NATIONAL WILDLIFE FEDERATION®
People and Nature: Our Future Is in the Balance

Rocky Mountain Natural Resource Center

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May 24, 2000

VIA FAX 801/517-1021

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 Content Analysis Team:

The National Wildlife Federation ("NWF") appreciates this opportunity to comment on the draft Unified Federal Policy for Ensuring a Watershed Approach to Federal Land and Resource Management ("Unified Federal Watershed Policy"), published in the Federal Register on February 22, 2000. NWF is the nation's largest member-supported conservation education and advocacy group, with more than 4 million members, supporters, and contributors nationwide. Our mission is to educate, inspire and assist individuals and organizations of diverse cultures to conserve wildlife and other natural resources and to protect the Earth's environment in order to achieve a peaceful, equitable and sustainable future. Since 1936, NWF has united people from all walks of life to protect nature, wildlife and the world we share – and these comments are submitted on behalf of NWF and all its members.

NWF applauds the Departments of Interior and Agriculture for their efforts to ensure that activities undertaken by federal land managers result in the protection and restoration of water quality on their administered public lands. Although significant progress has been made toward achieving the Clean Water Act's (CWA) goal of "fishable, swimmable" waters since its enactment nearly 30 years ago, almost 40% of the nation's waterbodies still do not meet water quality standards. Because many of the nation's impaired waters are located on federal lands or impacted by federal activities, a consistent and unified program by federal land managers – to meet the same, or higher, standards required of states and the private sector – will be necessary to attain the CWA's goals.

The proposed Unified Federal Watershed Policy establishes some laudatory goals, principles and objections – such as *accelerating* the improvement of our nation's water quality,

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enhancing existing watershed protection programs, implementing a watershed approach to *prevent* and *reduce* water pollution from federal management activities, and establishing the participating agencies as *models* of good land and water stewardship and effective watershed management. NWF generally endorses a watershed management approach to protecting and restoring our nation's waters – but we are concerned that the draft Policy fails to provide adequate mechanisms for preventing federal water pollution and enhancing water quality impacted by federal activities. More particularly, the draft policy should (1) ensure that the federal government is held to the same – or higher – standards as private parties and the states and does not engage in or issue permits for activities that degrade water quality; (2) sufficiently protect priority watersheds; (3) provide for adequate and meaningful public participation; and (4) establish sufficient funding and personnel resources to meet the intended goals of the policy.

NWF therefore urges that the Departments of Interior and Agriculture adopt the following changes to their proposed policy in order to maximize its effectiveness and ensure it produces meaningful results:

A. The Federal Government Should Serve as a Model for Water Quality Protection and Enhancement.

Although the Unified Federal Watershed Policy commits to "meet applicable State and Tribal water quality requirements under the Clean Water Act," (draft Policy, ¶ II(B)(2)(a) NWF believes federal governmental agencies should have an express policy of reducing or eliminating activities on federal public lands which are likely to degrade water quality. Certainly, the federal government should be held, at a minimum, to the same standards applicable to others who must comply with federal environmental regulations. In addition, however, the federal government should serve as a *model* for achieving Clean Water Act goals, setting *higher* standards and *more ambitious* mechanisms for measuring and attaining water quality on federally managed (or impacted) lands. The government's bar of performance should include such goals as (1) establishing a specific date by which water quality standards in all impaired watersheds on federal land must be attained, and (2) assuring full implementation of measures needed to protect high quality and sensitive waters by a specified date.

B. Federal Agencies Should Not Engage in Activities that Degrade Water Quality.

In addition to its over-arching purpose of restoring and maintaining our nation's water quality, the Clean Water Act establishes antidegradation mandates which preclude the further impairment of already-degraded waters. Under the Unified Federal Watershed Policy, activities undertaken on federal land must also not be permitted to degrade water quality. Indeed, federal agencies themselves should not engage in activities which degrade existing water quality, nor

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should they issue permits for third-party activities on public lands without expressly finding that the proposed activity will safeguard water quality.

Unfortunately, federal land managers today often fail to reject proposed activities, and proceed to issue federal permits, even though the proposed actions will cause or contribute to the non-attainment of water quality standards. Simply, to comply with the antidegradation mandates of the CWA, federal agencies must initiate a review process that will ensure permits are not issued for proposed activities that would degrade water quality.

Before a federal agency is legally allowed to issue a permit which reduces water quality, the regulations require that it make a finding that "lowering water quality is necessary to accommodate important economic and social development." 40 C.F.R. § 131.12(a)(2). The Environmental Protection Agency's guidance clarifies that "[t]he antidegradation policy is intended to protect current water quality; in only a *limited set of cases* can economic grounds be used to allow for a lowering of water quality." *See* EPA, *Economic Guidance for Water Quality Standards Workbook*, EPA 823(b) 95-002 (March 1995). An agency finding that a reduction of water quality is "necessary" means that no other alternative is available; and "important" means that failing to permit the activity will cause significant economic hardship to the local community. *Id.* And in those rare instances where an agency finds that circumstances may justify a reduction in water quality, public participation must be allowed and encouraged in the decision-making process.

Moreover, reductions in water quality are not allowed *at all*, under any circumstances, where it would interfere with existing uses or the waterbody has been designated an Outstanding National Resource Water ("ONRW"). 40 C.F.R. § 131.12.

C. Priority Watersheds Should be Designated Outstanding National Resource Waters.

Federal regulations also provide for the designation of highly valuable waterbodies as an outstanding national resource. 40 C.F.R. § 131.12(a)(3). In addition, states have the authority to designate such waters. NWF recommends that priority watersheds be considered and treated as Outstanding National Resource Waters (ONRWs), and that the Unified Federal Watershed Policy provide a means for federal agencies to nominate priority watersheds for ONRW status to relevant states and tribes.

Even before an ONRW designation, federal land managers should treat priority watersheds with the protections afforded on ONRW. More particularly, federal antidegradation regulations applicable to ONRWs (which fall under "Tier III" protections), *prohibit* the reduction of water quality in these outstanding waters – and the Unified Federal Watershed Policy should reflect that level of protection for priority waters.

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D. The Policy Should Require Regular Review and Revision of Best Management Practices.

Federal agencies currently place substantial reliance on best management practices ("BMPs") to curtail water pollution resulting from non-point sources such as erosion caused by timbering activities and runoff from public lands subjected to heavy livestock grazing. Although BMPs may be useful pollution control mechanisms in certain circumstances, they *must* be regularly monitored, reviewed and revised to determine whether, in fact, they provide the requisite benefit to degraded waters. Because the effect of particular BMPs on water quality is often not measured, their effectiveness is uncertain. The Unified Federal Watershed Policy should therefore also require federal monitoring and review of BMP compliance and, where needed, revise them to assure their effectiveness. This will help not only to protect water quality on federal lands but also to gather information useful in protecting water quality across the country.

E. Data Collected for Water Quality Assessments Should be Considered in Management and Regulatory Decisions.

The Unified Federal Watershed Policy should encourage federal lands to become models for collaborative data gathering and analysis by specifically containing a commitment that data and other information collected from waterbodies on federal lands will be integrated into water quality reporting under the Clean Water Act. *See, e.g.,* CWA §§ 303(d), 305(b), and 319. The policy should explicitly provide for effective methods of information-sharing among federal agencies and the states, and confirm 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.

F. Federal Agencies Should Not Be Provided 10 Years to Satisfy CWA Biennial Reporting Requirements.

The draft Unified Federal Watershed Policy proposes to grant federal agencies a 10-year water quality reporting cycle – instead of the 2-year schedule which must be met by state agencies. *See* CWA § 305(b). Again, federal land managers should be held to *at least* the same requirements imposed on states and the private sector under the Clean Water Act – and allowing federal agencies a more leisurely pace in reporting water quality assessments flies in the face of the Policy's intention to provide equal treatment for federal entities and non-federal ones. Federal agencies should therefore be required to meet the same biennial reporting obligation applicable to state agencies.

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G. A Public Petition Process Should Be Included in the Policy, Establishing a Mechanism for Citizens to Request the Designation of Watersheds in Need of Special Protection.

Because citizen and other stakeholder organizations have a substantial interest, extensive knowledge and valuable expertise regarding their regional watersheds, the Unified Federal Watershed Policy should contain an express mechanism for them to participate in the nomination and selection of watersheds in need of special protection or restoration – rather than just reacting to government initiatives. Existing language in the draft Policy regarding stakeholder involvement fails to provide this necessary public opportunity. The Policy should establish a citizen petitioning protocol which enables citizens to propose selection criteria and nominate watersheds for priority targeting; it should also include procedures by which federal agencies, states and tribes can respond to a citizen petition, and establish a timely decision deadline for the decision-making authority.

H. The Unified Federal Watershed Policy Must Provide For Adequate Funding and Personnel Resources to Implement its Goals.

To attain the goals and objectives envisioned by the proposed policy, each federal agency must commit the necessary financial and personnel resources – and be required to seek adequate funding from appropriate sources. NWF is concerned that existing federal agency budgets are insufficient to implement the Unified Watershed Policy, and absent new funding commitment, the policy will prove ineffective. The Policy should therefore include a requirement that participating agencies determine what budgetary increases will be required to achieve the Policy's goals, and that they take action to acquire the additional budgetary resources.

Conclusion

For all these reasons, NWF urges the Departments of Interior and Agriculture to seriously consider revisions to the draft Unified Federal Policy for Ensuring a Watershed Approach to Federal Land and Resource Management in order to achieve meaningful improvements to our nation's remaining degraded waters. The success of the Clean Water Act is dependent, not only on private parties, the states, and tribes, but also on ensuring that federal land managers take the appropriate steps to protect water quality on the public lands subject to their administration. Federal agencies must take a leadership role in demonstrating how activities can be undertaken in a manner consistent with the highest level of protection of water quality.

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Thank you, again, for providing the opportunity for public comment on this important proposed policy.

Sincerely,

Kimberly J. Graber

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