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Kentucky Farm Bureau Federation

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May 2, 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 Unified Federal Policy for Ensuring a Watershed Approach to Federal Land and Resource Management

Dear Sir/Madam:

On behalf of thousands of Kentucky Farm Bureau members, we appreciate the opportunity to comment on the Unified Policy for Federal Lands. As the largest general farm organization in the state, we acknowledge the time and effort your agency has put into drafting the policy.

Farmers will be significantly impacted by the proposed federal policy. Farmers and ranchers graze livestock on federal lands. They recreate on federal lands, and use federal lands for a number of other purposes. Moreover, farmers most often reside near federal lands, within the watersheds that encompass these federal lands. As a result, we take a great interest in activities or policies that might affect their use or enjoyment of the federal lands, or impact the surrounding privately-owned lands. We have been heavily involved in the issue of non-point sources of pollution and the Total Maximum Daily Load (TMDL) process. Farm Bureau affiliate representatives attended the Milwaukee and Denver public meetings held on the draft policy.

Kentucky Farm Bureau supports clean water. Farmers and ranchers are taking many voluntary steps to increase the quality of water in agricultural watersheds.

The federal government is generally recognized as a major polluter of our nation's waterways. We are pleased to see that federal agencies are taking steps to ensure the waters on federal lands are clean. We believe that the approach taken in this draft policy will help achieve that goal.

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We also believe that the draft policy correctly focuses on a more localized, manageable watershed as the appropriate unit. Only by identification and monitoring on this type of watershed basis will proposed solutions be viable. It is necessary to get all contributors involved in a voluntary process where no single party or parties dominate the discussion. Coming together is the best way to discuss mutual watershed concerns and make progress.

At the public meeting in Milwaukee, it was explained that the draft policy had two main thrusts: to provide a uniform and consistent methodology among federal agencies for gathering information within a watershed using sound science that will afford all agencies a uniform interpretation of data, and to foster collaboration among states, tribes and private landowners within a watershed to identify and solve watershed problems.

We will discuss each of these separately.

1. Uniform and Consistent Methodology for Collecting Watershed Data.

One of the major purposes for the unified policy is to develop a uniform and consistent methodology for collecting data on a watershed basis. The primary vehicle for accomplishing this collection is through "watershed assessments." The draft policy states that such assessments will only be conducted on federal lands, even though state, tribal and private lands may be included in the watershed.

As part of this data collection, the draft policy states, among other things, that it will "identify and incorporate watershed management goals into our planning programs and actions." It also states that it will "help states and tribes develop science-based total maximum daily loads (TMDLs)."

These statements sound ominously like this policy could be a regulatory or management program to create and advance a federal role in non-point source pollution management that has been traditionally left to the states. We strongly urge the agencies not to use this policy in that manner.

In our view, we would support a unified policy that had the following elements:

1. The watershed assessments are strictly for data collection only, and are not decision-making or decision-forcing documents.
2. Development of the unified methodology for watershed assessments and interpretation will be open to public scrutiny through notice and comment opportunities.
3. Use restrictions or water quality permits will not be considered as the only way to meet water quality standards.
4. Assessments will not be conducted on state, tribal or private lands without the written consent of the landowner.

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5. Federal use restrictions will not be placed on private landowners as a result of watershed assessments.
6. Watershed assessments will be developed and interpreted on the basis of sound, scientific principles.
7. Watershed assessments and other data collection will be used only to provide technical assistance to the states in development of TMDLs, and not as imposing or otherwise unduly influencing a state's development of TMDLs.
8. State, not federal, guidance will be followed in addressing non-point sources of pollution.
9. The Unified Federal Policy will not create any new requirements or criteria with respect to planning on federal lands or implementation of federal plans, nor will the Unified Federal Policy rearrange priorities for planning or implementation.

We would support the unified policy to the extent that it can develop a scientifically based watershed assessment methodology that is consistent for all federal agencies. As a strictly data collection policy, it would perform a significant and valuable contribution. We strongly support the use of sound science as the basis for environmental decision-making, and we believe that a uniform watershed assessment methodology would be invaluable as a way to collect such data. We also support the concept of federal agencies making assessments on the lands they manage in order to meet state water quality standards.

We also support the attempts by the agencies to develop a uniform and consistent methodology for watershed assessments that puts all federal agencies "on the same page" with regard to conducting and interpreting the assessments. A consistent approach among agencies will benefit farmers, ranchers and other users because they will not be subject to different standards or interpretations depending on the federal agency. It will benefit the federal agencies because they will not have to "reinvent the wheel" when it comes to assessments.

In addition, properly done assessments will be able to determine impacts from natural and upstream influences. These important factors in water pollution are often overlooked because they are not considered.

On the other hand, we strongly oppose the use of this policy as a regulatory tool. We strongly oppose the use of these assessments to impose federal restriction on uses to which farmers and ranchers can use federal lands. We oppose the federal use of watershed assessments to curtail or restrict livestock grazing permits, or to impose Best Management Practices (BMPs).

There is a fine line between a data collection policy (which we support) and a federal non-point source regulatory or management policy (which we oppose). We understand and accept that the watershed assessments are one piece of data that is considered in the planning or decision-making process. We also understand and accept the fact that in the course of planning or decision-making, changes in management and use might

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occur. Watershed assessments, however, should not be decision-making or decision-forcing documents.

Because watershed assessments play such an important role in planning and implementation of land resource management, it is imperative that the public be given every opportunity to scrutinize the development of the methodology used in the unified policy. It is very important that the public be meaningfully involved at every step in this process. To be able to comment on assessment results alone means very little if the underlying methodology is not subject to public scrutiny. The draft policy contains no opportunity for public input at this important developmental stage. We strongly urge that the draft policy be amended to incorporate public involvement in the development of a unified assessment methodology.

We see a similar role for watershed assessments in the development of TMDL's. Watershed assessments should be used to provide technical assistance to states ONLY in their development of TMDLs, as one piece of scientific information for the states to consider. We do not support the use of this policy as a means for the federal agencies to carve out a role or to justify a role in the development of TMDLs. We firmly believe that non-point source jurisdiction in the Clean Water Act resides exclusively with the states, and the federal government has no role in non-point source regulation. Any activities undertaken with regard to TMDL's should be to supplement state programs, and not to interject federal regulation.

2. Collaboration to Identify and Solve Watershed Problems.

In most cases, federal lands are merely one component comprising a "watershed." "Watershed management," on the other hand, cannot meaningfully be achieved if only one element of a watershed is involved. That is the problem facing federal land agencies in attempting to achieve watershed management.

Kentucky Farm Bureau favors a watershed approach that contains the following features:

a. It must be a collaborative approach to watershed management that involves all the major users of a watershed.
b. The effort must be local in scope.
c. The collaborative effort must be truly voluntary or incentive-based on the part of all users. Federal agencies should not use this policy to attempt to mandate watershed management.
d. It must be a consensus-based program. All participants have equal status in the process.
e. All participants must be committed to identifying and solving any problems within a watershed.
f. All participants must go into the process with open minds that eliminate any pre-conceived ideas as to what might be causing watershed problems.

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g. The assessment of the watershed must be done according to sound scientific principles.
h. Any results of the watershed assessment should not lead to federal regulations being imposed on any of the parties.
i. Solutions should be voluntary or incentive-based, and take into account the needs and capabilities of the water users.

3. Watersheds of Special Protection.

One area of the draft policy that troubles us provides for the designation of "watersheds of special protection." The draft policy identifies those watersheds "that may have significant human health, public use, or aquatic ecosystem values."

The draft policy identifies no legal authority for designating such watersheds. There is no such authority in the Clean Water Act or corresponding regulations. Similarly, while the draft policy states that it would only designate the portion of watersheds for special protection that are on federal lands, the federal agencies acknowledged at the public meeting in Milwaukee that there may be changes in use that are made throughout the privately-owned portions of the watershed as a result of the federal designation.

We have very serious concerns with this type of approach. As indicated above, we would oppose any unified federal policy that assumes additional regulatory authority. Designation of "watersheds for special protection" is the type of new federal regulatory authority that we oppose.

As expressed by the federal agencies themselves, designation of such watersheds would trigger use restrictions and other changes within the watershed. This process transforms the use of watershed assessments from mere information collection documents into decision-making and decision-forcing documents. This makes the unified federal policy a regulatory program that we cannot support. We urge the Forest Service to delete provisions relating to designation of "watersheds of special protection" from the final policy.

We appreciate the opportunity to participate in the public discussion of this policy.

Sincerely,

Rebeckah T. Freeman
Director of Natural Resources

RTF/sje

cc: Executive Committee; Richard Newpher; Ira Linville; Jack Wilson

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