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American Wildlands

April 23, 2000

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

Re: Comments on the draft Unified Federal Policy for Ensuring a Watershed Approach to Federal Land and Resource Management.

Dear USDA-Forest Service Content Analysis Enterprise Team,

American Wildlands appreciates the opportunity to provide comments on the draft Unified Federal Policy for Ensuring a Watershed Approach to Federal Land and Resource Management. American Wildlands is a non-profit conservation group working to protect and restore the wildlands, wildlife, water quality and native aquatic species of the Northern Rocky Mountain Region in Idaho, Wyoming and Montana. AWL applauds this effort 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.

The importance of this is exemplified by the fact that this policy could apply to 40% of the watersheds in the country. The successful implementation of an adequate policy could lead to the protection and restoration of a significant amount of rivers, lakes and streams. Most of the watersheds covered by this policy are in the west and impacted by non-point source pollution. In Montana, Idaho and Wyoming, there is a substantial amount of federal land and non-point source pollution is the leading cause of water quality impairment and failure to support designated uses such as recreation and cold water fisheries. Unfortunately, it is federal land management activities that contribute much (if not the vast majority) of this non-point source water pollution.

We strongly support the requirement that the federal government is held to the same standards as everyone else regarding water quality protection and restoration. In fact, the federal agencies addressed by the proposed policy are already required to comply with the CWA as well as state and local laws: The Clean Water Act (CWA) specifically states that all federal agencies engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants...shall be subject to, and comply with, all Federal, State, interstate and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution...the preceding requirement shall apply to any requirement, whether substantive or procedural.

40 East Main Street, Suite 2 • Bozeman, Montana 59715
Tel 406-586-8175 • Fax 406-586-8242 • Email amwild@wildlands.org • www.wildlands.org

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tried to bring to the Forest Services attention for timber sales throughout the region. Especially troubling is the OIG's findings that the Forest Service does not necessarily follow up on mitigation measures and that the agency's cumulative effects analyses and biological evaluations are often inadequate. Specifically the OIG found that (a) integrity of environmental decisions was not maintained, (b) environmental assessments did not include adequate analyses, (c) biological evaluations were incomplete, (d) decision notices did not adequately address required elements, and (e) "Findings of No Significant Impact" were incomplete. The following excerpt is the Executive Summary of the Report (although we urge you to read the entire report that can be found at: http://www.usda.gov/oig/auditrpt/auditrpt.htm)

CHAPTER 1 - EXECUTIVE SUMMARY - Results in Brief

Forest Service's administrative controls over the preparation of environmental documents and implementation of mitigation measures applicable to timber sales have not been effective. Therefore, Forest Service's decisions regarding various environmental issues were not always based on adequate research and analyses. Specifically, environmental studies and related documents that were used to support the decisions contained deficiencies, omissions, and inadequate descriptions of the analyses performed. Forest Service did not ensure integrity in the preparation of its environmental documents, and consequently permitted timber sales and other activities without limiting the environmental damage associated with those activities.

Deficiencies in environmental documents and analyses have many consequences. Officials cannot rely on these documents to provide assurance that the Forest Service is complying with all environmental laws. Taxpayers and timber purchasers suffer when errors and omissions come to light and cause the Forest Service to cancel or modify previously approved timber sales. Future generations and the natural environment also suffer when Forest Service employees overlook sensitive resource issues and do not adequately protect heritage resources, water quality, and threatened, endangered, or sensitive species and their habitat. Finally, the Forest Service's credibility suffers when promises, in the form of mitigation measures, are not kept and the published position of the agency conflicts with on-the-ground reality.

Not only are BMPs and mitigation measures not implemented, but their actual effectivenss in reducing non-point source pollution and protecting aquatic species is unknown and untested. Therefore, it is necessary that BMPs and mitigation measures be regularly reviewed and revised. The policy should require monitoring of BMP and mitigation measure compliance and effectiveness, and disallow actions to rely on untested measures.

More Specific Goals for Attainment of Water Quality Standards

The policy should set more specific goals for attainment of water quality standards on federal lands. While the policy commits to "meet[ing] applicable state and tribal water quality requirements under the Clean Water Act.", we suggest the policy set more specific, loftier goals

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Data collected from all waterbodies on federal lands should be used to fulfill state water quality reporting requirements 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. Therefore, it is necessary for the policy to specify that data collection to be conducted by and for federal agencies as part of watershed assessments will be in such a format as to enable state and tribal agencies to integrate this information 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 and tribes 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.

Tiering

According to the draft policy, the agencies will use the results of watershed assessments to guide planning and management activities. This brings up the use of "tiering". Because I am most familiar with the Forest Service, I will use them as an example, but this issue may apply to all of the federal agencies. Federal agencies cannot "tier" to decisions made in a non-NEPA documents. The agencies cannot simply create new direction for their lands without proper NEPA compliance. Please refer to 40 C.F.R. §§ 1500.4(i) and (j), 1502.4(d), 1502.20, 1502.21, 1508.28; and 48 Fed. Reg. 34263, 34265 (July, 28, 1983) for specific "tiering" regulations. Instead, any "decisions" made in non-NEPA documents must be incorporated into agency planning and decision-making using the proper NEPA procedures which includes public participation.

It must be clear that watershed assessments are not decision-making documents and that any recommendations made in the assessments must be incorporated into agency planning and decision-making using the proper NEPA procedures, which includes public participation.

A serious problem that we have encountered with the Forest Service is their use of documents such as landscape analyses or integrated resource analyses that have not gone through the NEPA public participation process to establish management direction different from, or more narrow than, the Forest Plan, and as the basis of the site-specific actions. The Forest Service implements desired conditions, goals and objectives identified in the analyses on the ground through site-specific activities such as timber harvesting or prescribed burning. This is an incorrect use of the monitoring and evaluation process. The Forest Service is required by law to conduct monitoring and evaluation. 16 U.S.C. §1604(g)(3)(C). The NFMA regulations require Forest Plans to contain "[m]onitoring and evaluation requirements that will provide a basis for a periodic determination and evaluation of the effects of management practices." 36 C.F.R. §219.11(d). See also 36 C.F.R. §219.12(k)(1-5). However, in many instances, the Forest Service is using an analysis documents to establish new management direction for the analysis area in the form of desired

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