershed, reductions in water quality should be prohibited. A watershed is identified as a priority because of its importance as habitat, for recreational uses, for drinking water supplies or for other values. If the public and federal land managers have decided a watershed is a priority for addressing current causes of water pollution, it only makes sense to ensure further reductions in water quality do not occur. It will be much easier to address current water pollution if the problem is not allowed to get worse in the meantime.

4. Policy Should Require Broad Application of State-of-the-Art BMPs.

Currently, federal agencies rely primarily on best management practices (BMPs) to address pollution caused by diffuse, non-point sources such as erosion from clearcut forests and heavily grazed lands. Despite their name, some of these BMPs are out-dated and fail to represent state-of-the-art practices currently available. The policy should commit federal agencies to reviewing and revising BMPs on a regular schedule.

Some BMPs are good, but federal agencies fail to apply them consistently. For example, contracts for timber sales that effect endangered species such as salmon often contain effective BMPs to protect water quality. These BMPs include buffer, no-cut zones adjacent to streams and [add more specifics here]. Where the U.S. Forest Service has developed effective BMPs, there is no reason not to apply them to all timber sales.

5. Policy Should Include Commitment to Monitor and Evaluate Effectiveness and Compliance with BMPs.

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Monitoring is critical to ensuring that BMPs are actually doing the job in protecting water quality. Monitoring is essential both to ensure that BMPs are effective and that private and public activities on federal lands comply with the BMPs. The policy should include a commitment by federal agencies to monitor regularly compliance and the effectiveness of BMPs. The results of this monitoring should be used to review and revise BMPs on a regular schedule.

6. Selection of Watersheds for Priority Targeting Should Include Explicit Mechanism for Public Participation.

Non-governmental organizations have a great deal to contribute to establishment of criteria and selection of priority watersheds. Members of the public have valuable expertise to supplement that of federal agencies. In addition, the validity and acceptance of the priorities selected depends on allowing the public to have input in the selection. For these reasons, the policy should include an explicit mechanism for citizens to propose selection criteria and to nominate watersheds for priority targeting.

The policy should create a clear and straightforward petition process which cuts across the agencies to enable citizens to petition for the selection of watersheds in need of special protection or restoration. A protocol is needed, including (1) mechanisms for the governing federal agency and the affected states or tribes to respond to the petition, and (2) timely decision from the decision-making authority. It is unclear from the proposal whether a single agency, such as the Council on Environmental Quality, will have ultimate responsibility for selection of priority watersheds. Giving each federal agency the ability to designate priority watersheds makes sense as long as the public has a clear and defined role in the process.
The current language discussing involvement of stakeholders is inadequate. Citizens need an explicit opportunity to initiate selection, rather than simply react to government initiatives.

7. Data from Water Quality Assessments Should be Collected in Format for Use in Management and Regulatory Decisions.

The policy should include a specific commitment to collect information in a format and with a focus that will enable key management and regulatory decisions to be made based on the data collected. In particular, the policy should explicitly provide that information gathered by and for federal agencies as part of watershed assessments will be systematically integrated into water quality reporting and assessment programs under the Clean Water Act, such as requirements under §§ 303(d), 305(b), and 319. This would require effective methods of sharing information between federal agencies and the states that are primarily responsible for water quality reporting under CWA programs.

Federal lands should become models for collaborative data gathering, analysis and information-based decision making. There is an ongoing effort to harmonize federal, state, tribal and private data gathering under the auspices of the Advisory Committee on Water Information (ACWI) and its subsidiary National Water Quality Monitoring Committee. More should be done in this policy to endorse and support those efforts.

The policy?s ten-year assessment cycle does not satisfy the CWA?s biennial reporting requirements and should be changed. The CWA requires states to provide water quality assessments every two years. 33 U.S.C. § 1315(b). A lot happens in ten years. Regular monitoring and evaluation should be required to ensure that actions taken to protect water quality are effective. Federal land management agencies cannot and should not establish a policy that endorses a more leisurely pace for water quality assessment than the law allows. The policy recognizes the need to treat federal entities and non-federal entities alike. Having consistent reporting requirements is necessary to provide equal treatment.

8. Policy Should Include Commitment of Resources.

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Given all that is needed to ensure that federal land managers are meeting their responsibilities under the Clean Water Act, it is inappropriate to hold this policy to existing budgets. The policy should include a commitment from participating agencies to assess what increases will be needed to achieve the policy?s goals and then to request additional funds. For example, new funds will be needed for increased monitoring, as well as increases in implementation costs for BMPs on lands controlled by agencies without established watershed programs. This assessment should occur in time to be included in the President?s budget request for FY02 submitted to Congress in February 2001.

Conclusion

Ensuring that federal land managers do their share is critical to the success of the Clean Water Act. Many of the nation?s waters are located on federal lands or are impacted by activities on federal lands. I applaud the efforts of the Department of Interior and Department of Agriculture to insure that federal land managers take the steps necessary to guarantee that their activities protect and restore water quality. I hope the Departments will adopt the changes suggested herein so that the unified federal policy will produce meaningful results.

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