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State Water Resources Control Board

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TO: Sylvia Baca, Assistant Secretary of the Interior for Land and Minerals Management
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Gaylon Lee

FROM: Gaylon Lee, Forest Activities Program Manager

DATE: July 8, 1999 (via facsimile)

SUBJECT: COMMENTS ON "WORKING DRAFT OF PROPOSED UNIFIED FEDERAL POLICY FOR ENSURING A WATERSHED APPROACH TO FEDERAL LAND AND RESOURCE MANAGEMENT"

Thank you for the opportunity to provide comments on the working draft of the subject document prior to its release in the Federal Register. Consistent with your request for comments, Division of Water Quality staff of the State Water Resources Control Board (SWRCB) have conducted a quick review of the working draft to determine: (i) how the proposed policy would coordinate with our water quality and watershed programs; (ii) what its potential impacts are on those programs, (iii) whether its timelines and content are effective and appropriate, and (iv) whether it would seriously hinder the State's water quality protection and watershed management efforts.

Under both the Federal Clean Water Act and the State's Porter-Cologne Water Quality Control Act, the SWRCB and the nine California regional water quality control boards are the state agencies with primary responsibility and authority for planning, managing, and protecting water quality and water rights in California. In recent years, the SWRCB has implemented a Watershed Management Initiative to encourage a locally-led community-based watershed approach to controlling pollution. With the exception noted later, the proposed policy would coordinate with and strengthen our Watershed Management Initiative.

In 1981, pursuant to section 208 of the Federal Clean Water Act, the SWRCB: (i) certified a Water Quality Management (WQM) Plan for National Forest System Lands in California, (ii) designated the U.S. Department of Agriculture, Forest Service as the water quality management agency for WQM plan implementation, and (iii) executed a Management Agency Agreement with USFS to implement the WQM plan. We have greatly appreciated the quality of our partnership with USFS during the subsequent years. We are currently in the process of developing a similar WQM plan with U.S. Department of the Interior, Bureau of Land

Management. Generally, the proposed policy could help strengthen our partnership with these agencies and could become a basis for improving the WQM plans and their implementation.

The proposed policy would also coordinate with and strengthen our total maximum daily load (TMDL) efforts and our core regulatory program. The proposed implementation timelines are different from those for our regional watershed and TMDL efforts. In regions where State staff is currently fully committed to completing these efforts under mandated timelines, they may not be available to fully collaborate with the Federal agencies in implementing this policy.

We support the two goals of the policy and the guiding principles. However, the first goal could better define its intended outcome, and it does not adequately recognize that impairment of beneficial uses of water is often not due to too much of a pollutant, but too little of a necessary watershed input (e.g., large woody debris, flushing flows). We suggest the following alternative language for the first goal: "use a watershed approach to maintain the quality and beneficial uses of water and the beneficial functions of riparian areas and wetlands where they are in good condition, protect them where they are threatened, and, insofar as feasible, restore them where they are impaired;". To support this goal, we suggest adding the following principle: "In watersheds that contain or drain into water bodies where the quality or beneficial uses of water are threatened or impaired, protection and restoration of these values shall the highest priority for management activities. Management activities that support protection and restoration of these values shall be encouraged; those that would not adversely impact those values may be accepted, and those that threaten to retard recovery or cause further impairment shall be discouraged."

We particularly appreciate the stated principles and implementation measures to ensure consistency and compliance with state's water quality requirements and programs. We have often found this principle to be lacking on the part of some Federal agencies. Ensuring that each agency is familiar with the U.S. Environmental Protection Agency's publication entitled "Section 319 Federal Consistency Guidance" could help implement this principle.

There is a great advantage to developing consistent interagency procedures for watershed delineation, assessment, classification, and monitoring for dealing with particular types of problems or issues. We completely support development and testing of various watershed assessment procedures to determine and improve their effectiveness and efficiency in dealing with particular types of problems or issues. There is also considerable benefit in developing a consistent interagency logical framework for determining the particular procedures that are most appropriate for a given situations. We recommend that the proposed policy include commitments to carry out these activities.

Potential problems inherent in the proposed agency commitments could hinder effective policy implementation by Federal agencies. These include, but are not limited to, the following:

1. A unified approach may discourage selection and application of the most appropriate approaches for watershed delineation, assessment, classification and monitoring in a given watershed. There is no "one size fits all" procedure for any of these activities. The particular type of problem or issue being addressed should be the primary determinant of the most appropriate approach. An appropriate approach must generate the information needed to fully address the particular problem or issue at hand, without requiring unnecessary effort or generating irrelevant information. For example, where a beneficial use of water is threatened or impaired, the assessment procedure should begin instream with the specific factors that limit that beneficial use in that water body and should stay focused on those watershed inputs, functions and processes that are associated with the particular limiting factors. On the other hand, where addressing other, especially multiple, issues (e.g., biodiversity, habitat, wildfire hazard, visual aesthetics, transportation/access), the most effective assessment approach could start at the ridgetop and work downward toward the water body, considering all ecological functions and processes along the way. We recommend that the proposed policy be amended to commit the Federal agencies to not only actively develop and test the effectiveness and efficiency of a number of approaches in dealing with particular types of problems, but to actively support and encourage use of the most appropriate approaches for a given type of watershed problem.
2. The policy does not reflect recognition of the importance of (i) historic watershed conditions, (ii) actions taken on Federal lands that are or were not under the control of the Federal land management agencies, and/or (iii) activities on non-Federal lands within a watershed. In conducting watershed assessments, historic watershed conditions are needed to determine significant longer-term trends in watershed condition as well as potential future conditions. Such trends may be more important than the watershed conditions existing at the moment. In many watersheds, significant impacts occurred before the lands were under current Federal management (e.g., historic mining and grazing) or are due to other activities not under the control of the Federal land management agencies (e.g., highway construction). Appropriate assessment of watershed condition is not limited by political or ownership boundaries, even though assessment of management activities and their effects on nonfederal lands may need to approached carefully to avoid unnecessary conflicts. We recommend that the proposed policy be amended to appropriately reflect the importance of these factors.
3. The policy is not clear regarding the differences between a "priority" watershed and one that warrants "special protection". Similarly, the policy does not reflect clear recognition that: (i) investment of resources as well as prioritization for assessment, restoration, and protection needs to be given where the most "bang for the buck" will be realized, and (ii) the policy of "protect the best, then restore the rest" espoused by conservation scientists may be the best means for realizing this. We recommend that the proposed policy be amended to clarify the differences and set forth a principle of maximizing the return on investments both in establishing priorities and committing resources for restoration and protection.

While direct serious hindrance to the State's water quality protection and watershed management programs appears unlikely, some significant indirect problems are likely. These include, but are not limited to, the following:

1. A unified Federal approach is likely to discourage the locally-led community-based watershed approach that is advocated by SWRCB. Approaches to watershed assessment, classification and monitoring designed for Federal lands are often mistaken by Federal personnel and other parties as valid precedents for use on non-Federal lands, even where (i) they are not feasible to use (for legal and other reasons), (ii) they are not appropriate for the situation, and/or (iii) another science-based approach may be equally valid and more appropriate for the problem at hand. A danger in a unified Federal approach is that it encourages Federal personnel and other parties to treat it as the only or best valid approach. We recommend that the proposed policy explicitly state that the Federal agencies shall continue to actively support and encourage any valid watershed assessment, classification, or monitoring approach and shall not explicitly or implicitly discourage it because it is different from the unified Federal approach.
2. Watershed boundaries delineated under the unified approach may conflict with mutually acceptable boundaries already developed by State and Federal agencies. In California, these agencies have spent considerable effort in successfully delineating mutually acceptable hydrologic unit boundaries and have established a process for amending those boundaries as mutually deemed appropriate. We recommend that the proposed policy explicitly state that the Federal agencies shall continue to support any existing mutually agreeable interagency hydrologic unit boundaries unless a state agrees that it would be mutually beneficial to change them.

There are existing problems that the policy could address more effectively. Two of these are as follows:

1. Lack of collaboration between State and Federal agencies in setting priorities and allocating funding and resources for watershed assessment, management, and monitoring may continue to be a major impediment to effective watershed management. The proposed policy seems to represent an excessively dominant Federal role in setting priorities and allocating resources for these activities. The statement that "appropriate" consideration will be given to views of states and others seems weak; who decides what is "appropriate"? We recommend that the proposed policy more clearly connect Federal agency commitments to collaboration with the states and others to its statements about establishing watershed priorities and resource allocations.
2. Lack of mutually compatible watershed databases may continue to limit the effective interagency leveraging of funding/resource investments and effective coordination of watershed assessment, monitoring and management decisions. The policy does not address watershed database development and maintenance. To facilitate these activities, we recommend that the policy commit the Federal agencies to assist in development of interagency databases that show with appropriate precision the characteristics and affected

location of existing, in process, or planned (i) important regulatory or planning decisions by each agency (e.g., adoption of a TMDL), (ii) water quality/watershed assessments conducted or funded by each agency, (iii) watershed management and/or monitoring plans developed or funded by each agency, and (iv) protection, restoration/improvement, and/or monitoring programs or projects conducted or funded by each agency.

cc: John Rector, U.S. Department of Agriculture, Forest Service
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