GULF RESTORATION NETWORK

Working to Protect and Preserve the Gulf of Mexico

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Comments of the Gulf Restoration Network
On the Unified Federal Policy to Enhance
Watershed Management on Federal Lands

I submit the following comments on behalf of the Gulf Restoration Network (GRN), a network of local, regional, and national environmental, environmental justice, social justice and public interest groups dedicated to the fight to restore the ecological and biological integrity of the Gulf of Mexico. GRN members work in each of the Gulf states to improve water quality of local streams, rivers, and estuaries.

The GRN applauds the efforts of the Department of Interior and the Department of Agriculture to ensure that federal land managers take the steps necessary to protect and restore water quality. Although some progress has been made towards achieving the Clean Water Act's promise of fishable and drinkable water, much remains to be done. Approximately forty (40) percent of the nation's waters 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.

While the proposed Unified Federal Policy to Enhance Watershed Management on Federal Lands (Unified Policy) moves the agencies in the right direction, the GRN believes that it lacks three key prerequisites for maximum effectiveness: (1) the provision of adequate resources; (2) strong public participation; and (3) a sufficiently "high bar" for measuring success. The GRN would suggest the following specific changes to the Unified Policy to fill these gaps and ensure that it produces meaningful results.

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Specific Recommendations

1. The Goals of the Unified Policy Should Include Attainment of Water Quality Standards by a Date Certain.

The Unified Policy as proposed merely commits to "meet[ing] applicable state and tribal water quality requirements under the Clean Water Act." The Unified Policy should set loftier goals. The Policy should require that federal agencies: (1) attain water quality standards in all degraded watersheds under federal control by a date certain; (2) assure protection for high quality/ sensitive watersheds in all federally managed or impacted lands by a date certain; and (3) reduce or halt the .expansion or initiation of activities likely to impair water quality. These more ambitious goals would ensure rapid reduction in water pollution and allow the federal government to serve as a model for state governments.

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

Despite significant progress in addressing point sources of pollution, polluted runoff continues to be a significant cause of water pollution nationwide. Approximately 90 percent of impaired waters fail to meet water quality standards, in part, as the result of polluted runoff. The Clean Water Act was intended to both "restore and **maintain** the quality of the nation's waters." 33 U.S.C. §1251(a). Yet, public and private land use decisions continue to allow widespread, incremental degradation of the nation's watersheds.

The single overriding principle that must guide watershed management is "**do no harm.**" EPA's guidance makes clear that the antidegradation policy is intended to protect current water quality; and that under no circumstances are reductions in water quality allowed where the reduction would interfere with existing uses of the water or degrade water in an outstanding national resource water. 40 C.F.R. § 131.12. Federal agencies must ensure that their activities do not degrade water quality. Also, these agencies must ensure that they do not issue permits for activities that will degrade water quality. Adoption of such a policy will ensure that degradation of existing water quality will not occur.

In those rare instances where circumstances may justify a reduction in water quality, the responsible agency must make the required finding that "lowering water quality is necessary to accommodate important economic and social development" prior to issuance of a permit. 40 C.F.R. § 131.12(a)(2). Moreover, the public must be provided the opportunity to participate in the decision.

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

A watershed is identified as a "priority" because of its importance as habitat, its recreational uses, its use as a drinking water supply or other factors rendering it of importance. Federal regulations provide for the designation of highly valuable or "priority" waters as an outstanding National resource. 40 C.F.R. § 131.12(a)(3). States are given the authority to designate outstanding

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national resource waters. The Unified Policy should identify a mechanism through which federal land managers can recommend to states or tribes that priority watersheds be classified as outstanding national resource waters. For example, EPA's triennial review of state standards provides a regular periodic means for ensuring that state use classifications reflect watershed priority designations. Federal recommendations for upgrading the classification of priority waters could easily be incorporated into this process.

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

The current discussion of stakeholder involvement the designation of priority watershed is inadequate . Non-governmental organizations have a great deal to contribute to the establishment of criteria and the selection of priority watersheds. Members of the public have valuable expertise that supplements that of federal agencies. In addition, public acceptance of priorities depends, in part, on the public's ability to participate in the selection process. For these reasons, the Unified Policy should include an explicit mechanism for citizen involvement in the selection of criteria and the nomination of watersheds for priority targeting. For example, the Unified Policy should create a process that enables citizens to petition for the selection of watersheds in need of special protection or restoration. The petitioning process must include: (1) mechanisms for federal agencies and affected states or tribes to respond to the petition, and (2) timely decisions by the decision-making authority.

Additionally, the proposed Unified Policy does not clearly identify the agency with ultimate responsibility for selection of priority watersheds. If this decision-making authority is given to each federal agency, the public must be provided with a means of identifying the appropriate decision-maker and have a clear and defined role in the process. Similarly, if decision-making authority is vested in single agency, that agency must be clearly identified and methods for public participation in the decision-making of that agency delineated.

5. *The Watershed Assessment Cycle must be Consistent with the Clean Water Act's Biennial Reporting Requirements*

The Unified Policy's ten-year assessment cycle does not satisfy the Clean Water Act's biennial reporting requirements applicable to the states. *See*, 33 U.S.C. §1315(b). The Unified Policy recognizes the need to treat federal entities and non-federal entities alike. Federal agencies must, therefore, be held to the biennial reporting requirements imposed by the Clean Water Act

6. *Policy Should Require Broad Application of State-of-the-Art BMPs and Monitoring of those BMPs.*

Currently, federal agencies rely primarily on best management practices (BMPs) to address pollution caused by diffuse, non-point sources. Despite their name, some of these BMPs are out-dated and fail to represent state-of-the-art practices currently available. The Unified Policy should require federal agencies to review and revise BMPs on a regular basis to ensure the use of state-of-the-art BMPs.
Moreover, federal agencies should be required to monitor BMPs to ensure that they are

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Moreover, federal agencies should be required to monitor BMPs to ensure that they are effectively addressing pollutants of concern. Monitoring is critical, ensuring that users of federal lands comply with BMP requirements and that those BMPs are effectively addressing the identified pollution problem. Monitoring results can then be used to review and revise BMPs regularly.

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

The Unified Policy should include a specific commitment to the collection of data in a format that facilitates sharing of data between federal and state agencies primarily responsible for water quality. Furthermore, the Unified Policy should require that information gathered by and for federal agencies as part of watershed assessments be systematically integrated into water quality reporting and assessment programs under the Clean Water Act (i.e. sections 303(d),305(b), and 319 data requirements).

8. The Unified Policy Should Include a Commitment of Resources.

Given the actions needed to ensure that federal land managers are meeting their responsibilities under the Clean Water Act, it is unrealistic to expect that the Unified Policy can be effectively implemented under existing budgets. The Unified Policy should provide for an increased commitment of resources, as identified by the participating agencies, aimed specifically at achieving the goals of the Policy. Identified funding needs should then be included within the Administrations Congressional Budget request.

Conclusion

Ensuring that federal land managers act to address pollution is critical to the success of the Clean Water Act. The GRN believes that the Unified Policy, with certain modifications, will produce the needed action and achieve meaningful results.

Respectfully submitted,

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