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Siskiyou County Farm Bureau

May 22, 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" published for comment in the federal register on February 22, 2000.

(1) The Siskiyou County Farm Bureau strongly objects to the proposed "Unified Federal Policy for Ensuring a Watershed Approach to Federal Land and Resource Management." This policy implements the "Clean Water Action Plan" (CWAP,) an initiative of the Administration which was not mandated by Congress, was never released to the public for appropriate review and comment and is not legal.

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 or the state and local government cooperation requirements under the Intergovernmental Cooperation Act. In fact, the public was never allowed to review a draft Plan or comment on any parts of the Plan before it was adopted and implemented.

The development and implementation of the CWAP has violated numerous federal laws. For example, the National Environmental Policy Act ("NEPA") commands that all agencies of the federal government complete an environmental impact statement ("EIS") or an environmental assessment ("EA") for "every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment."

The regulations implementing NEPA describe a "major federal action" as "adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of Federal resources, upon which future agency actions will be based."

The CWAP contained 111 "Key Actions" to "guide or prescribe alternative uses of Federal resources, upon which future agency actions will be based." Among these Key Actions was one directing the Department of the Interior ("DOI") and the

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DOA to "develop a Unified Federal Policy to enhance watershed management for the protection of water quality and health of aquatic ecosystems on federal lands." CWAP at 32. Other Key Actions included obliteration of roads, moratorium on new road construction in roadless areas, new forest transportation regulations." CWAP at 34.

In addition to missing NEPA analysis of CWAP, NEPA requires analysis of "cumulative impacts" and "connected actions" of all these Key Actions A cumulative impact "[I]s the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." Cumulative impacts also consider the direct and indirect "effects" of an action, even those which may have both beneficial and detrimental effects.

The implementation of an individual NEPA document for each Key Action evades addressing the cumulative impacts, and direct and indirect effects of all the activities directed under the CWAP. It also thwarts the whole intent of the NEPA process and its role in discretionary decision making. The "Key Actions" being implemented, such as the current proposal, are mandated under CWAP. As a mandatory action, there is nothing left to the decisionmaking authority of the agencies, rendering a consideration of the environment (both physical and human) superfluous.

CWAP also violated the Intergovernmental Cooperation Act ("ICA"). The purpose of the ICA is to "strengthen [s]tate and local government and improve relations between those governments and the [f]ederal government through closer cooperation and coordination of policies and activities . . . ." The ICA provides that federal agencies, to the extent possible, take into account all viewpoints and objectives- national, regional, state and local- in the formulation, planning and administration of programs and development projects. Additionally, the ICA stipulates that insofar as possible, federal planning shall be coordinated with and made part of local and area wide development planning.

No local government received notification of the CWAP nor were they contacted to solicit their input and to attempt to coordinate the CWAP with their local programs.

The CWAP also violated the Unfunded Mandates Act ("UMA"). The Act 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 (other than to the extent that such regulations incorporate requirements specifically set forth in law). None of these mandates have been met by the CWAP.

(2) Based on the CWAP, on December 4, 1998, the EPA issued a memorandum requiring states to complete Unified Watershed Assessments ("UWAs") assessing the

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health of each watershed within each state. The memorandum did not cite to ANY statutory authority for the implementation of UWA. Rather the only authority cited is another memorandum dated June 9, 1998 entitled "Clean Water Action Plan -- Unified Watershed Assessment Framework." The June 9, 1998 memorandum cites as its authority the Clean Water Action Plan.

The June 9, 1998 memorandum gave states only until October 1, 1998 to complete these new assessments and schedule priorities. The memorandum then mandated that states develop "Watershed Restoration Action Strategies" for those watersheds not meeting the goals of the program.

The current proposal indicates that it will use the results of state Unified Watershed Assessments to identify "priority watersheds for federal action." The Unified Watershed Assessment (Assessment) that was submitted by the State of California to measure the health of watersheds within this state has little credibility. California did not actually assess any of California's watersheds in development of the Assessment, but relied solely on information that had already been gathered by various sources and under varying conditions. Some of this information was scientific, some narrative - most qualitative, anecdotal, highly subjective and developed to promote specific interests and agendas.

According to the United States Environmental Protection Agency, Water Quality Inventory 1996 Report To Congress, EPA 841-R-97-008, April, 1998, only seven percent of California's streams have actually been surveyed using monitoring data, and only forty-two percent have been evaluated using "best professional judgement" assessments. The same report also indicates that, of the total rivers and streams assessed by these methods in California, ninety-seven percent were found to be in either good or fair condition. This means that, based on EPA and the state's own records, only a total of forty-nine percent of California's streams have had any type of assessment that would even make them eligible for consideration of inclusion in Category I, and of these, ninety-seven percent had no problems that would warrant such inclusion.

Remarkably, the final Assessment for California listed more than eighty percent of the state's watersheds in "Category I " as "impaired or in threat of impairment," while less than two percent of California's watersheds actually met the description. If the records are correct, fifty-one percent of the state's watersheds should have actually been placed in Category IV, which is reserved for watersheds with insufficient data to make an assessment. These discrepancies make it glaringly clear
that the building blocks that form the foundation of the CWAP program is fatally flawed from the onset.

(3) Currently, the Intergovernmental Cooperation Act ("ICA") and other laws provide for coordination and cooperation with State and **county** governments in recognition of "dual sovereignty" and local government's Constitutional status as possessing separate

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jurisdiction and authority. Local governments also represent real human social and economic interests in the management of the Forests within their boundaries and have the fundamental responsibility for the health, safety and welfare of local residents and protection of their private property. Provisions for coordination with county government is glaringly absent from this proposal and should be acknowledged in any planning or management process. Existing regulations provide that the Forest Service must:

1) provide direct notice of proposed planning to potentially affected state and local governments with similar planning efforts; 2) develop procedures for coordination with such governments and carry out such coordination; 3) analyze such governments' own planning efforts; 4) assess any interrelated impacts and conflicts; 5) consider alternatives to such impacts and conflicts; and 6) actively seek input from such governments to help resolve these and any other management concerns in the planning process. 36 C.F.R. § 219.7(a-e).

Siskiyou County Ordinance Ch. 12, Section 10-12 requires agencies to consult and coordinate with the county in the development of rules, plans, actions and activities that relate to the natural and human environment of Siskiyou County and to allow the County to fully participate in its proper role in the joint planning process.

Siskiyou County has compiled a Comprehensive Land and Resource Management Plan, specifically to aid in the coordination process with the U.S. Forest Service as provided under Forest law, the joint environmental planning authorities under NEPA, the Intergovernmental Cooperation Act (42 USC §4231) the California Environmental Quality Act and other applicable laws. Further, an ordinance has been passed by the County of Siskiyou requiring State and federal agencies to comply with the provisions of applicable laws such as the CFRs, NEPA, etc. in their joint planning efforts. Part I of this Comprehensive Plan, "Introduction and Statement of Purpose," states:

> "The management and regulatory actions of federal and State agencies within Siskiyou County have a profound impact on the citizens of this county. The Constitution of the United States and the Constitution of the State of California provide for a republican form of representative government with specific limitations and separations on the governing powers of federal and State bodies of government and the executive, legislative and judicial branches therein; as in respect to one another and to the people in which sovereign power resides. The limited power of government in relationship to the individual citizen is expressed, in part, by the recognition of certain rights as inalienable by governance and the enumeration of specific guarantees of protection in regards to many others.
>
> "The duly elected Board of Supervisors of the County is empowered by the citizens of Siskiyou County with administering the general law of California in respect to the "police powers" of regulation in regard to the public health, safety, welfare and morals within the territorial boundaries of the County and in accordance with a sworn duty to protect and defend the Constitution of the United States. As such, the Board of

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Supervisors of Siskiyou County embodies the convergence of both generally and specifically delegated authority and the political jurisdiction to represent the interests of the citizens of Siskiyou County in the administration of civil governance by all agencies affecting citizen actions as well as individual rights within the territorial boundaries of Siskiyou County.

"The National Environmental Policy Act and the many other federal and state laws creating agencies, as well as authorizing the agencies to manage and regulate resources, require that the agencies consult and coordinate with the County in decision making when proposing actions that have physical, social or economic impacts on the County or its citizens. In discharging its responsibilities in this regard, the Board of Supervisors of Siskiyou County recognizes various cultural populations within the boundaries of the County that are distinct from one another, yet linked in identity by customs, social communities, lifestyles, values and institutions; and defined largely by common resources-based economic activity that warrant specific consideration in agency decision making processes.

"The Siskiyou County Comprehensive Land & Resource Management Plan seeks to describe these distinct cultural populations in terms of common actions, economic enterprises and uses of real and personal property as exist within the boundaries of Siskiyou County. The purpose of such description is to advise federal and state agencies of the existence of these cultural populations and the need to protect, conserve and enhance the cultural and economic diversity within the County and to take no actions which diminish, or tend to diminish the political and legislative jurisdiction of the State of California or the County of Siskiyou in the civil governance of its citizens in regard to the interests of the health, safety, welfare or morals of its citizens and the general prosperity of its communities and the county as a whole.

"Accordingly, the Board of Supervisors of the County of Siskiyou declares that it is the policy of the county to require each and every federal (see Appendix I) and state agency administering, managing or regulating lands or natural resources within the county to fully coordinate with the county at the initiation and throughout the planning process, whenever proposed plans, actions, regulations, restrictions or establishment of productivity levels are being considered.

"Furthermore, the County of Siskiyou has adopted Resolution No. 93-2-84, which provides for County participation in environmental review and coordination when federal and state agencies are proposing actions within the County which affect or may affect a wide range of County and citizen interests."

(4) The proposal states that "collaboration" is essential to the efforts and that the policy will require working with States and Tribes to establish appropriate memorandums of agreement. Federal agencies are constrained in their power and authority by enabling

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acts of Congress and specific delegations of authority. Increasingly, we have witnessed interagency understandings and agreements that pair policy agendas of one agency with enforcement authorities delegated to another, administratively enlarging agency power. We are also witnessing increasing pressure to pair the jurisdiction and enforcement authority of State and local government in its police powers with a federalized agenda. Often this is done politically, but it is also done as a condition of receipts of federal funds. This is tantamount to a purchasing of jurisdiction. Although the federal government may establish conditions upon states for the receipt of funding from a federal program, the state may freely refuse to participate in the program. As States and local governments are also prohibited from conceding to an unconstitutional enlargement of federal jurisdiction, agreements that conspire to self-manufacture new government authorities or unconstitutional power are a nullity.

We are not so naive to believe that the process proposed here will stop and the boundaries of the Forest. When a local watershed assessment was made by the USDA Forest Service in the Callahan watershed, private lands and resources were fully detailed on the maps.

(5) It should also be noted that not all watersheds hosting "federal lands" are based upon navigable streams in law or in fact. The rivers in Siskiyou County are privately held non-navigable streams. Adjacent landowners privately own the bed and banks of these rivers, as well as the fishery. These are not State "sovereign lands" to which "public trust" applies. The state authority for regulation of activities is limited to the legitimate "police powers" of government to prohibit substantial injury to human health, safety, peace or morals. Federal authority is restricted to activities that have a legitimate nexus in the Commerce Clause of the Constitution. CWAP policies must reflect such limitations on authority.

(6) It should also be noted that the Scott River, Shasta River and Salmon River have established landowner-based watershed councils that operate on a strictly voluntary basis. Their activities include education and development of acquatic habitat and watershed enhancement projects. Currently the Forest Service attends meetings in a non-voting, advisory capacity. This sort of agency role should continue to be encouraged. We know that there is increasing pressure to exclude agency attendance at meetings of groups that do not recognize multiple interest groups or "stakeholders" as voting members. Our experience with such a group for a decade was unsuccessful. Decision making was obstructed by one group and that group's representative acted in an aggressive and intimidating manner to other members that eventually destroyed participation in the council.

We have found that landowner-based councils place the decision making with those in a position to directly implement a watershed plan. Decisions regarding public funding

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The Siskiyou County Farm Bureau supports comments made on this proposal by the California Farm Bureau Federation and the Wyoming Association of Conservation Districts. The Siskiyou County Farm Bureau requests that this proposal be immediately withdrawn.

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