

POLICY AMENDMENT FORM

Amendment to ___ Conservation & Resource Management

(Policy Title)

Section Number /Title to Be Amended _7.1 through
7.12_____

Subject of Amendment: Comprehensice rewrite and update of natural resource and environmental resource
management policy _____

Submitted By ___ Leonard Blackham _____ Utah _____

(Name)

(State)

Amendment Text (Please write legibly):

Provides a comprehensice rewrite and update on natural resource and environmental resource management
policy. (see attached).

Signature_____

Date_____

Adopted _____
Adopted w/ Amend. _____
Not Adopted _____

1 CONSERVATION AND RESOURCE MANAGEMENT

2 ***Note: New proposed language is shown in italics, color and underlined. Current policy is in regular font.**

3 Table of Contents (*Reorganized*)

4 7.1 Working Partnership Between Agriculture and the Environment

5 7.2 Foundation Principles
6 Working Cooperatively with Farmers and Ranchers
7 Working Lands and Environmental Objectives
8 State Agencies and Programs are Key
9 Sound Science
10 Coordinate and Simplify Programs
11 Private Property Rights
12 Environmental Assurance
13 Confidentiality of Data

14 7.3 Program Tools to Get the Job Done
15 Agricultural Stewardship Program
16 Resource Management Plans
17 Technical Assistance
18 Monitoring

19 **7.4 Farmland Preservation**
20 **Easements**

21 **7.5 Conservation Programs**
22 **Improving USDA and Farm Bill Programs**

23 **7.6 Water Resources**
24 Goals for Clean Water Act
25 Nonpoint Source Pollution
26 Section 319 of Clean Water Act
27 Implementation of the CWA Water Quality Standards Program
28 Designated Uses
29 Water Quality Criteria
30 Antidegradation
31 Total Maximum Daily Load Program (TMDL)
32 TMDLs on Public Lands
33 Coastal Zone Management Act
34 Pesticide Management Plans for Groundwater
35 Watershed Site-Specific Process
36 Assistance to Small Drinking Water Systems
37 **Water Quality Trading**
38 **Drought**
39 Wetlands

40 **7.7 Environmental Management**

41 Animal Feeding Operations (AFO's)
42 Concentrated Animal Feeding Operations (CAFOs)
43 Classification of Agricultural Byproducts in Environmental Regulations
44 Noxious Weeds
45 Funding for Noxious Weed Programs
46 Regulatory Environment
47 Research Needs
48 Noxious Weeds on Federal Land
49 Accountability

50 7.8 Water Quantity

51 **7.9 Air Quality**
52 **Climate Change**
53 **Carbon Sequestration and Trading**

1 7.10 Energy

2 7.11 Forestry

3 Wildfires

4 7.12 Threatened and Endangered Species

5 **7.1 Working Partnership Between Agriculture and the Environment**

6 One of the most significant trends in the last few decades is the growing awareness of nearly all elements of U.S. society in the
7 importance of preserving our land, water, and air resources. As a whole, U.S. crop and livestock producers are among the most
8 dedicated and effective conservationists, and many of them have voluntarily adopted environmentally friendly practices that have local,
9 regional, and even global benefits. However, agriculture like any business sector still has environmental policy challenges to address.
10 These include finding ways to keep high-quality working farmland in production, encouraging producers to implement additional
11 conservation measures on working farmland, and developing more effective government programs that achieve conservation aims
12 while making economic sense for landowners.

13 These include protecting high-quality farmland and open spaces from urban development, and developing more effective government
14 programs that achieve conservation aims while making economic sense for landowners. There is also a need for the agricultural
15 community to address the lingering perception in some corners of U.S. society that farmers are merely part of the environmental
16 problem instead of key allies in conservation efforts.

17 Significant gains have been made in addressing traditional agricultural environmental concerns over the past decade. Soil erosion is
18 down, wetlands protection has increased, and wildlife habitat has been enhanced. Existing USDA-managed conservation programs
19 account for a good deal of this progress, and NASDA strongly supports their continuation. However, the scope and range of
20 environmental challenges faced by farmers and ranchers has expanded, while environmental regulations have increased and changed
21 along with the public perceptions, priorities, and science that underlie them. A new focus on partnership is needed to harness a new
22 generation of environmental stewardship.

23 **7.2 Foundation Principles**

24 Certain critical principles must be adhered to as the country develops a working partnership with agriculture that must be sustained as part
25 of our overall effort to meet the numerous environmental challenges we face. NASDA strongly encourages federal agencies to strengthen
26 working relationships with the agricultural community and build more partnerships with farmers and ranchers to accomplish
27 environmental goals. NASDA's principles include:

28 Working Cooperatively with Farmers, Ranchers and Forest Landowners

29 NASDA believes the nation's environmental efforts should emphasize and enlist the voluntary support and participation of farmers,
30 ranchers and forest landowners. Crop and livestock producers are among the most dedicated and effective stewards of our natural
31 resources because agriculture depends on continued access to clean air, water, and fertile land for its viability.

32
33 Voluntary, incentive-based initiatives have been highly successful and offer continuing opportunities for major environmental quality
34 protection. NASDA supports this approach because locally-led initiatives are more effective in addressing diverse state and regional
35 differences both in what farmers produce and in the most pressing agricultural environmental challenges they face.

36 Farmers are ready to do their part in accomplishing current and future national environmental goals. However, meeting new and
37 ongoing environmental demands is a "make or break" challenge for producers. The food and agricultural production system is not
38 organized in a fashion that allows increased costs of production to be passed on to consumers. Many on-farm conservation practices
39 have high capital or management input costs that do not generate additional revenues for producers. As such, on-farm expenditures for
40 conservation compete directly with serving farm debt and other family financial needs. NASDA believes it is critical to provide a
41 balanced mix of policy tools, financial incentives, education and technical assistance to enhance environmental performance by
42 producers.

43 Working Lands and Environmental Objectives

44 A financially healthy and profitable agricultural sector is essential to the production of a safe, fresh, and affordable supply of food, fuel
45 and fiber. NASDA believes that environmental and conservation policy needs to balance a variety of concerns ranging from meeting
46 regulatory requirements to farm viability. The economic impacts on individual producers must be considered along with environmental
47 quality. Economically viable farming and ranching enterprises will enable producers to increase their efforts to maintain a healthy
48 environment, protect our natural resources, and build stronger rural communities. Agriculture provides not only the food and fiber of
49 America, but is the largest offset provider against human activity. A healthy agricultural landscape provides clean air, water and open
50 space. In addition, the nation's climate change policy should include agricultural offsets.

51 State Agencies and Programs are Key

1 State departments of agriculture are at the front lines with producers and rural communities and must be considered full partners in
2 the development and implementation of national environmental programs and policies. State agriculture departments often tackle
3 environmental, water quality, food safety and pesticide management issues before they reach national attention. They have long been
4 the lead state agencies for implementing federal pesticide laws, and about half of the state conservation agencies are housed within the
5 state agriculture departments. In this capacity, state agriculture departments oversee and implement soil and water conservation
6 programs, non-point source water quality programs, and a variety of other environmental resource programs. State-led initiatives have
7 provided significant and continuing opportunities for major environmental quality protection. NASDA believes federal agencies,
8 particularly USDA and EPA, should provide states with the flexibility to account for regional differences in approach and should
9 recognize "functionally equivalent" state programs that meet environmental goals

10 **Sound Science**

11 The foundation of the agricultural sector in this country has long been the development and adoption of science-based practices
12 derived from reliable data and research. NASDA believes that policy makers and regulatory agencies with responsibility for natural
13 resource and environmental programs should ensure that all information used or relied upon in the decision-making process is based
14 on sound science, technical analysis, and best available data. All major science policies and methodologies for assessing risks, costs
15 and benefits, and other modeling systems should be subject to rigorous peer review.

16 **Coordinate and Simplify Programs**

17 NASDA believes more integration, coordination and implementation of programs at the federal level is necessary. Federal "stovepiping"
18 and overlapping jurisdiction is a significant problem for many conservation and environmental resource programs. Unnecessary
19 duplication of programs, services and requirements diminishes program productivity, wastes taxpayer dollars, and is confusing for
20 producers/those who are regulated. Unnecessary duplication of programs, services and requirements not only wastes the valuable
21 resources of agencies and the public they are serving, but also creates a tremendous lack of confidence in the programs and the people
22 administering them. Better program coordination will help leverage resources and ensure more effective environmental/conservation
23 benefits are realized. It is essential that entities within agencies coordinate their efforts to ensure consistency. Goals and objectives should
24 be clear and comprehensible.

25 **Private Property Rights**

26 All conservation and environmental programs, laws and regulations must respect personal property rights. In recent decades, the intrusion
27 of federal regulations into property owners' land use decisions has increased dramatically. The result has been an unprecedented surge in
28 litigation directed toward the federal government. Much of this litigation has been predicated on the theory that a particular federal land
29 use regulation has violated rights guaranteed by the "just compensation clause" of the Fifth Amendment to the United States Constitution.

30 Unfortunately, the exact scope of the rights guaranteed by the "just compensation clause" has proved elusive. Landowners seeking to
31 determine their rights under the Constitution face the prospect of protracted litigation, open-ended legal costs, and an uncertain outcome.
32 At the same time, regulators are themselves uncertain over the extent of the responsibilities under the Constitution with respect to private
33 property rights.

34 The constantly evolving national debate over the need to protect the environment and conserve the country's natural resources, while at
35 the same time ensuring private property rights, presents one of the most difficult policy and legal issues now before Congress. There is a
36 wide range of federal programs that either directly or indirectly affect the use of private property. The development and implementation of
37 many of these programs should, to the maximum extent practicable, reflect the need to avoid unnecessary and unwarranted impacts on the
38 sanctity of private property. In a rush to protect the environment and conserve natural resources, lawmakers must never lose sight of the
39 critically important role that private property plays in our society.

40 If Congress mandates that federal agencies must consider the likely impact of their programs on private property, such a mandate will
41 provide developing programs a blueprint to balance the need to protect and conserve natural resources with the concerns of private
42 property owners. To avoid the conflict over private property rights, federal and state agencies should move away from the "central
43 command and control" model and toward programs that provide incentives for landowners to conserve appropriately defined natural
44 resources, with voluntary compliance being the ultimate goal.

45 **Environmental Assurance**

46 Aside from the desire to foster good stewardship, an important aspect of any voluntary program is the benefit gained by a participating
47 agricultural producer in terms of reduced burden associated with regulation and liability. Where an agricultural producer participates in a
48 voluntary resource management-planning program with demonstrated benefits, the producer should receive significant and meaningful
49 credit for this work. Voluntary programs should offer some form of presumption of compliance with the objectives of regulatory programs
50 (e.g., water quality standards, habitat protection, etc.), appropriate relief from water-related permitting requirements, and/or reduced
51 liability associated with off-farm environmental degradation (e.g., from undefined sources). The so-called environmental assurance or
52 "safe harbor" concept incorporates relief from regulation and enforcement for landowners where acceptable voluntary management
53 practices are put in place.

54 Voluntary programs are the preferred and most effective means to working with farmers and ranchers to help them manage the resources
55 on their operations wisely and to protect the quality of the environment. However, the potential exists for resource management problems
56 to develop on an operation that is not participating in one of the many effective programs. If these problems are significant, it is possible
57 that the inaction of a few non-participants could lead the general public to believe that these problems are present on the majority of
58 operations.

1 In this instance, a voluntary program will not be comprehensive enough to address the full range of resource needs and situations that may
2 exist. As a result, NASDA recommends that there be provisions or processes to provide opportunity and resources to correct these
3 problems not addressed by the voluntary programs. When a producer fails to take what is generally recognized to be appropriate and
4 prudent steps to correct a significant resource problem, NASDA recognizes the need to pursue appropriate follow-up to assure that such
5 problems or situations are resolved. Provide for graduated certification and implementation which would afford varying degrees of 'safe
6 harbor' or 'no action assurance' for producers.

7 Federal programs are neither effective nor fair if they do otherwise. They become tools for abuse and are often expanded through court
8 decisions beyond what may have been intended by Congress. This is particularly true where Congress has authorized agencies to
9 regulate, or the courts have allowed citizen suits to direct federal policy. And such programs impose on certain unfortunate landowners
10 the obligation to dedicate the value of their property to the public purpose of preserving natural resources, often without sufficient
11 opportunity for those landowners to protect their interests. It is imperative that Congress understands the impact of regulatory programs on
12 private property and prevents the involuntary "taking" of private property by the government.

13 Congress should eliminate government activities that infringe on private real property rights without compensation and move toward
14 incentive-based programs for natural resource protection with the ultimate goal of private/public voluntary cooperation to protect and
15 enhance those natural resources.

16 The federal government owns 32 percent of the land area in the U.S. and two percent of the world's land area. Federal lands are 3.5 times
17 larger than the original 13 colonies and 4.5 times larger than Texas. Additional federal land acquisition should be accomplished by
18 exchange or sale of surplus federal property whenever possible. Where the federal government owns 25 percent or more of a state, there
19 should be a no net loss of private property within that state. Further, Congress should retain its oversight function of all federal land
20 acquisition.

21 ***Confidentiality of Data***

22 The privacy and confidentiality of data and information in a farmer's or rancher's voluntary conservation plans must be preserved and
23 protected if society is to obtain their full and effective cooperation and participation in natural resource conservation and environmental
24 programs. The plans themselves must not be subject to the federal Freedom of Information Act (FOIA) and must not be allowed to be
25 used against the farmer or rancher in a federal or state enforcement action. Rather, these plans should be a means to assure that, once
26 implemented, the farmer or rancher will meet other environmental laws and regulations, natural resource needs, and allow a producer to
27 make a profit in the world marketplace.

28 **7.3 Program Tools to Get the Job Done**

29 ***Agricultural Stewardship Program***

30 NASDA calls for a bold, new initiative to address agricultural conservation and natural resource and environmental priorities through state
31 partnerships. A new Agricultural Stewardship Program would be a "block grant" type initiative that would give state and local
32 governments greater flexibility, innovative tools, and resources to implement agricultural conservation priorities. The intent of the
33 initiative is to fill in the gaps, which will only increase in the future due to changing public expectations and regulatory requirements. This
34 new approach will provide a better "tool box" with new and appropriate tools to meet these needs. Current conservation programs have
35 limited capacity and funding to address these situations and needs. Under the Agricultural Stewardship Program, the Secretary of
36 Agriculture would provide block grants to state departments of agriculture. The grants would serve as a means to provide assistance and
37 support, cost-share payments, incentive payments, technical assistance, and education to agricultural producers and landowners for
38 environmental enhancements, best management practices, and air and water quality improvements addressing resource concerns. Under the
39 block grant program, states would have maximum flexibility to

- 40 Address threats to soil, air, water, and related natural resources, including grazing land, wetlands, and wildlife habitat;
- 41 Comply with state and federal environmental laws;
- 42 Make beneficial, cost-effective changes to cropping systems, grazing management, manure, nutrient, pest, or irrigation
43 management, land uses, or other measures needed to conserve and improve soil, water, and related natural resources.

44 ***Target state-wide conservation efforts to address environmental threats.***

45 ***Resource Management Systems and Conservation Plans***

46 Resource Management ***Systems and Conservation Plans*** address *environmental* quality in a comprehensive manner, ***including soil,***
47 ***water and air.*** They are technically, environmentally and economically feasible, and also provide the most effective basis to meet the
48 requirements of several environmental laws and regulations, including the Clean Water Act (CWA), the Safe Drinking Water Act
49 (SDWA), the Coastal Zone Management Act (CZMA), the Endangered Species Act (ESA), and the Federal Insecticide, Fungicide, and
50 Rodenticide Act (FIFRA.). ***Resource Management Systems and Conservation Plans*** provide farmers and ranchers with a voluntary
51 opportunity to enhance their resource protection and meet the requirements of the laws and regulations in a manner tailored to their
52 operation. The purpose of ***Resource Management Systems and Conservation Plans*** are to provide technical, educational, and financial
53 incentives to encourage the enhancement of environmental stewardship. They are designed as an integrated
54 approach that is voluntary and site-specific in application. To be successful, these voluntary plans must be farmer and rancher owned,
55 controlled, developed and implemented.

1 Components of Resource Management Systems and Conservation Plans should include, but are not limited to, as determined by the
2 producer: residue management; soil erosion management; nutrient management; integrated pest management; manure management; cover
3 crop management; water quality and utilization management; grazing and range management; irrigation water management, wetlands
4 management; and species management. The planning process provides increased outreach to farmers and ranchers by providing
5 information, technical assistance, and financial opportunities to producers for implementation of the plans.

6 **Technical Assistance**

7 Conservation Technical Assistance (CTA) is vital in helping farmers, ranchers and landowners to plan, design, and apply conservation
8 practices on the land. By utilizing CTA, greater adoption of conservation practices is accomplished by landowners seeking to be good
9 stewards of their natural resources. There remains a strong demand for technical assistance and NASDA has long believed CTA has been
10 under-funded. NASDA supports increased funding for CTA.

11 Many in agriculture do not have adequate access to technical assistance unless they participate in federal conservation programs. NASDA
12 believes it is essential for NRCS to expand the technical assistance delivery system for all farmers and ranchers who are seeking to adopt
13 better, more environmentally sound production and management practices.

14 Increasing CTA is critical to allowing staff time for pro-active conservation planning. State block grants to conduct risk-based assessments
15 with farms is critical for targeting Farm Bill program financial assistance.

16 **Monitoring**

17 An effective and cost-efficient response to water quality problems requires accurate and reliable information on the source, extent and
18 impact of nonpoint source (NPS) pollution, as well as the effectiveness, utility and economic feasibility of conservation measures and best
19 management practices. CWA reauthorization should include a strong financial commitment to further research, monitoring and
20 assessment projects of sufficient duration to effectively inform the policy process. Monitoring should be performed in a manner
21 consistent with NASDA's sound science principles. Monitoring should be conducted for biological indicators in addition to chemistry
22 and other environmental issues. When implementing a research or monitoring project, state and federal protocols should be selected
23 based on sound science, the watershed objectives, the budget of the project, all with state and local input. Prudent use of scarce fiscal
24 resources would provide monetary assistance to states for monitoring activities. Many state departments of agriculture are being called
25 upon to carry out significant monitoring programs in support of federal and state objectives. These state agriculture agencies should
26 receive a considerable portion of the federal monies made available to states for this purpose.

27 **7.4 Farmland Preservation**

28 A growing number of states across the nation are recognizing the importance of actively protecting farmland and supporting their
29 agricultural industries and infrastructure. Many states are positioning themselves to lead the future bioeconomy by protecting working
30 lands used for agriculture and forestry to provide biomass needed for fuel, electricity, chemicals, and other products. Protecting
31 farmland assists states to develop a diverse agricultural economy through value-added products. Working lands also provide ecological
32 services that promote environmental quality, sustain economic growth, and improve the quality of life by providing flood control,
33 protection of streambanks, groundwater recharge, scenic vistas, wildlife habitat, and carbon sequestration. Absent a viable agricultural
34 industry, irreplaceable farmlands cannot and will not be preserved for future generations of farmers. (NASDA believes) the Farmland
35 Protection Program Program (FPP) must not exclusively focus on soils preservation, but must incorporate farm viability into its overall
36 mission.

37 NASDA supports the recent enhancements of the FPP and recommends that improvements to the program in the 2008 Farm Bill,
38 which include increased flexibility in the program and some deference to local and state conservation entities, be maintained and
39 enhanced in the development of regulatory rules and guidance. In particular, 1) if a state run conservation easement program exists
40 and that program can be considered to be a qualifying entity under the provisions of the Farm Bill, funds should be allocated to those
41 state agencies for distribution to other qualifying local government entities and conservancies within the state; 2) conservation easement
42 language developed by qualifying state programs should be considered as being acceptable to the federal government so that
43 conservation easements can be tailored to the particular characteristics of the state; 3) recognize farm viability as a priority in addition
44 to soils preservation in the FPP; and 4) enhance the effectiveness of the FPP by allowing state run conservation easement programs to
45 distribute funds and complete locally initiated conservation easements in a reasonable fashion, and 5) recognize unique farmland
46 orchards and vineyards.

47 **Easements**

1 NASDA supports the elimination of capital gains taxes on income received from the sale of agricultural conservation easements.
2 Taxing agricultural conservation easement income discourages farmer participation, and increases the cost to states, counties, and
3 private organizations which are trying to preserve farmland by purchasing development rights. Current tax policy also causes
4 inequities between farm owners depending on their income level and the length of time they have owned their farms. In particular,
5 farmers who have modest income, and who have owned their land for many years, are disadvantaged by existing tax policy as it relates
6 to the sale of an agricultural conservation easement.

7 Eliminating capital gains taxes on agricultural conservation easements will allow state and local dollars to preserve more acres of
8 farmland; encourage wider farmer participation in farmland preservation programs, and eliminate the need for complicated and costly
9 programs which are designed to overcome the capital gains tax disincentive to farmland preservation.

10 7.5 CONSERVATION PROGRAMS (New Section)

11 Improving USDA and Farm Bill Programs

12 *In the beginning of this document, NASDA states its support for existing conservation programs. Does it need to be restated and
13 expanded here? Do we want to express support for specific programs, such as EQIP, CRP, etc.?

14 7.6 Water Resources

15 **Goals for Clean Water Act**

16 Water resources are essential to the United States' health and economic well-being. NASDA supports the goals of the Clean Water
17 Act (CWA) to make the Nation's waters "fishable and swimmable." NASDA supports efforts to ensure the maintenance of water
18 quality at levels that protect human health, as well as physical and biological aquatic environments. Strategies to achieve these water
19 quality levels should be based on technically sound, practical, cost-effective and achievable methods. State laws regarding water
20 rights and allocations must be honored.

21 NASDA believes states should be given maximum flexibility in their management of water resources. The role of the federal
22 government should be to establish national water quality goals that are achievable, support state efforts for implementing water
23 programs, provide technical and financial assistance, support research and development, and providing appropriate oversight of state
24 programs. The federal government should also recognize state certification and assurance programs.

25 NASDA believes the best way to achieve water resource goals and standards is through watershed-based approaches, which take into
26 account regional differences in climate, landscape, and geography. Groundwater management and the related water conservation
27 issues should not be addressed by the Clean Water Act. States, and their local units of government, have and must maintain the primary
28 responsibility for managing ground water resources, in partnership with the federal government.

29 **Nonpoint Source Pollution**

30 Nonpoint source (NPS) water pollution is, without question, one of the major remaining water quality challenges in this country that
31 must be addressed. NPS pollution stems from multiple types of human activities and natural sources occurring diffusely over broad
32 areas of land. These human activities include many urban and suburban land and water uses, construction activities, septic systems, as
33 well as agriculture and forestry activities. Agriculture, in particular, has received considerable attention in recent years, as federal and
34 state agencies have sought to increase their water quality protection efforts.

35 Whatever the source of NPS pollution, the programs and policies adopted to address it must be significantly different than those adopted for
36 point sources. This is because nonpoint source pollution is fundamentally different than point source pollution. Nonpoint source runoff
37 can naturally occur over broad areas of land and is seldom observable to both regulators and the source itself, creating uncertainty as to
38 whether poor water quality is due to nonpoint sources, undesirable states of nature, or other sources of pollutants. In addition, weather,
39 particularly rainfall events, has a dramatic affect on the amount and timing of runoff that occurs. As such, any reasonable policy devised
40 to meet a set standard for runoff can be defeated by an unusual weather event.

41 Unlike point sources of a particular pollutant, you cannot expect similar pollution reduction results across many different farms or
42 ranches when applying the same technological solution for the same type of pollutant. This is because the same set of management
43 practices used in different locations, even when applied to the same crop, will likely have substantially different consequences for the
44 amount of runoff that will occur. This is due to the major influence that different soils, slope, weather, and timing of application have on
45 runoff prevention in agriculture. As a result, dealing with agricultural nonpoint source pollution requires site-specific solutions involving
46 detailed knowledge about a farm or field's situation and needs.

1 Many claim that agricultural nonpoint source runoff should be addressed through the Clean Water Act's mandatory measures. The intent
2 of the CWA is clear – non-point sources of pollution are not subject to mandatory regulations under the CWA, but are to be addressed
3 through voluntary, outcome-based programs. Legislation has provided a clear and concise distinction between point and non-point source
4 management, and it is imperative that the federal clean water program not require states to operate in any different manner. Similarly, it is
5 inappropriate to provide the authority for citizen suits against individuals participating in NPS management programs.

6 Still, agricultural nonpoint source runoff, along with all the other sources of nonpoint source runoff, must be prevented or minimized if we
7 are to reach the country's water quality goals. To do this, a commitment of the time and resources similar to the 20-year commitment our
8 country has made to eliminate point source pollution is necessary. State revolving funds (SRF) dedicated to dealing with nonpoint source
9 pollution must be established and funded.

10 The Clean Water Act (CWA) does not stand alone in protecting America's waters from NPS pollution. Other ongoing programs at the
11 federal, state and local levels must be funded fully, and coordinated with, not superseded by, the CWA. In particular, the state-led
12 programs, when coupled with various Farm Bill, Clean Water Act and Safe Drinking Water Act incentives and support, can provide
13 significant and continuing opportunity for major environmental quality protection. Federal water policies must recognize that the value of
14 the state programs, if enhanced through Federal efforts, could provide a firm foundation for a sound national NPS policy.

15 The central focus for NPS management solutions should be on reasonable, voluntary, and incentive-based solutions utilizing education
16 and technical assistance as well as financial assistance. All of these efforts must be grounded in solid, scientific, research-based
17 solutions. NPS pollution management programs should emphasize the protection of water resources and state-designated water uses,
18 including state and federal designated agricultural uses, recognizing the importance and needs of individual agricultural producers and
19 other landowners affected by the CWA. *There is clear evidence that work in addressing nonpoint source pollution takes local focus and
20 considerable on-site technical assistance. Financial assistance for conservation practices, carbon offsets, and block grants to do this
21 work will assure success in addressing this considerable charge.*

22 Maximum opportunities should be provided for farm/ranch self-assessments of potential nonpoint source contributions followed by
23 incentive-based adoption of scientifically sound practical best management practices tailored to field and/or operational practices. A
24 collective assessment should be carried out on a watershed basis with resources and priorities focused toward the principal sources and
25 sensitive areas. The opportunities can be provided by state and federal adoption of the concepts embodied in NASDA's report on
26 "Innovative Approaches to Natural Resource Protection - A Summary of Successful State Comprehensive Resource Management Planning
27 Initiatives."

28 The use of nutrients in production agriculture, specifically the impact of those nutrients on surface and groundwater, will continue to be an
29 issue in American agriculture. By incorporating urease inhibitors and nitrification inhibitors into ammonium containing fertilizers, farmers
30 can improve efficiency of ammonium fertilizers, reduce nitrate runoff into surface and groundwater and reduce the emission of ammonia
31 and greenhouse gases. NASDA recommends farmers be encouraged to incorporate urease inhibitors and nitrification inhibitors into
32 ammonium-containing fertilizers as a Best Management Practice where appropriate. NASDA also encourages NRCS to consider allocating
33 resources to urease inhibitors and nitrification inhibitor projects where requested.
34

35 ***Section 319 of Clean Water Act***

36 The CWA contains valuable provisions for NPS management embodied in Section 319. The proper management of NPS pollution lies in
37 state and local efforts. As such, states should continue to identify and resolve their priority NPS water problems through administration of
38 Section 319 funds.

39 With state oversight and approval, local entities should continue to carry out these NPS programs. State and local programs should
40 provide for a mix of research, development, education and technical and financial assistance for both planning and implementing actions
41 aimed at achieving state designated water uses. Agencies at the federal and state levels should harmonize objectives and coordinate
42 funding for national and regional NPS management programs. Amendments to, and programs under, the CWA should continue to focus
43 on the 319 program as the means for states to identify nonpoint sources in critical areas, and to develop management programs to control
44 discharge.

45 Federal appropriations in the Section 319 program for on the ground work with producers and to help them adopt BMP practice
46 implementation must be increased. Amendments to the CWA should provide increased authorization for funding and technical support
47 for state management programs and local implementation. Reauthorization of the CWA should include amendments to allow states to
48 allocate 319 funds to cost sharing BMP's not necessarily as part of a demonstration project. Management efforts funded by Section 319
49 should be directed to priority areas based on scientific assessments that identify water bodies with impaired or threatened uses. Priority, as

1 determined by states, should be based on the magnitude of risk to human health, improving water quality for designated uses, attaining
2 water quality standards, and likelihood of further significant and unreasonable water quality degradation if no action is taken.

3 Strategies should be developed on a hydrologic unit, watershed-wide basis using an approach that includes consideration of both surface
4 and groundwater quality. Programs should focus on cost-effective, site-specific practices for individual operations with flexible
5 implementation. EPA and the state water quality agencies should actively work with the state agricultural agencies and producers in
6 identifying agriculture's needs and priorities for 319 funding relative to agricultural NPS issues.

7 Section 319 management programs on federal lands should be developed and implemented by the specific agency statutorily charged
8 with management of the lands in question, rather than by regulatory authorities independent of that agency.

9 Groundwater management and the related water conservation issues should not be addressed by the Clean Water Act, including Section
10 319, except to the extent that the states decide that they want to use Section 319 for this purpose.

11 ***Implementation of the CWA Water Quality Standards Program***

12 In general, it is critical that the Environmental Protection Agency's (EPA) implementation of the Clean Water Act continue to respect and
13 follow the standard established in the Act that the states and Tribes are to have the lead role in determining how CWA's provisions are
14 going to be applied in the unique circumstances and needs in each state or tribal area.

15 ***Designated Uses***

16 Wherever possible, EPA's emphasis in its oversight of the use designation process should be on providing guidance to the states as to
17 how an effective use designation program should be designed and operated. EPA must avoid over-specifying the use-designation process
18 if it wants to ensure that states, in fact, come up with a flexible and adaptive process that can work in all locations across the country for
19 very different waters. In this way, it will be possible to create a program that meets CWA goals for clean water while also respecting
20 and reflecting the judgments and involvement of people at local and state level. In particular, EPA should not have the authority to
21 change a state's designation for a water body unless EPA meets a reasonable standard of proof. Once a state has established a use and
22 provided justification for that designation, EPA should not reject that designation and require that a new one be established without
23 adequate proof that the state's original designation was incorrect.

24 EPA should recognize states' ability to identify every water in a state for some specific usage and their ability to manage these waters
25 according to these uses. The concept of an "existing use" is not in the CWA as it is reflected in the current regulations. Requiring states to
26 manage waters at quality levels that are the result of historical circumstance with no deliberate public process, rather than at a
27 "designated use" decided upon by the state, is not consistent with the CWA and should not be EPA policy.

28 A state's water quality program, not individual water quality attainment plans, land use rules or resource management plans, should be
29 subject to EPA approval. EPA must approve the program unless it finds that there is not a reasonable likelihood that the program will
30 result in the attainment of water quality standards in impaired waters within fifteen years.

31 In the use-designation process, states must be free to make decisions affecting water quantity rights and allocations consistent with state
32 law. As stated in the Clean Water Act, it should be EPA's policy to recognize, preserve, and protect the primary responsibilities and
33 rights of states to plan the development and use of land and water resources.

34 ***Water Quality Criteria***

35 As for the overall water quality standards program and the use-designation process, EPA's emphasis in its oversight of the development
36 and implementation of water quality criteria should be on the use of guidance to help the states establish scientifically sound and
37 effective water quality criteria. EPA must avoid over-specifying what these criteria are going to look like to ensure that states come up
38 with a flexible and adaptive process that can work in all locations across the country for very different waters.

39 Many of the changes that EPA has considered recently in the water quality criteria program are well beyond the financial resources the
40 states would need to implement the changes. As EPA makes changes to the federal water quality criteria policies, they must reasonably
41 and prudently reflect the financial resources available to the states to do this work.

42 Also, EPA must ensure that the principles of sound science are followed as they revise and update criteria policy. In all of these cases,
43 EPA must not exceed the science that is available. Only sound criteria should be used in the process of establishing permit
44 requirements and effluent limitations. The aquatic systems that the CWA addresses can be incredibly complex. We have a far from complete
45 understanding of the chemical, physical and biological processes that are at work in these systems. This is especially true as the science tries to

1 integrate the chemical and physical factors to biological outcomes. Complicating this science are naturally occurring sources of pollutants and
2 contaminants that are hard to delineate from other human-induced stressors, and multiple stressors from multiple sources.

3 There will be instances where the science is adequate to begin to use our incomplete understanding of chemical, physical and biological
4 processes as “indicators” of water quality conditions. Use of indicators under these circumstances is appropriate for educational purposes
5 and to assist informal assessments. Indicators under these circumstances should not be used to establish the thresholds for the impairment
6 of a water body. Nor should such indicators be used to establish permit requirements.

7 In all of this, EPA must continue to implement a program that is grounded in the Clean Water Act’s emphasis on the regulation of the
8 discharge of “pollutants”. The CWA does not regulate “pollution” and therefore it is inappropriate to establish criteria for the purpose of
9 permit requirements that are based on pollution and not pollutants.

10 ***Antidegradation***

11 NASDA believes that EPA has established through rulemaking an antidegradation program that reaches far beyond that authorized in
12 the CWA and envisioned by the Congress. The CWA speaks of antidegradation in the context of water bodies with outstanding water
13 quality that must not be allowed to degrade. For other waters, CWA directs the states to establish a water quality standards program
14 consisting of designating uses for the waters of the U.S. and criteria to be used to judge whether these uses are being met. It is
15 inappropriate to require the states to establish an antidegradation program that does not allow them to manage these waters to their
16 designated uses. This is particularly true since Congress established the Total Maximum Daily Loads (TMDL) process in Section 303 of
17 the CWA to ensure waters are returned to their designated uses if their quality degrades below that needed to meet this use.

18 If EPA persists in pursuing their current antidegradation policies, it must recognize that the states cannot establish a credible antidegradation
19 program without a significant increase in federal funding to support this activity. EPA’s requirements for an antidegradation program
20 must not exceed the financial resources available to the states to implement the provisions. In addition, antidegradation policies must
21 recognize that nonpoint source pollution events are highly weather dependent. Natural events can lead to extreme variability in
22 loadings even when best management practices or any other pollution control measures consistent with the CWA are being used as
23 designed.

24 ***Total Maximum Daily Load Program (TMDL)***

25 The intent of the CWA is clear – non-point sources of pollution are not subject to mandatory regulations under the CWA, but are to be
26 addressed through voluntary, outcome-based programs. Legislation has provided a clear and concise distinction between point and non-
27 point source management, and it is imperative that the TMDL program not require states to operate in any different manner. The Section 319
28 program was established as the means to be used to address waters impaired by nonpoint sources. It is therefore not appropriate that EPA
29 continues to seek to list waters under the TMDL process that are impaired by nonpoint sources only. If EPA persists in its approach to listing
30 nonpoint source impaired waters under the TMDL process, it is essential that EPA recognizes that voluntary approaches, like Resource
31 Management Plans (RMPs) under Section 319 will meet the needed and/or required water quality standards. In all cases, TMDL or otherwise,
32 EPA must support and allow local, voluntary, incentive-based approaches as a key means to address local water quality challenges.

33 In all cases, listing of waters as impaired under TMDL’s must be based on sound and complete data – there has to be ample proof that
34 a water is impaired before a state must be required to go through the lengthy and controversial process of developing a TMDL plan for
35 that water. The use of “surrogate” indicators of pollutant loads as leading to impairment as the basis of listing a water under the TMDL
36 program must occur only after careful consideration and with the best science possible to ensure a high level of confidence that the
37 TMDL listing can withstand critical scrutiny. To do otherwise will not result in improvements to water quality, create controversy and
38 the waste of resources, and otherwise harm our overall water quality protection efforts. Even if great care and good science is used to
39 establish a surrogate indicator, it will be very difficult for state agencies to establish nonpoint source reduction goals under a TMDL
40 process.

41 EPA must provide a clear and reasonable process for the TMDL delisting of waterbodies that have met their water quality standards.
42 Similarly, EPA should provide a sound process for the delisting of waterbodies that have been listed as the result of erroneous data or
43 where sound science indicates that the listing of the waterbody is inappropriate.

44 ***TMDLs on Public Lands***

45 The requirement of establishing TMDLs under the CWA does not grant additional implementation authority to the federal land
46 management agencies. Federal land management agencies, in cooperation with the states, should only address water quality issues
47 under their own enabling legislation, and as an integral part of all resources under their management authority. If these federal agencies
48 are required to establish TMDL’s for waters under their jurisdiction, the TMDL process of the CWA must not be interpreted to require

1 these agencies to go beyond the requirements of their own enabling legislation. In addition, when states are required to participate with
2 federal agencies to conduct TMDL's for waters under federal jurisdiction, federal financial resources should be provided to the states to
3 assist them with this responsibility.

4 ***Coastal Zone Management Act***

5 Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA – also known as CZMA), requires that coastal
6 states (Alabama, Alaska, American Samoa, California, Connecticut, Delaware, Florida, Guam, Hawaii, Louisiana, Maine, Maryland,
7 Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Northern Mariana Islands, Oregon,
8 Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Texas, Virgin Islands, Virginia, Washington, and Wisconsin) with federally
9 approved coastal zone management programs develop Coastal Nonpoint Pollution Control Programs to be approved by the U.S.
10 Environmental Protection Agency (EPA) and the National Oceanic and Atmospheric Administration (NOAA). These programs are
11 designed to bring together authorities and capabilities within state coastal zone management and water quality agencies to jointly address
12 the potential problem of coastal NPS pollution. The purpose of the program is to implement management measures for NPS pollution by
13 more fully integrating federal, state and local authorities.

14 EPA and NOAA must coordinate section 6217 of the CZMA with Section 319 of the CWA. States should be allowed to show the
15 federal agencies that their 319 program meets the requirements of section 6217 of the CZMA. Further, the agencies must recognize that the
16 most effective way to implement protection of coastal resources is through voluntary, site-specific RMPs.

17 ***Pesticide Management Plans for Groundwater and Surface Water***

18 Pesticides have been detected in groundwater in several states as a result of legal pesticide use. State lead agencies for pesticides and other
19 stakeholders have worked with EPA to develop a strategy to address those situations where there is a significant risk to water
20 resources. **(need to define "significant risk.")* The pesticide management plan (PMP) strategy, involving local management of
21 pesticides, can be effective in protecting the resource while allowing continued use of pesticides. The PMP approach includes
22 identification of areas vulnerable to contamination, implementation of modified use practices and other responses to contamination
23 where necessary, and monitoring of the resource.

24 EPA must assure the PMP rule provides an effective, affordable and workable mechanism for states to manage these pesticides as
25 follows:

26 *Most State Lead Agencies (SLAs) don't have statutory authority to directly affect water quality issues and rely on a collaborative*
27 *approach to implement voluntary or regulatory solutions. EPA's Office of Pesticide Programs (OPP) should collaborate with EPA's*
28 *Office of Water to coordinate water monitoring activities. Such program goal coordination could facilitate sharing of resources and*
29 *efficient utilization of limited funds*

30 *There needs to be a comprehensive approach to water monitoring and evaluation of results to adequately interpret data. Timely*
31 *analysis and monitoring plans that are representative of pesticide activities are based on adequate funding by EPA.*

32 *EPA should require registrants to provide some funding to states (PRIA?) and registrants should provide stewardship activities*
33 *when requested by a state.*

34 The PMP review and approval process conducted by EPA regions must be consistent across the nation. EPA must recognize the need
35 for flexibility in addressing local issues and situations. An appeal process must be built into the rule for those situations where a state
36 and EPA region are unable to resolve PMP issues.

37 EPA must provide states with adequate assessment of health and environmental risks, appropriate reference points, and laboratory
38 methods and standards for these pesticides and their degradates of concern.
39

40 PMPs are an appropriate mechanism, in lieu of cancellation, to address groundwater concerns for these currently registered pesticides.
41 However, EPA must assure that future registration decisions are made that reduce the potential for contamination by new pesticides.
42 Improved communication between states and EPA related to registration decisions is needed to protect groundwater resources and
43 minimize the potential resulting impacts on states and pesticide users.

1 ***Watershed Site-Specific Process***

2 Following a scientifically sound pesticide risk assessment, Community Water Systems (CWS) should be targeted, managed and or
3 regulated based upon current monitoring data (not more than 5 years old). This approach leads to watershed mitigation measures instead
4 of a by-county basis. A watershed specific approach is preferable to national rate reductions or cancellations of pesticides.

5 Goals of Site-Specific Process:

- 6 Identify vulnerable watersheds and water systems where a pesticide is a potential concern.
- 7 Develop and implement practical mitigation measures at a state and local level producing effective and sustainable results in
8 compliance with drinking water standards.
- 9 All programs should follow a “tiered management approach.”
- 10 Implement targeted, practical, and effective mitigation measures which are technically appropriate.
- 11 Research to identify alternative cost-effective Best Management Practices (BMPs) to improve water quality on a site specific basis.
- 12 Education.

13 New EPA programs will be integrated with ongoing state and local level initiatives. This includes the use of existing water quality
14 committees & coalitions where appropriate.

15 States will make recommendations to EPA on mitigations measures matching states’ cropping and field cultural practices. The
16 detail and extent to which each mitigation program is developed by a state must be commensurate with the state's assessment of
17 vulnerability to contamination and subsequent risk.

18 The timeframe for development and implementation of mitigation programs must be reasonable and based on the funding available. A
19 phase-in approach for implementation is necessary. The effective date of the rule must be selected so as not to coincide with the
20 pesticide use season to avoid unnecessary disruption.

21 The states will have direct input prior to any consideration for product use reductions or cancellations proposed by EPA. There shall
22 be allowances for unusual acts of nature that cause a temporary water quality concern in any CWS in the monitoring program.

23 EPA must recognize the need for flexibility in addressing local issues and situations. An appeal process must be built into the rule for
24 those situations where a state and EPA region are unable to resolve regulatory or policy issues.

25 ***Assistance to Small Drinking Water Systems***

26 Many of the contaminants regulated under the Safe Drinking Water Act such as arsenic and radionuclides are naturally-occurring in
27 groundwater in many rural areas where this groundwater is often the sole source of drinking water. Additionally, these communities
28 typically lack the necessary infrastructure and technical assistance for compliance, and because of their small size and geographic
29 isolation, it is often not economically feasible for small community water systems serving populations of 10,000 or fewer to comply with
30 these standards. To assist small community water systems in complying with national primary drinking water standards, maximum
31 flexibility through variance technologies and additional financial and technical assistance should be provided.

32 ***Drought***

33 *Drought has broad impacts on the Nation’s economy and the environment, far beyond those areas experiencing actual drought*
34 *conditions. Drought impacts public health and safety, instigates conflicts among water users, and reduces quality of life.*

35 *Economic impacts of drought are easily seen in agriculture and related sectors. Crop and livestock losses directly impact farmers and*
36 *ranchers, which impact rural communities. In addition, forests and rangelands are more susceptible to wildfires during extended*
37 *droughts and endanger communities and wildlife habitats.*

38 *NASDA believes a national drought policy and program is urgently needed to move the country away from costly, ad-hoc emergency*
39 *relief and toward a coordinated approach that emphasizes preparedness and cost-reduction.*

1 **Wetlands**

2 Many of the nation's wetlands are highly valuable resources that must be conserved and enhanced. At the same time, any federal program
3 to protect wetlands must also preserve private property rights and allow for a balance between economical agricultural production and
4 wetland conservation. It is neither practical nor possible to meet these goals if states are required to develop and implement water quality
5 standards under the CWA for wetlands in a particular state. EPA should not require that such standards be established.

6 The debate over federal wetlands policy has proven to be one of the most contentious and difficult issues facing Congress. Clearly, the
7 federal government has a role in stemming the rate of wetlands loss and encouraging restoration of areas that have been degraded by
8 pollution and careless development activity. The policy process is complicated by the reality that 75 percent of the nation's wetlands in
9 the lower 48 states is privately owned and that much of that resource is located near large population centers. Conserving and restoring
10 the nation's wetlands will require an enormous commitment of privately owned land, money and expertise. It cannot be accomplished
11 without the involvement of the private sector, particularly the people who own wetlands, in conservation and restoration activities.

12 The need for wetlands regulatory reform must be addressed. The federal wetlands program in effect today under section 404 of the
13 Clean Water Act (CWA) is not the product of carefully debated legislative policy. Current federal wetlands law is the result of 25 plus
14 years of bureaucratic decisions and judicial rulings under very general statutory language — authority that does not mention the word
15 "wetlands."

16 For regulatory purposes, wetlands should be defined as lands which have a predominance of hydric soils and which are inundated by
17 surface water at a frequency and duration sufficient to support, and that under normal circumstances (determined on the basis of the
18 factual circumstances in existence at the time the delineation is made) do support, a prevalence of vegetation typically adapted for life in
19 saturated conditions. This definition generally includes swamps, marshes, bogs, and similar areas.

20 In implementing this definition, rules should be established to delineate such wetlands, which:

- 21 Result in the delineation of lands as wetlands only if clear evidence of wetlands hydrology, hydrophytic vegetation, and hydric
22 soils are present during the period in which such delineation is made;
- 23 Result in the classification of vegetation as hydrophytic only if such vegetation is more typically adapted to wet soil conditions than
24 to dry soil conditions or is equally adapted to wet or dry soil conditions;
- 25 Result in the classification of lands as wetlands only if some obligate wetlands vegetation is found to be present during the period of
26 delineation;
- 27 Result in the conclusion that wetlands hydrology is present only if water is found to be present at the surface of such lands for at least
28 21 consecutive days during the growing season (defined as the period between the average date of the last frost in the spring and the
29 average date of the first frost in the fall) in which such delineation is made and for 21 consecutive days in the growing season in a
30 majority of the years for which records are available; and
- 31 Does not result in the classification of lands as wetlands that are temporarily or incidentally created.

32 In order to preserve and protect truly valuable wetlands, a classification system should be developed for lands which meet the above
33 definition. The system could restrict activity on high value wetlands, allow for permitted activities on moderate value wetlands, and
34 exempt low value wetlands from regulations. The category of wetlands statutorily exempt from regulation should include:

- 35 "Farmed wetlands" — defined as those lands which are frequently cropped (six out of 10 years);
- 36 Prior converted wetlands — land that was both manipulated and cropped before December 23, 1985;
- 37 *Failed tile drainage system causing ponding of water and restoration of hydrophytic vegetation should not be considered a*
38 *wetland;*
- 39 Wetlands that serve limited wetlands functions; and
- 40 Insignificantly small wetlands.

1 These areas represent agricultural lands which do not provide functional wetlands benefits, and should therefore be exempt from regulation.

2 Current law exempts normal farming practices on wetlands from the section 404 permitting process. The "normal farming practice"
3 exemption should be clarified to mean normal ongoing practices as defined by the Secretary of Agriculture, in consultation with the
4 Cooperative Extension Service for each state and the land grant university system and agriculture colleges of the state. Existing
5 practices and such other practices as may be identified in consultation with the affected industry or community should be taken into
6 account.

7 Finally, wetlands regulations should be consistent between federal agencies. For example, mitigation requirements for the section 404
8 program should be the same as mitigation requirements under the swampbuster program.

9 7.7 ENVIRONMENTAL MANAGEMENT (New Section Title)

10 ***Animal Feeding Operations (AFO's)***

11 The Clean Water Act (CWA) and the National Pollution Discharge Elimination System of permits (NPDES) do not stand alone in
12 protecting America's waters from NPS runoff from animal feeding operations. In particular, the state-led programs, when coupled
13 with various Farm Bill, Clean Water Act and Safe Drinking Water Act incentives and support, can provide significant and continuing
14 opportunity for major environmental quality protection. Federal water policies must recognize that the value of the state programs, if
15 enhanced through federal efforts, could provide a firm foundation for a sound national NPS policy, including addressing the runoff
16 associated with animal agriculture. States should have the flexibility and the authority to protect their natural resources from potential
17 negative impacts resulting from livestock production by enacting statutes, regulations, and voluntary programs based upon sound science,
18 economic feasibility, and the specific needs of the state. States implementing effective zero discharge programs for confined animal
19 feeding operations (CAFO's) should not be forced to require CAFO's to also have NPDES permits.

20 EPA does not have authority under the CWA to subject the land application of manure to some form of NPDES permit requirements, as it
21 has recently sought to do. The intent of the CWA is clear – non-point sources of pollution are not subject to mandatory regulations under
22 the CWA, but are to be addressed through voluntary, outcome-based programs. The legislative language makes a clear and concise
23 distinction between point and non-point source management. The land application of manure has been a standard practice in agriculture
24 since humans first introduced livestock into their agricultural activities. It has been an integral part of agriculture's fertility and land
25 improvement ever since. As such, and as for any of the other agricultural activities taking place across the land, the land application of
26 manure is a nonpoint source activity under the CWA. It is imperative that the federal clean water program not require states to operate
27 in any different manner.

28 Congress must support USDA's incentives and NRCS technical assistance to help producers deal with their livestock manure management
29 challenges, and EPA must continue to work with USDA in support of these efforts. Private sources of technical assistance on nutrient
30 management matters will increase in importance as animal agriculture works to improve its manure management activities. Although the
31 private technical assistance delivery system has been growing dramatically in recent years, it is nowhere near the capacity needed to
32 prepare the number and kind of plans that EPA and USDA have envisioned. The federal agencies must not rely on the private sector
33 delivery system beyond its capacity to provide solid and technically sound assistance. To do so would result in poor nutrient
34 management plans, little help to the environment, and great damage to the credibility and future usefulness of this fledgling service sector.
35 Such an initiative must build off the existing federal-state public conservation delivery system. The private sector can provide little of
36 the needed services without maintaining a viable NRCS field staff capability.

37 Compliance with state and federal regulations by livestock operations should offer some form of presumption of compliance with the
38 objectives of regulatory programs and provide reduced liability associated with off-farm environmental degradation or nuisance law suits.
39 This so-called environmental assurance concept or "safe harbor", which incorporates relief from additional regulations and enforcement,
40 is necessary to ensure active voluntary participation.

41 **Concentrated Animal Feeding Operations (CAFOs)**

42 **The Environmental Protection Agency (EPA) has been regulating Concentrated Animal Feeding Operations (CAFOs) for more than**
43 **25 years. In many cases, the states preceded the federal government in both recognizing and regulating issues related to animal feeding**
44 **operations. Throughout the 1970's, 1980's and 1990's, a number of states set higher or more restrictive standards for CAFOs, usually**
45 **as a result of local issues or information. Some states developed permit programs and/or required design criteria for protection of both**
46 **surface water and ground water. Other states implemented voluntary, incentive-based programs with strategies for nutrient**

1 management. These efforts have been led by state agriculture and conservation agencies working together with federal agencies,
2 livestock and poultry industries, land grant universities, engineering consultants, scientists, and other local stakeholders.

3 Both state and federal CAFO rules have been reevaluated and updated over the past several years to keep up with industry changes,
4 new technologies, and public perceptions. EPA finalized new regulations for CAFOs in 2003 which expanded the number of operations
5 covered by the Clean Water Act (CWA) permit program to an estimated 15,500 operations. New permit requirements were added to
6 include comprehensive nutrient management planning, and to extend coverage to include all poultry operations of a certain size. EPA
7 is currently revising its 2003 CAFO rules to conform to a ruling of the 2nd Circuit U.S. Court of Appeals in 2005. EPA proposed a
8 revised rule in 2006, but it has not yet been finalized.

9 NASDA supports EPA's proposed 2006 revised rule. Now, the state agriculture departments and other agricultural stakeholders are
10 anxiously awaiting the agency's final rule. We have urged EPA to limit the final rule to the issues addressed by the court ruling and to
11 provide more clarity on the regulatory obligations of livestock operations. States will need time to modify their CAFO programs to
12 conform with the final rule. In late July, EPA announced that certain compliance deadlines would be extended until February 2009.
13 This is helpful and will allow the states and other stakeholders an opportunity to adjust to the new requirements.

14 Although states have additional time to implement the new CAFO program requirements, the changes will create a resource and
15 administrative challenge for state agriculture and conservation agencies. EPA has estimated that the CAFO regulations could result in
16 compliance costs of \$850 million to \$940 million per year.

17 States will need to increase our efforts to identify, permit and inspect CAFOs. A major challenge is the ability of producers and state
18 agency personnel to prepare the thousands of new nutrient management plans that will be required under the new rule. Livestock
19 operators will need to address multiple nutrients in their waste management plans. They will need additional technical assistance,
20 education, and training to comply with their permits. This creates additional demands on the state agriculture and conservation
21 agencies which provide technical and financial assistance.

22 The key to achieving the national goal of assuring that animal feeding operations are managed to protect water quality is to provide
23 states with the flexibility and resources to meet legal and programmatic responsibilities. We strongly believe that programs for
24 managing animal nutrients are most appropriately implemented at the state and local level.

25 Classification of Agricultural Byproducts in Environmental Regulations

26 Livestock manure, poultry litter, crop residue disposal and other agricultural byproducts contain or volatilize into naturally occurring
27 organic compounds such as orthophosphate, ammonia and hydrogen sulfide. These naturally occurring organic compounds result from
28 routine agricultural operations and therefore do not meet the definition of a "hazardous chemical" under the Community Right to Know
29 Act (EPCRA), or a Superfund "release" under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA),
30 nor do these compounds contain a "hazardous substance" as defined under CERCLA. As such, these agricultural byproducts
31 produced during routine agricultural operations should not be subject to the provisions of EPCRA and CERCLA.

32 Rangelands, Pasturelands & Grasslands

33 NASDA recognizes the importance of grasslands and rangelands. These land resources account for almost one-half of the total area
34 in the United States and are found in all 50 states.

35 Our land resources are important to agricultural and livestock production but also provide many benefits to society: clean air and
36 water, open space, recreation and wildlife habitat. These lands are the base of our protein food supply and the proper grazing of these
37 lands is essential to maintaining a healthy landscape and environment.

38 NASDA strongly supports efforts to promote and enhance the stewardship of these lands. The conservation programs of the NRCS,
39 Forest Service, BLM, and EPA are strongly supported by state departments of agriculture.

40 NASDA fully supports the ongoing research by USDA's Agriculture Research Service (ARS) National Program in Rangeland, Pasture
41 and Forages. This research will produce valuable scientific information and new tools for assessing and managing rangelands and
42 pasture lands.

43 NASDA appreciates the contribution of the Universities and Extension programs in this nation. The ability of this nation's people to
44 feed themselves with less than 10% of their income is in a significant degree due to their efforts

1 **Noxious Weeds**

2 **Funding for Noxious Weed Programs**

3 Funding for weed management efforts should emphasize supporting cooperative and coordinated approaches among all types of
4 landowners within a geographically defined area. Partial or incomplete cooperation undermines the ability of State departments of
5 agriculture to successfully implement statewide noxious weed management plans. The groundwork for such cooperation with federal
6 land management agencies has been established with the passage of federal legislation such as the Natural Resource Protection
7 Cooperative Agreement Act (H.R. 658/S. 2739) as well as specific funding streams such as the USDA-US Forest Service, State and
8 Private Forestry, Forest Health Protection Program. Allocating additional funding to federal agencies will enhance their ability to be
9 full partners with state agencies and local communities. When federal agencies have infused new funds to jump start local efforts to
10 manage noxious weeds, they has cost-effectively prevented the spread of noxious weeds onto uninfested public and private lands and
11 established long-term partnerships to address local and regional weed management needs. Any policies dealing with noxious weeds
12 should build on this type of success where the federal government can contribute funds to efforts that emphasize cooperation and
13 coordination amongst the public and private landowners in a defined area.

14 Congress should fund legislation that supports coordinated management of noxious weeds. This funding should be channeled through
15 block grants to the states in order to implement state strategic plans to stop the spread of noxious weeds. It is at the state level that most
16 of the strategic planning for noxious weed management is carried out. State departments of agriculture have knowledge of the
17 individual weed management areas and are the most qualified to administer funding to the wide variety of weed management areas
18 within a state.

19 Congress should pass and fund legislation that creates a national Early Detection and Rapid Response (EDRR) Fund for use by States
20 and local governments in the rapid elimination of new invasive plant species to the United States or its regions. Numerous recent
21 studies, some notably conducted by the Government Accountability Office, have concluded that investing in EDRR efforts is one of the
22 most cost-effective strategies the Federal government could employ to make a tangible difference in invasive species management.
23 Administering a dedicated and stable funding source that can help States and local governments respond quickly and aggressively to
24 new invasions will greatly improve the State's and the Nation's ability to prevent the establishment and spread of additional noxious
25 weeds.

26 **Regulatory Environment**

27 State and federal lands must be subject to the same regulations and expectations regarding the control of noxious weeds that private
28 landowners are.

29 The Federal Noxious Weed Act has not kept up with the increase in global trade. Many invasive plants are not restricted under the
30 Federal Noxious Weed Act, rendering the current permitting system inadequate to stop the introduction of detrimental species. Federal
31 agencies responsible for routine inspections of imported goods at US ports-of-entry need regulatory tools and training to identify and
32 quarantine suspected invasive plants without limitations or questioning of their authority. Therefore, NASDA supports the USDA
33 Animal and Plant Health Inspection Service (APHIS) efforts to update and strengthen the regulations in 7 CFR 319.7, also known as
34 Quarantine 37 (Q 37). These are principal quarantine regulations governing the import of plants for planting and will significantly
35 help to prevent the inadvertent introduction of invasive plants.

36 A protective rule in Q 37 should utilize a pre-import "screening" mechanism. Plants that are non-invasive should be permitted entry
37 while plants with uncertain risk must be subject to further testing and study prior to granting permission for import. USDA-APHIS is
38 urged to fully staff the development and implementation of this important regulation.

39 The federal government should devise means to more closely monitor movement of invasive species through both traditional channels
40 and through Internet sales. Closer regulation must be paired with an increased effort to educate wholesale and retail members of the
41 nursery industry as well as the end-buyers.

42 **Research Needs**

43 As global trade increases, the number of species introductions will continue to rise. The federal government should fund research
44 to evaluate the risk or invasiveness of newly introduced species. Furthermore, it should fund research that seeks to reduce the
45 number of accidental introductions through packing materials, shipping ballast, etc.

1 Research should focus on finding economically feasible management strategies. Many of the technological advances in controlling
2 weeds in cropland situations have been a direct result of federally funded agricultural research. However, funding for research focused
3 on the biology, ecology, and sustainable management strategies of invasive noxious weeds has been limited. Funding for these
4 programs has declined by as much as 50 percent during the past decade. The cost of many of the current management strategies for
5 noxious weeds on rangelands rival the purchase price of land in some areas of the country.

6 Noxious weeds continue to spread across the United States causing significant economic and environmental damage. While there
7 have been many new herbicides developed and registered for agronomic crops, there remains an inadequate selection for the long term
8 control of invasive, noxious weeds. Strong federal support is needed to ensure the availability of environmentally sound tools. The
9 U.S. EPA should expedite the regulatory approval of effective noxious weed control herbicides. As new, ecologically-sound herbicides
10 are approved by EPA, federal land management agencies such as NPS, BLM, and USFS should temporarily increase personnel
11 needed to speed the approval of such herbicides for use on federal lands and avoid unnecessary delays. Furthermore, there is a need
12 for enhanced research of biological controls as long-term control options for established noxious weed populations. USDA APHIS
13 and the Agricultural Research Service should invest additional resources in the discovery, selection, and introduction of new
14 biological control agents for noxious weed control.

15 **Noxious Weeds on Federal Land**

16 Section 15 of the Federal Noxious Weed Act of 1974 (7 U.S.C. 2801 et seq.) should be adhered to by all managers of federal land. This
17 act requires each federal agency to 1) designate an office or person to develop and coordinate an undesirable plants management
18 program for control of undesirable plants on federal lands under the agency's jurisdiction; 2) establish and adequately fund an
19 undesirable plants management program through the agency's budgetary process; 3) complete and implement cooperative agreements
20 with state agencies regarding the management of undesirable species on federal lands under the agency's jurisdiction; and 4) establish
21 integrated management systems to control or contain undesirable plant species targeted under cooperative agreements. The act
22 stipulates that in the event an environmental assessment or environmental impact statement is required under NEPA, the federal
23 agencies shall complete such assessment or statements within one year after the requirement for such assessment or statement is
24 ascertained. Unfortunately, one year is an inadequate and unrealistic timeframe to complete NEPA assessments or statements. It then
25 goes on to detail the cooperative agreements with state agencies the federal agencies shall enter into.

26 One of the critical components of the Federal Noxious Weed Act is the requirement that the federal government should adequately
27 fund noxious weed management. It is imperative that the federal government adequately fund noxious weed management at a level
28 commensurate with the scope of the problem on federal lands. The amount budgeted for noxious weed management on federally owned
29 lands is a drop in the bucket compared to the number of infested acres.

30 **Accountability**

31 Funding allocations should be divided with separate amounts designated for planning and actual land management activities. With the
32 current fiscal procedures, federal land management areas that do not want to raise public ire by using herbicides for noxious weed
33 treatments simply stall actual management decisions by dragging out the planning process. Furthermore, federal land management
34 agencies should comply with statewide weed management plans. It is counterproductive when an agency does not work towards state-
35 mandated eradication of a certain noxious weed when adjacent private landowners and local governments must and do comply.
36 Cooperation and coordinated action across the landscape is the only way to achieve statewide weed management goals.

37 The standard of accountability for weed management within the federal government needs to be increased. Inventories of noxious
38 weeds should be completed and available to the states. Furthermore, inventories should reflect the numbers of acres treated, the
39 efficacy of the treatments used, the number of acres replanted with desirable species, and the cost per treated acre.

40 State strategic noxious weed management plans are developed in consultation with federal agencies. When these plans are adopted,
41 federal agencies should be full partners in implementing them. States have a legitimate role in developing these plans in order to
42 achieve coordinated efforts across the landscape. Federal agencies should be held accountable for their partnership role. As in state

1 budgets, line items within federal agency budgets should be established specifically for the control of noxious weeds. This will ensure
2 that noxious weed management is a high priority and will reduce the potential for funds to be spent on unrelated projects such as
3 wildfire mitigation, wild horse management, or pine beetle control efforts.

4 **7.8 WATER QUANTITY (New Section Title)**

5 Congress made it clear in the CWA that it is federal policy to recognize, preserve, and protect the primary responsibilities and rights of
6 states to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement)
7 of land and water resources, and to consult with the Administrator of the EPA in the exercise of federal authority under this chapter. It
8 is essential that in the implementation of CWA and other federal statutes that the federal government recognize, preserve, and protect
9 these responsibilities and rights of states and not take steps to directly or indirectly create any federal water law or program that
10 supersedes, abrogates or impairs state water allocation systems and water rights.

11 7.9 Air Quality (New Section Title)

12 Air quality is an increasingly important issue for agriculture. Agriculture has always had some impact on air quality, whether through
13 wind erosion and fugitive dust emissions, odors or smoke. Conversely, the quality of the atmosphere can affect plant and animal
14 production. Federal, state and local regulatory agencies have been examining, and in some cases, regulating certain emissions from
15 agricultural operations. Some of these are among EPA's six "criteria pollutants" which are regulated under the National Ambient
16 Air Quality Standards (NAAQS) of the Clean Air Act, and for which specific, measurable threshold values have been established.
17 EPA is required to review scientific studies associated with "criteria pollutants" every 5 years. One of the criteria pollutants related to
18 agriculture is particulate matter (PM) which includes dust. Other criteria pollutants include ozone precursors (emissions that lead
19 to formation of ozone, i.e. volatile organic compounds (VOCs), and oxides of nitrogen. There is significant debate over agriculture's
20 contribution.

21 NASDA believes more study is needed. Very little science exists for agriculture related air quality issues. NASDA supports dust
22 control measures, but does not believe agricultural dust should be regulated under the Clean Air Act. There is no scientific evidence.

23 NASDA believes more information and better technology is needed to fully address current and future agricultural air quality issues
24 which are increasingly complex. USDA's NRCS is engaged in this process by developing information resources, providing technical
25 assistance and training, and developing or implementing appropriate air quality technologies that will ultimately assist landowners and
26 producers in making wise management decisions.

27 Practices to improve air quality include conservation tillage, residue management, wind breaks, road treatments, burn management,
28 manure management, integrated pest management, chemical storage, etc. NASDA encourages these and other conservation activities.
29 Addressing air quality concerns is an area of increasing emphasis in USDA's conservation programs, including EQIP, CSP which
30 provide incentive payments for actions that benefit air quality, including improving viability, reducing ozone levels, reducing transport
31 of fine and coarse particulate matter, reducing potential for airborne agricultural chemicals, etc.

32 NASDA believes EPA and USDA should develop partnerships with state agriculture departments to address these issues in a voluntary,
33 incentive-based way because this will have better success.

34 Burning woody biomass for energy in highly efficient combustion systems such as boilers is preferable to emissions from wildfire and
35 open burning of woody debris piles. It also supports utilization of waste wood, is a renewable form of energy, and helps local
36 economies by keeping energy dollars local.

1 Climate Change

2 United States agriculture has a very momentous and meaningful challenge in regards to climate change. Greenhouse gases are crucial
3 for plant, water, and atmospheric ecosystems, which all greatly affect our lives. Each region of the world will have different reactions
4 to change in climates, and decisions regarding laws and enforcement of said laws need to be carried out by state and local
5 governments.

6 NASDA recognizes that a cap on greenhouse gas (GHG) emissions could increase fuel, fertilizer, and utility costs in the agricultural
7 sector, and it could possibly lead to regulated production methods and practices. At the same time, agriculture could also benefit from
8 from opportunities for producers to voluntarily moderate their GHG emissions through carbon sequestration in soils as well as in
9 methane and fertilizer management. In any national policy on climate change, agricultural offsets should be eligible.

10 NASDA opposes mandatory restrictions on agriculture including mandatory methane restrictions under the Clean Air Act and
11 restrictions on farming practices and farm machinery. NASDA also opposes a carbon tax. We support additional funding for USDA
12 for carbon program implementation and agricultural sequestration research. NASDA believes the federal government needs to increase
13 its effort to improve the scientific understanding of global climate change and how states can adapt to changing climatic conditions.
14 The research should include potential impacts of climate change, including impacts on federal, state, and local infrastructure as well as
15 impacts to natural systems at the local and regional scale, while keeping an economic balance.

16 American agriculture can continue to contribute to GHG emissions reductions through biofuels production, thus offering a clean
17 supply of domestically produced energy. Climate discussions can lead to the development of a practical, voluntary carbon-trading
18 system that includes access to the carbon market for agriculture and carbon sequestration for forestry.

19 Carbon Emissions Cap and Trade System * This is current NASDA policy in the Rural Development/Energy section. Does it need to be
20 restated or expanded here?

21 *NASDA supports a national carbon emission cap and trade system to offset non-farm greenhouse gas emissions and which allows the*
22 *agriculture sector to receive credits for greenhouse gas reductions. Such a system should include provisions for standardized, cost-*
23 *effective protocols for estimating greenhouse gas emission reductions from agriculture. NASDA also urges continuation and expansion of*
24 *the Chicago Climate Exchange or other similar markets to provide financial compensation to farmers and ranchers for environmentally*
25 *sound practices.*

26 Promotion of conservation practices which accure carbon in the soil as well as prtect water quality should occur.

27 7.10 Energy (New Proposed Section Title) *NASDA currently has policy on energy issues in the Rural Development section. Does
28 additional language or cross reference needed here?

29 7.11 Forestry (New Proposed Section Title)

30 Wildfires

31 *No comments were received suggesting language for this section.

32 7.12 Threatened and Endangered Species

33 Any federal program to protect threatened and endangered species must also preserve private property rights and allow for a balance
34 between agricultural production and species conservation. As Congress debates the Endangered Species Act (ESA), it is critical that
35 lawmakers fully comprehend the policy permutations that have occurred regarding the nation's efforts to protect threatened and endangered
36 species. Congress should enact legislation allowing for the protection of endangered animal and plant species as well as guarding the
37 greater public interest.

38 Science has provided a greater understanding of the complexity of the world's ecosystems. New uses have been discovered for common
39 and exotic plants and a greater appreciation has been gained for the need to protect animal and plant species and their habitats. As stewards
40 of the vast majority of the nation's land resources, farmers and ranchers, in turn, are stewards of most of the habitat of the various plant and

1 animal species in America. They understand the need to protect species. However, they also bear the major costs of endangered and
2 threatened species protection.

3 The ESA began as an ambitious attempt to stem the tide of species extinction in America. What has developed, however, is an extensive
4 program with wide-ranging authority without appropriate accountability or reasonable direction. This lack of direction, needed from
5 Congress, has created an atmosphere of absolute, unfettered authority among regulators at the U.S. Fish and Wildlife Service (FWS)
6 and the National Marine Fisheries Service (NMFS). Paul Craig Roberts of the Institute for Political Economy said in *Business Week*,
7 "Government is felt to be out of control because so much law is now made by activist executive branch officials and judges who are
8 unaccountable to the people." Unfortunately, this statement has been proven correct in the ESA case since landowners, particularly farmers
9 and ranchers, find themselves at the mercy of the FWS and NMFS regulators when their property is identified as "critical habitat" for a
10 species that may, or may not, be in danger of extinction. Landowners lack a voice and reasonable recourse when their property becomes
11 a "critical habitat." While recent administration policies on "no surprises" and "safe harbors" have improved this situation, much is yet to
12 be accomplished.

13 When Congress passed the ESA in 1973, the law's goal was to prevent the extinction of America's natural resources by bringing harmony
14 to the biological system. This law expired in October 1992. The 1973 Act established a uniform procedure for designating a plant or
15 animal as being in danger of extinction, protecting that species from further decline and formulating a plan for its recovery. The law
16 made it a federal offense to kill, injure, trap, harass or otherwise "take" any animal species listed as endangered or threatened. It is also a
17 crime to buy, sell, possess, export or import any listed species, or any product made from such a species.

18 The 1978 amendments to the ESA established the Cabinet level Endangered Species Committee with the power to exempt a construction
19 project or other activity from the ESA's restrictions and allow that activity to proceed even if it would cause the extinction of a species. In
20 1988, Congress amended the Act to clarify that while decisions about whether to list a species must be based strictly on science, economic
21 factors may be considered in defining "critical habitat" necessary to ensure a listed species' survival.

22 Amendments to the ESA must reaffirm the goal of conserving endangered and threatened species while assuring that the decisions
23 taken to attain this goal truly balance species conservation requirements with the economic and social needs of the human community.
24 Reauthorization of the ESA must acknowledge the following:

- 25 The definition of the term "species" must clarify the intent of Congress concerning "subspecies" and "population segment" as well as
26 the levels of protection to be afforded to candidate species. Proof of a species being endangered shall be the responsibility of the
27 petitioner or the Department of the Interior and not the general public.
- 28 The socio-economic impacts of species listing, with reasonable scientific criteria to prevent indiscriminate species listing, must be
29 considered.
- 30 An open process for delisting must be utilized which will specifically provide an opportunity for the public to petition FWS for
31 delisting within one year of listing of an endangered or threatened species. If FWS does not delist, the Act should give the petitioner
32 the right to a formal hearing before an Administrative Law Judge on all matters pertinent to the issue.
- 33 Extensive public input into the listing process, recovery plan process and delisting process must be allowed.
- 34 Consideration should be given to the probable impact to private property rights and society's obligations to pay for the recovery of a
35 species and to compensate individuals whose private property is "taken" or devalued.
- 36 The role of voluntary incentive-based agreements with landowners for captive propagation, species population support programs, and
37 alternatives to listings must be included.

- 1 The listing, designation of critical habitat, and implementation of recovery plans should only be effected subsequent to review and
2 concurrence by an independent scientific review team.

- 3 The definition of "taking" must be more specific, including a listing of those activities which would "harm" or "harass." Any
4 activity not listed should not be subject to criminal penalty and should only be specified as subject to reduced civil penalty.

- 5 The term "critical habitat" should be limited to the historical area that is essential to recovery and such critical habitat should be
6 identified at the time of listing.

- 1 ❑ The petition process for exemptions should be enhanced and improved so that it is easily understood and
2 readily accessible to the public.
- 3 ❑ Mandatory controls of predators to enhance recovery of species when necessary should be implemented.
- 4 ❑ A greater role for states in implementing and enforcing the Act. Specifically, there must be a true partnership
5 between the states and the FWS. In this partnership role, states and FWS should concur in identifying species
6 for listing, preparation of recovery plans, identification of recovery areas, and subsequent delisting.
- 7 ❑ The targeting of limited human and financial resources on the protection of species for which there is the
8 greatest probability for successful recovery and to accept a recovery system that is successful even though the
9 gene pool may not be perfect.
- 10 ❑ The definition of successful recovery which recognizes scientifically sound population dynamic
11 measurements.
- 12 ❑ A certainty to landowners that their cooperation in endangered species protection will not result in increasing
13 demands and regulatory prohibitions on their farming or ranching operation. Such certainty is possible by
14 clearly delineating the roles and responsibilities of all parties to an ESA recovery plan. When plans are
15 reviewed and needed changes are required to successfully recover the species, landowners need certainty that
16 financial assistance will be forthcoming that will cover additional operating costs to conform to recovery plan
17 alterations.
- 18 ❑ The need to foster cooperation among landowners by offering voluntary, incentive-based opportunities for
19 species conservation which minimizes prescriptive regulation. The implementation of voluntary agricultural resource
20 management plans (RMPs) should provide compliance with and certainty under the ESA for farmers and ranchers.