# Coalition for Land Use and the Environment

## Delta, Mesa, Montrose, and Ouray Counties

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

March 8, 2000

Dear Team,

I enclose an analysis of the Unified Federal Policy for Ensuring a Watershed Approach to Federal Land and Resource Management by Tom McDonnell. I agree with his analysis in its entirety. I would add that this policy is clearly drawn from the UN's Agenda 21 - specifically Chapter 18, sections 8; 9.a,b,c; 11.a.i,ii; 12.a through p - a document that has not been in any way approved or ratified by the Congress of the Unite States. I speak for our entire coalition when I say that I am adamantly opposed to the policy and the methods being used to force it upon the American people.

Sincerely,

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# Watershed resource management: A review

***By Tom McDonnell***

Wednesday, March 01, 2000

indicates audio link

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The following is a preliminary review of the Unified Federal Policy for Ensuring a Watershed Approach to Federal Land and Resource Management. The comment period for this proposed rule is from February 22 to April 21, 2000. This comment period is 30 days shorter than originally announced last fall.

There are four public meetings scheduled: March 7 in Portland, Oregon; March 9 in Milwaukee; March 14 in Atlanta; and March 16 in Denver. Congresswoman Cubin called the last Forest Service meetings on its Roadless Management rule a "mockery of the public comment process." These meetings are little better, with public comment limited to one hour and most of the time devoted to agency presentation on the unified federal policy and controlled discussion.

It is important to note that these proposed regulations potentially apply to all water and land resources -- private, state and federal. Since the inception of the Clean Water Act, federal agencies have expanded the definition of "waters of the United States", or waters navigable by a ship of interstate commerce, to include any water at which a goose may glance. Under these regulations, federal agencies propose to expand their authority to all resources and land which water touches. Such an expansion of authority jeopardizes the continuation of any vested property right in America and raises the question of whether we are truly a self-governed people or a people governed by centralized authority. These regulations could be considered representative of those of a democratic socialist state, not a republic -- democratic only in the sense that a majority of the people either do not speak or are too uninformed to speak.

PRELIMINARY REVIEW OF THE
UNIFIED FEDERAL POLICY FOR ENSURING
A WATERSHED APPROACH TO
FEDERAL LAND AND RESOURCE MANAGEMENT

Prepared by Tom McDonnell

Review of the Department of the Interior's, Secretary Babbitt's, and

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USDA Secretary Glickman's announcement of the unified federal policy for ensuring a watershed approach to federal land and resource management, falsely leads the reader to believe this policy only applies to federally managed land and resources. This proposed policy potentially impacts all private, state and local government lands.

The first objective within the policy is to delineate the boundaries of watersheds with "significant Federal lands and resources." The term "significant" is not defined within this or other documents related to the Clean Water Action Plan. In other documents related to watershed management, some agencies are defining resource as "a substance or place required by an organism for its growth, maintenance and reproduction." With terms such as "significant" and "resources" left undefined within this document, federal agencies could potentially delineate every watershed with a wetland, migratory bird or endangered species within its boundary.

Once watersheds are delineated (some 20,000 by some federal agency analyses), federal agencies are to assess the existing and potential condition of watersheds and classify them as either: a) not meeting clean water or other natural resource goals; b) needing action to sustain current water quality; c) pristine and sensitive; or d) needing more information. It should be immediately noted that "clean water or other natural resource goals" are not outlined within the document. In fact, under point number 2(6), the document states that watershed management goals will be identified and incorporated into watershed management plans, programs and actions at a later date. Furthermore, point 2(5) of the plan states that watershed assessments and management will be based on good science, but goes on in the glossary of terms to say that "assessment will be conducted using existing data, where available" and that "data gap may suggest the collection of additional data."

EPA's assessment of water quality to date, has been anything but good science. In 1999, an EPA report led Congress to believe that agriculture polluted 70 percent of the nation's streams. In other 1999 EPA documents, EPA states that 40 percent of U.S. waterways are still polluted, and 60 percent of the current pollution comes from agriculture and urban non-point sources. But EPA's own actual data supports neither of these statements. Their data used to justify regulating Animal Feeding Operations (AFOs) shows that only 693,905 miles of the 3.6 million miles of streams in America, or 19.3-percent, was ever surveyed. Of those 693,905 miles of surveyed stream, only 14,075 miles, or 2 percent, had major problems due to livestock. It must be remembered, however, that even this data is suspect because most of the surveying occurred in areas where problems were thought to be likely, and 22 percent of the data came from one state -- Mississippi.

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EPA data also shows that only 248,028 miles of streams nationally, or 7 percent, are classified as "impaired" by all sources of pollution. Based on this data, it would be impossible for 60-70 percent of this nation's streams to be impacted by agricultural pollution. Even EPA's data supporting "impaired" classifications is suspect, however. After Wyoming had 350 streams listed by EPA as impaired, Wyoming reviewed the information and found that most of the streams had been listed based on subjective "professional opinion," rather than the quantitative standards of biological, chemical and physical data required by federal law. Once Wyoming law was also passed requiring water quality analysis based on biological, chemical and physical data, the number of streams listed as impaired plummeted from 350 streams to 86 streams.

Once watersheds are delineated and assessed using "good science," federal agencies under this proposed rule are to implement pollution prevention and controls to address point and non-point source water pollution. The prevention and controls outlined include the establishment of Total Maximum Daily Loads (TMDLs) and Best Management Practices (BMPs). While this rule states that it will implement these actions in a manner consistent with legal authorities, it qualifies this statement by using the term "applicable legal authorities" and does not limit these authorities to the statutes passed by Congress and signed by presidents past and present. The proposed rule also does not acknowledge the fact the Clean Water Act explicitly exempts non-point source pollution from regulation and that federal agencies have no legal authority to implement TMDLs and BMPs. It can only be assumed that this section of the Clean Water Act is not considered "applicable legal authority."

The proposed regulations state that federal agencies will work with states "to address nonpoint sources of pollution" and will "help" states develop Total Maximum Daily Loads. What the proposed rule doesn't state is that on August 23, 1999 EPA published new proposed regulations that require states to not only provide EPA with a list of impaired streams and TMDL's for EPA's approval, but also to provide "reasonable assurances" that the state will regulate any pollution identified by a TMDL. If a state does not provide "reasonable assurance," EPA will directly regulate the problem. Reasonable assurance under the rule must include proof of actual state regulation and funding to enforce them. Also under the TMDL regulations, the term "pollution" is redefined to include any hydrological modification. In other words, any diversion of water pursuant to an established water right could be considered pollution.

There is no mention within the proposed regulation of their impact on the environment (NEPA), impact on small business, or impact of unfunded mandates being placed on the state. The establishment of

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TMDLs will likely result in the permitting of all activities within a watershed that don't meet the standards to be established by the EPA. Costs to small businesses could be substantial, as shown by American Farm Bureau Federation's analysis of EPA's January 1999 Unified National Strategy for Animal Feeding Operations. Under these regulations all 450,000 farms and ranches with livestock will have to be permitted or have Comprehensive Nutrient Management Plans to ensure they do not pollute water resources above and below ground by the year 2008. Farm Bureau estimates the average cost of developing and implementing these plans will be $50,000 per farm with larger operations exceeding $100,000.

Point 4(3)(2) of the plan states that opportunities will be provided "for interested stakeholder to participate in monitoring and assessing watershed conditions and in implementing watershed restoration projects". With the rash of citizen suits that have been filed in recent years involving non-point source water pollution, this section brings immediately to mind Section 505(a)(1) of the Clean Water Act authorizing the filing of legal actions by private citizens' groups.

While comment is strongly urged on these proposed regulations, Congressional oversight in what was established as a system of checks-and-balances should not be overlooked. The administration is requesting more than $1 billion in Congressional appropriations this next fiscal year to implement these and other regulations under Vice President Gore's Clean Water Action Plan.

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*Tom McDonnell is Director of Natural Resources for the American Sheep Industry Association*

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