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6048 So. Lakeview Street
Littleton CO 80120

March 16, 2000

Mr. James Lyons
Under Secretary
Natural Resources and Environment, USDA

RE: Proposed Unified Federal Policy Denver March 16, 2000

Dear Mr. Lyons,

What you are trying to do is important - and long over due. It the long-run, it will be easier, cheaper, and faster to use a legal framework to organize your efforts than to allow the various swat teams to create their own point and focus for the effort. The current proposed policy, however, does not have a sharp legal focal point.

The swat team's job is to blend and mix all the possible combinations. But, based on examples from previous efforts, we will get more generic guidance with little real utility in meeting the proposed goals and objectives. The Clean Water Act - and related guidance - has been around since 1972 and the federal focus on watersheds has been mainly lip-service. But under the Clean Water Action Plan, we have, at last, a change to a watershed perspective. It has been largely due to the intensive level of successful lawsuits that we now have the current emphasis. Your goals and objectives do not carry a legal focus; I suggest they do.

I agree that now is the time to change. It seems clear that the balance of power over federal lands will continue to shift away from federal managers if they continue to abdicate their watershed responsibility. The proposed notion of collaboration is not much more than an effort for the FS/BLM to get back to the table where many others are beginning to sit down. Welcome. It will be easier with your active participation than without it.

Last July, the Forest Service held a national review of Region 2 and 3's efforts at water quality assessment and stream health reporting under the auspices of the Clean Water Act. While the review was mainly technical, it was very apparent that few participants had any working knowledge of what the law actually requires. As a result, there was no acceptance that the FS was a regulated agency with servitude to State water quality agencies, Army Corps of Engineers, Fish and Wildlife Service, Federal Highway Administration, and official (i.e. S304) guidance from EPA.

My foremost recommendation to you is to convene a team of trial lawyers to prepare a detailed course on environmental law, its regulation and case law, and the leadership roles played by other agencies; then REQUIRE persons joining the swat team to take the course. Finally, provide genuine senior management review of the basic framework to be taught to make sure the swat team retains the emphasis desired by the Depts. of Interior and Agriculture.

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Too often, management has not paid any real attention to these efforts with the result that the end production has little value.

In order to be practical, the course needs to be detailed and not the usual superficial survey where each participant gets a ream of paper copied from the regulations. A better way is to take the objectives as listed and work through the most demanding requirements needed to address that objective. Once a tough legal framework is in place - and the whole swat team is knowledgeable about it - then the specialists can work through the most efficient and cost effective method of achieving it. Stern management control is still needed, however. Too often, once a team gets its funding, they go do their own thing and are no longer accountable.

The six aquatic health classes defined by EPA and used by Region 2 and 3 was rejected by the Forest Service's national review in July. Yet, I submit, that EPA IS the agency responsible for making the definitions and there has been ample opportunity to play with and refine the definitions. These were first published by EPA as part of the 1983 Water Quality Standards Handbook and its partner, the 1983 Waterbody Assessment Manual. Subsequently, they were made part of the 1989 Rapid BioAssessment Protocol manual, and with some simplification, carried into the latest 1999 version. The basic structure starts from a natural ecosystem that fully meets the CWA goal:

> *Comparable to the best situations unaltered by humans; all regionally expected species for the habitat and water body size, including the most intolerant forms, are present with full array of age and sex classes; balanced trophic structure.*

Each of the other five classes are incremental departures from this standard with the last class with no fish, very tolerant macroinvertebrates, or no aquatic life at all. At the definition stage, it just doesn't seem to be that complicated. For a unified federal policy, I suggest you adopt EPA's set of aquatic definitions and save your horse power for improving the metrics necessary to make the assessment. Field people are often enthusiastic about inventories but do not want to make judgement calls about what is not acceptable. One way to speed up attaining your objectives is to require aquatic health determinations and reports sent to State Water Quality agency.

If the end point is to have practical application then something as simple as "number of miles of streams by aquatic health class" would be a good start as well as a measure of watershed cumulative effects and a contribution to the States S305(b) and S319 reports. If FS and BLM used the same end point definitions, such as EPA's 6 aquatic health classes, then it would not be quite so important for all the methods to be the same. There are already several good ways to make these assessments; what we lack are standardized end points.

Regards

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