NEW MEXICO WOOL GROWERS, INC.

2231 Rio Grande NW - P.O. Box 7520
Albuquerque, NM 87194
Phone: (505) 247-0584 - FAX: (505) 842-1766

Sustainable Agriculture
Protecting The Environment
& All Its Creatures

April 3, 2000

USDA Forest Service
Content Analysis Enterprise Tem
Attn: UFP, Building 2, Suite 295
5500 Amelia Earhart Drive
Salt Lake City, UT 84116

RE: **February 22, 2000 Federal Register notice – Unified Federal Policy for Ensuring a Watershed Approach to Federal Land and Resource Management**

Dear Sir/Madam:

On behalf of the New Mexico Wool Growers, Inc. (NMWGI) and its membership, I am writing to comment on the above-specified Federal Register notice. The NMWGI represents New Mexico's sheep industry and producers.

The NMWGI strongly supports watershed planning to achieve natural resource goals and objectives. We have several substantial concerns with the intent and purpose of this policy, which are documented below:

1. The NMWGI, along with 67 other individuals/organizations, filed suit in June 1999 against the US Environmental Protection Agency, et. al. over the Administration's Clean Water Action Plan (CWAP). The basis of this suit includes numerous violations of various federal laws. Although the NMWGI endorses and promotes natural resource management on a watershed basis, the Association opposes this policy. The purpose, outcome, and decisions related to this policy were predetermined upon the publication of the CWAP. In addition, the intent and affects of this policy were not collectively analyzed for cumulative impact collectively with the other 110 "key actions" contained in the plan. Further, the agency has not, pursuant to the National Environmental Policy Act (NEPA), identified what the "need" may be for this federal action nor conducted any further NEPA analysis.

2. The narrative language contained in the CWAP prefacing this particular key action, contains the following statement: ***"Activities such as road building, logging, mining, grazing, hydrologic modification, or excessive recreational use can degrade the integrity of these watershed and require actions to reduce their harm." (Clean Water Action Plan, page 30).***

   Comment: Based on the above language it is apparent that the purpose for this policy has been determined. The intent is obviously based on the notion that virtually all land use activities are degrading the watershed, regardless of the method in which they are conducted. The states develop Best Management Practices to ensure that all of the above activities are conducted in a manner so as to protect the resource while meeting multiple use objectives. The above language

CAET RECEIVED

APR 05 2000

indicates that regardless of how the activity occurs it must be degrading the watershed. The focus of the policy is clearly geared toward elimination of multiple use activities.

3. The policy is extremely vague. In reading the policy, one would question why it has even been published it is so lacking in specifics. This issue could have likely been addressed had adequate NEPA analysis been conducted to identify and define the specific issues. This concern was solidified during the public meeting held in Denver in March. An attendee questioned how the agencies would know how they achieved the intent of the policy. One of the presenters who was involved in developing the policy, had great difficulty in responding. If individuals involved in developing the proposal cannot respond adequately to this question, it is apparent it is unclear why the policy is even being developed.

4. The policy is calling for actions and processes to be completed that are redundant to initiatives already being mandated by EPA through "authority" directed by the CWAP. More specific comments will be provided under the applicable section of the proposed policy.

5. The policy completely ignores the primacy of states that have delegated authority for implementing the Clean Water Act (CWA). Again, it appears the policy is yet another attempt, as can be seen in the proposed TMDL regulations, to circumvent the role and primacy Congress intended for the states in implementing the provisions of the CWA.

6. The policy appears to substantially modify the management approach to federal lands. However, as indicated in March, there is no intent to issue planning regulation amendments. NMWGI would question the agency's determination that rule changes are not necessary and substantial changes in federal land management processes can be implemented with a two-page policy.

Specific comments on the policy:

1) **Page 8837; Introduction** The introduction states ***"Implementation of the following proposed policy will improve water quality and aquatic ecosystems on Federal lands and will further the use of a watershed approach to federal land and resource management activities."***

   Comment: Again, it is troublesome that the introduction repeatedly refers to the CWAP as if it was a law that was enacted, investing additional authorities to the federal agencies. If the intent is truly to address resource planning and management on a watershed basis, then it is incomprehensible why the policy ignores the fact that it is highly unlikely that watersheds contain only federal resources and this watershed approach can be applied strictly to federal lands and still accomplish the intent of watershed planning. This leads to the next concern, which is the impact to private lands. At the meeting held in Denver, the attending public was reassured that the policy has no affect on private lands. After reviewing the policy, it is obvious that it will affect private landowners.

2) **Page 8837; Policy Goals** - The policy refers to the ***"managing the Federal lands, resources, and facilities in our care".***

Comment: The glossary section does not provide a definition of "resources". In order to clearly understand the intent and application of this proposed policy it is necessary that a definition be provided.

The policy goals recognize that there are existing programs for watershed protection and improvement currently underway and the policy is intended to enhance these programs. The policy goes on to identify guiding principals to achieve the two identified goals.

Principle A. ***"Use a consistent and scientific approach to managing federal lands and resources and to assess, protect, and restore watersheds."***

Comment: Although this principle states a very laudable intent that would be supported by the NMWGI, the policy is completely lacking in any specific detail on how this will be accomplished. NMWGI suggests that if the policy is truly intended to bring consistency among the federal agencies that the agencies incorporate the following:

A. Watershed Assessments: One of the basic fundamental challenges in efforts to pursue watershed assessments is the lack of consistency between local, state and federal entities on the level of science being collected for determination of watershed health. In addition, the federal agency monitoring process does not appear to consider geology, climate, soils, hydrology, stream succession, etc. Nor are the protocols, and ultimately the analysis of resource health, consistently applied. In addition, both the Forest Service (USFS) and Bureau of Land Management (BLM) monitoring activities are lacking in adequate science to determine water quality. The BLM tends to make determinations on water quality without any water quality data (Proper Functioning Condition). They utilize subjective physical information solely. Although NMWGI does not oppose the collection and use of the information, it should not be misapplied to make water quality determinations or watershed health assessments. Based on the above, NMWGI suggests that all of the agencies agree to and utilize a set level of scientific data when making various resource health decisions and specifically water quality determinations.

40 CFR § 130.0(b) **Water Quality Planning and Management**. Water quality standards (WQS) are the State's goals for individual water bodies and provide the legal basis for control decisions under the Act. **Water quality monitoring activities provide the chemical, physical and biological data needed to determine the present quality of a State's waters and to identify the sources of pollutants in those waters.** The primary assessment of the quality of a State's water is contained in its biennial Report to Congress required by section 305(b) of the Act. **(emphasis added)**

40 CFR § 130.4(b) **Water quality monitoring.** **The state's water monitoring program shall include collection and analysis of physical, chemical and biological data and quality assurance and control programs to assure scientifically valid data**. **The uses of these data** include determining abatement and control priorities; **developing and reviewing water quality standards**, total maximum daily loads, wasteload allocations and load allocations; assessing compliance with National Pollutant Discharge Elimination System (NPDES) permits by dischargers; reporting information to the public through the section 305(b) report and reviewing site-specific monitoring efforts. **(emphasis added)**

NMWGI recommends that the information necessary to determine watershed health be based on the above language, therefore providing consistency in the watershed assessment, planning, and implementation process.

B. Training/Education: In order for the above data to be collected with a consistent method, NMWGI recommends that the Departments not only encourage but require federal agency personnel who are responsible for these watershed management activities or related resources management, to attend training sessions. Although some states may not provide such a curriculum, the federal agencies could certainly take the initiative among their own staff.

C. Resources for collection of credible data - The agencies should provide adequate resources, if necessary redirected from other redundant programs, to allow their personnel to actively collect the necessary science for land and water resource management. NMWGI is not purporting to support an increase in appropriations to agency budgets, however would support and encourage a redirection of resources to ensure a science-based approach is being implemented.

The policy goals state that there are two basic goals: to promote a watershed approach to prevent and reduce water pollution from federal land and resource management activities and accomplish this in a

unified and cost-effective manner. The above comments should be given serious consideration if the agencies intend to remotely come close to achieving the above goals.

In addition, it is questionable why the process of evaluating, categorizing and prioritization for the focus of resources and actions will occur long before any effort is made to collect data and information. Based on the method proposed there will be no effort or activity to collect data until five years into the process.

Principal B: ***"Identify specific watersheds in which to focus our budgetary and other resources and accelerate improvements in water quality and watershed condition."***

Comments: EPA directed states in May 1999 to complete "Unified Watershed Assessments". These assessments, as described in EPA's memos and directives, mirror the assessments described in the draft policy. Based upon the NMWGI' review of various western states' Unified Watershed Assessments, the states included federal agency personnel. Obviously, based upon a sampling of these assessments the process was conducted regardless of jurisdictional boundaries.

The policy does not define the size of watersheds being discussed. It is assumed that the specific scale will be determined at the state level. There is a major problem with inconsistency from one agency to the next as to the size of the watershed. It is assumed that given when this effort was initiated, and has been in the process for over a year, that this policy would recognize that existing approach.

Principle C. ***"Use the results of watershed assessments to guide planning and management activities in accordance with applicable authorities and procedures."***

Comments: The NMWGI is concerned that the ultimate actions that may be taken as a result of this policy may pose conflicts between applicable authorities and procedures.

Principle D. ***"Work closely with states, tribes, local governments, and stakeholders to implement this policy.***

Comments: Again, it is questionable that this policy is even necessary given the actions and activities related to water quality and resource management on a watershed basis that have been initiated either by state or local governments. At the meeting in Denver, when asked how the state water quality agencies felt about the proposed policy, the answer was that the states supported the policy. However, I understand that only six states submitted comments, one of which recommended that the policy be withdrawn until the CWAP litigation was resolved.

Principle E. ***"Meet our Clean Water Act responsibility to adhere to Federal, State, Tribal, interstate, and local water quality requirements to the same extent as non-governmental entities."***

Comments: It is obvious that the federal agencies clearly need to address their contribution to water quality impairments. However, it is unclear how this particular policy will result in federal agencies adhering to water quality standards. As an example, although the Yellowstone National Park has been issued notices of violations from the Wyoming DEQ for water quality violations resulting from sewage spills into surface waters in the park, the state can do nothing more because it cannot assess any monetary penalties against the federal government. We recommend that if agencies are as committed to adhering to water quality standards as any other individual or entity would be, then the states should be allowed to assess penalties just as they would to any other individual or entity.

Principal F. ***"Take steps to ensure that Federal land and resource management actions are consistent with Federal, State, Tribal, and, where appropriate, local government water quality management programs."***

Comment: NMWGI would endorse the intent of this language. However, it is unclear why the policy is necessary to achieve this means. Over time, several local conservation districts and other local and state governments have attempted to be involved in federal land management planning activities. Where these partnerships occur, great success in resource management is made. However, it is continually frustrating that although the agencies purport to want to coordinate, they consistently ignore provisions of NEPA which provide that where state and local governments have jurisdiction by law or special expertise, they should be granted cooperating agency status on federal land management planning activities. Merely following the intent and mandate of NEPA, coupled with encouragement and empowerment of local field personnel to participate in locally initiated watershed planning efforts would accomplish this "principal."

As well, the language "where appropriate" is vague and if the policy is adopted it should be clarified.

Page 8837; II. Agency Objectives; 1st paragraph states: ***To accomplish these policy goals,...All agencies will implement this policy as individual agency laws, missions, and fiscal and budgetary authorities and resources permit."***

Comment: It would seem logical that prior to developing and issuing this policy the agencies would have ensured that the goals and actions proposed in the policy were permissible under individual agency laws, missions, and fiscal resources were sufficient. The mere fact that this language is in the policy indicates that there may be some conflicts or limitations that exist between the intent and goals of the policy and current authorities.

Section A. 2. A through d; states: ***"We will conduct watershed assessments for watersheds that have significant Federal lands and resources."***

Comment: The term "significant" is not defined in the glossary provided. When asked what the definition of "significant" was, at the Denver meeting, the response was that a definition had not been developed and that those submitting comments should provide input on whether the term should be defined. In addition, it was stressed at the public meeting, that the policy does not apply to or affect private property. However, unless "significant" is defined as solely federal lands there will be an impact on private property. It is assumed that in watersheds that are identified as "impaired", "high priority", or some other category indicating water quality impairments, that some map or delineation will be published. If the federal agencies even categorize a watershed as priority and there are private lands within that watershed, then this policy does affect private lands. It is unfathomable how the agencies could even begin to suggest that there would be no affect on private property. If the agencies truly intend for this policy to affect only federal lands then it should apply to those watershed which include strictly federal lands. This approach however, would obviously, in most instances defeat the purpose of a watershed approach. Therefore, NMWGI suggests that the policy be withdrawn. A commitment should be made by the agencies to watershed planning efforts initiated by state and local governments. The necessary resources to accomplish these watershed-based efforts are provided to the state and local governments, without the top down edicts, which fail to recognize local conditions. This would truly reflect what Congress intended to occur in the implementation of the CWA. This is supported with the language in the CWA at § 101(b) which states: **"It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administration in the exercise of his authority under this Act**.

Section B. 1 a through b.6; states: ***"We will work collaboratively to identify priority watersheds"***

Comment: This section goes on to provide a list of criteria or the process in which the agencies will determine priority watersheds. It is interesting to note that of the six criteria listed for determining priority watersheds, not one is directly related to scientific data indicating water quality degradation. Even though the goal of the policy is for federal agencies to comply with the CWA. Specifically one of the policy's goal states: "use a watershed approach to prevent and reduce water pollution resulting from federal land.."

Section B. 1. b. (3) states: "Magnitude of water quality impairment, impacts to aquatic resources, and/or ***changes to flow regime." (emphasis added)***

Comment: NMWGI is unclear what the intent is of the federal agencies to include flow regime. However, NMWGI would remind the agencies that the CWA states the following: ***§ 101(g): "It is the policy of Congress that the authority of each State to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this Act. It is the further policy of Congress that nothing in this Act shall be construed to supersede or abrogate rights to quantities of water, which have been established by any State."***

If the intent is to affect in any way, legally appropriated water rights, then this language should be deleted.

Section B. 1. b. (4) This language was addressed above in comments related to duplication of watershed assessments being conducted by state and local governments.

Section B. 1. b. (5) states "Vulnerability of the watershed to degradation".

Comment: This criterion only raises a myriad of questions as to how the agencies would determine a watershed's vulnerability to degradation.

Page 8838; B. 2. Through its entirety to section C.

Comment: Again, it is unclear, and this section solidifies this uncertainty, as to why the policy is necessary. This section discusses addressing nonpoint source pollution, implementation of Best Management Practices, total maximum daily loads, complying with state water quality standards, etc. Based on the NMWGI's knowledge these efforts are already occurring in various forms such as the large comprehensive USFS or BLM area planning processes, timber management, grazing strategies and management, coordination with states on water quality standards issues, etc. NMWGI would again recommend that the agencies merely make a commitment to watershed planning and involvement in such efforts.

Page 8838; section C. in its entirety

Comment: This section is too vague to even provide meaningful comment. However, it is apparent through this section that there are changes in multiple uses in store as a result of this policy. This is an assumption based on current agency trends to phase out uses and management practices such as timber harvesting, grazing, etc. and the language contained in the CWAP.

Section D. "***We will enhance collaboration***".

D. 3. b. states "***Provide opportunities for interested stakeholders to participate in monitoring and assessing watershed conditions and in implementing watershed restoration projects.***

Comment: This statement clearly causes concern. On face value, given the lack of specifics contained in the policy, one can interpret this statement that any interested public will be invited and encouraged to monitor and assess watersheds. There is no mention, whatsoever, of any minimum qualifications for participation from stakeholders. Again, it is imperative that the federal agencies consult with and maintain consistency with the state's approach. Clearly, there must be some threshold established for the level of expertise necessary for stakeholders to be involved in the collection of scientific data.

D. 3. d. states: ***"Seek early feedback on key decisions affecting watershed management through the Watershed Forum process called for in the Clean Water Action Plan and carefully consider this feedback in agency decision making."***

Comment: This statement is a prime example of how the agencies are treating the CWAP as an authorizing law, rule or regulation. The public input processes for federal planning activities are clearly governed by the NEPA, Administrative Procedures Act, and other federal laws. Yet, the policy sets forth that a "new" process will be followed. One contained in a Plan that was not even subjected to Congressional review. The CWAP discusses the National Watershed forum and indicates a ***"....Forum will be convened to provide a coordinating mechanism for the development of watershed assessment, restoration, and protection efforts. The Forum will include a total of about 20 members, including representatives of: federal agencies, state agencies, tribal governments, local governments, other stakeholder organizations, and watershed partnerships and citizens." (Clean Water Action Plan, page 87)***

There is no discussion of these reviews and/or decisions being made at the local level within the affected watershed. Further, there is no mention of private landowners serving on this Forum. Given that fact that this policy will impact private lands, it is necessary to involve landowners.

D. 4. States: ***"We will expand opportunities for dialogue with private landholders in priority watershed with a mix of Federal and private lands, we will work with private sector landholders to involve them in the watershed management process. We will work closely to ensure that Federally funded projects involving private cost-share partners fully consider watershed management objectives for both public and private lands."***

Comment: At the meeting held in Denver, agency representatives strongly assured attendees that the policy **DOES NOT AFFECT PRIVATE LAND. (emphasis added)** This was presented surely in anticipation of concern over a federal dictate of private land management. This concern is well founded based on the above. This policy will obviously affect private landowners. It is ironic that the policy does not discuss involving private landowners until the end of the policy. In addition, landowners are involved after the process of monitoring, assessing, prioritizing/categorizing, development and implementation of management practices, and collaboration with stakeholders. This demonstrates the clear lack of understanding and recognition by the federal agencies who prepared the policy of private property rights and working with private landowners voluntarily and cooperatively on resource management activities.

There are numerous examples throughout the west, where the majority of federal lands are located, that demonstrates private landowner commitment to sustainable resource management. This section sends a clear message that private landowners are an afterthought.

In closing, NMWGI would offer that if the federal land management agencies are truly interested in resource management on a watershed basis, then a sincere commitment needs to be made to work with state and local governments. Jointly the entities can discuss the development of a common process for approaching watershed management including a consistent understanding of the type of credible data necessary to assess watershed health. As well, the federal agencies must recognize the primacy of states in implementing the CWA, and most ***importantly*** recognize and respect the rights of those landowners with property located within these watersheds.

Thank you in advance for your consideration.

Sincerely,

Ron L. Merritt, Jr.
President

Cc: New Mexico Congressional Delegation
Governor Gary Johnson
Lt. Governor Walter Bradley