



Coordination's potential

conflict resolution, good relations, beneficial outcomes

For years, conflict has raged over the use and enjoyment of America's public and private lands and resources. It's caused bitter division between people, industries, interest groups, and government agencies that often leads to litigation. This isn't just a waste of time and drain on resources, the status quo doesn't work. It's time to take a step in a new direction.

Federal, state, and local governments working together in formal *coordination* can build positive relationships and resolve seemingly intractable conflicts that divide communities and paralyze agency management and planning processes. Governments that embrace *coordination* can move beyond impasse, economic devastation, and litigation.

Through *coordination*, thorny problems can be addressed collaboratively and resolved amicably. Governments working together in formal *coordination* can create multiple benefits for the people, places, and natural resources they serve. ↪

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What *coordination* is...

Congress has exclusive management power over federal lands and has mandated that its management designees, the US Forest Service (USFS), National Park Service (NPS), Bureau of Land Management (BLM) and others, *coordinate* their planning and management processes with local governments.

Coordination is a formal collaborative process established by Congress to require federal land and resource agencies to give states, local governments, and Indian tribes a meaningful role in the decision-making process. It has been written into virtually every environmental act passed in the last thirty years

The ultimate goal for the *coordination* process is consistency ("marked by harmony, regularity, or steady continuity: free from variation or contradiction", Merriam-Webster Online Dictionary)

between federal, state, and local plans, policies and actions.

Local governments fund public services with revenue from property taxes. Because many counties contain massive amounts of federal lands (from which no property tax revenue is derived), Congress mandated *coordination* to protect local interests. *Coordination* gives local elected officials meaningful input into federal agency management decisions to limit adverse impacts on their revenues and local economies.

Coordination can benefit lands, resources, and people.

Federal agencies developing and implementing plans and policies are required

to give local governments early notice and provide opportunities for their inclusion and active participation in *coordination*, should they desire to do so.

Coordination requires agencies to work government-to-government with local officials and involves close communication, relationship-building, and sometimes—dispute resolution. It allows local governments to represent constituents in direct negotiations and can ensure consistency between plans and policies.

If utilized as envisioned by Congress, the *coordination* process can benefit lands, resources, and the people who are entitled to have each level of their government work together productively in their best interests. ☞

What *coordination* isn't...

Cooperation

The Secretary of Agriculture didn't equate *coordination* with mere cooperation. Cooperation is a formal collaborative process that can include local governments, however it doesn't require a reach toward consistency. In fact, the statute doesn't even infer that consistency must be reached for agencies to cooperate. *Coordination* requires a reach toward consistency.

Throughout the West today, local governments experience resistance from USFS officials who refuse to *coordinate* as mandated by Congress and the Secretary of Agriculture. Instead, they encourage local governments to accept cooperating agency status, a much lesser role in decision-making processes.

Local governments that become cooperating agencies lose an opportunity to

negotiate for consistency. In fact, they give up *coordination* status, instead sitting at the decision-making table with no leverage whatsoever.

For several years, Wyoming's Fremont County Commissioners were involved with the USFS' interdisciplinary planning team as a cooperating agency. Commissioners grew frustrated because their input during planning sessions was not reflected in USFS plans. Not only were County positions not incorporated, they were never discussed further and no reasons were given for discounting their input.

Ultimately, Commissioners advised the Forest Supervisor they intended to engage in the *coordination* process. Commissioners said they would stay at the planning table, but insisted the provisions of *coordination* in statute and USFS rules must be strictly followed. As a result, Fremont County Commissioners' input began to be taken seriously.

Their experience illustrates a considerable difference between *coordination* and cooperation.

In *California Resources Agency v. USDA*, (September 29, 2009), the Federal District Court for the Northern District of California held that the USFS is

Coordination is not cooperation, consultation, or county supremacy.

obligated under the National Forest Management Act (NFMA) and its own planning rules to *coordinate* with local and state governments. In that case, the State of California sued USDA, charging that the plans issued for the Angeles, Cleveland, Los Padres, and San Bernardino National Forests were issued without *coordination* with the State as required by law.

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What coordination isn't...

(Continued from page 2)

The USFS argued that it had talked with the State and listened to the State's position, satisfying the *coordination* mandate. The Court disagreed. It held *coordination* requires far more than just listening to the position of the state or local government. It requires consistency analyses of policies and the consideration of alternatives to resolve them.

The Court also pointed out that USFS failed to discuss the State's Roadless Rule in its Record of Decision (ROD), and thus failed to address inconsistencies between the State's Rule and the ROD. The USFS employed the same argument now utilized by Region 5 officials who refuse to coordinate with local governments in the same state - California - where the court decision was issued.

Consultation

A variety of commonly used dictionaries define consultation: "to ask the advice or opinion of another" or to "deliberate together". The USFS can consult with a local government simply by talking to the governing body and listening to its position, opinion, or advice.

In *California Native Plant Society v. City of Rancho Cordova*, the California Appellate Court rejected the argument that a *coordination* requirement was satisfied by consultation. It held that *coordination* means more than trying to work together with someone else. The court said to coordinate is:

"...to bring into a common action, movement, or condition"; it is synonymous with 'harmonize.' (Merriam-Webster's Collegiate Dict., supra, at p. 275, col. 1.)...While the City could 'consult' with the Service by soliciting and considering the Service's comments on the draft EIR, the City could not 'coordinate' with the Service by simply doing those things...'coordination' implies some measure of cooperation that is not achieved merely by asking for and

considering input or trying to work together."

Had the Service only been required to cooperate with the State, the decision would have been different. Cooperating doesn't include and require performance of all the specific elements spelled out in the definition of *coordination*. Cooperation doesn't meet the statutory requirement of *coordination*.

County Supremacy

It is important to refute the notion that the *coordination* process is connected in any way with the county supremacy movement of the early 1990s. The county supremacy concept argued for supremacy of county government over federal management agencies.

Clearly, that concept violates the Supremacy Clause of the United States Constitution that provides that the Constitution and any law made "pursuant thereto" is the supreme law of the land. *Coordination* is distinguishable from county supremacy because it's required by federal statutes that comprise the supreme law of the land. It is consistent with federal law.

The Constitution, the supreme law of the land, charges Congress with management of the federal lands. Congress delegated duties to the USFS to manage the National Forest lands (in various statutes) and to BLM (in various statutes) to manage the federal rangelands. Those statutes are made "pursuant to" the Congressional provision for management by Congress. *Coordination* is included in the statutes. Thus, *coordination* is mandated by the "supreme law of the land."

Sagebrush Rebellion a catalyst

The county supremacy movement was a result of western rebellion against federal management known as the Sagebrush Rebellion. The rebellion of western ranchers, loggers, miners, and recreation users sprang from a major expansion in regulation of western lands during the administration of Presi-

dent Jimmy Carter. Federal controls nearly tripled as the President and Congress took control of lands that had been used for revenue production and for recreation use from the time the western states entered the Union.

US News and World Report described the conflict in 1980:

"...Named for the fragrant bush that abounds in the area, the Sagebrush Rebellion began as a fight over the federal government's vast land holdings and now encompasses almost any issue that causes friction between Washington and the West...During a campaign stop... [Ronald Reagan] pledged: 'The next administration won't treat the West as if it were not worthy of attention... [it] will reflect the values and goals of the Sagebrush Rebellion...' Westerners hope, with Reagan sitting in the White House, the conflicts between Washington's bureaucrats and the West will end."

As the Sagebrush Rebellion waned, conflicts didn't diminish and citizens turned to local governments for a solution to the impact of regulatory policies on their incomes and livelihoods. Catron County, New Mexico adopted a county supremacy ordinance in response, declaring its sovereignty over the lands lying within its boundaries. The ordinance restricted how federal employees could enter the County and perform their duties. It sought to impose criminal penalties on federal agents who violated the ordinance.

Other counties adopted similar ordinances, including Boundary County, Idaho. Eventually, the Idaho Supreme Court struck down the ordinance, holding that Congress holds the exclusive right to manage federal lands, a power that cannot be thwarted by state or local law. This effectively ended the county supremacy movement. ☞

The development of *coordination*

Though Congress mandated *coordination* in 1976 and the Secretaries of Interior and Agriculture ordered their responsible officers to *coordinate* with local governments, neither complied. The mandates imposed the duty on the agencies to *coordinate* with local governments, but neither agency voluntarily stepped forward and told local officials of the requirement.

But the fault for the late development of *coordination* can't all be placed on the agencies. Local governments didn't carefully review the statutes and regulations governing the relationship between the management agencies and the governing boards and require federal agencies to comply.

Owyhee County, Idaho

Since livestock grazing on public lands is a major contributor to their economy, in 1990 the Owyhee County Commission opposed a draft Resource Management Plan (RMP) that called for a 40% reduction in grazing on BLM lands. County Commissioners had not been involved in its creation.

Attorney Fred Kelly Grant researched the statutes and outlined the process of *coordination* for the Commissioners and concerned ranchers. They determined to adopt and stay with the process until it bore fruit. After some "convincing" BLM was engaged and the *coordination* process commenced.

Over 20 years later, the BLM continues to meet with County Commissioners once a month to review issues and reconcile differences. USFWS also *coordinates*, meeting with Commissioners every quarter to preview expected actions, issues, and reconcile inconsistencies.

Modoc County, California

County Supervisors in Modoc County in Northern California initiated the *coordination* process two years after Owyhee County did. After several years of successful *coordination*, the USFS advised the County they intended to prohibit

grazing on a critical strip of land used to move cattle from one region of the County to another.

Grazing was allowed there under a biological opinion by US Fish and Wildlife Service (USFWS) that it posed no threat to an endangered fish species in a lake on the route. However, a biologist for USFWS was drafting a new biological opinion and as a result, USFS advised the County that grazing would no longer be allowed there.

In defense, the Supervisors adopted as official policy the previous biological opinion which allowed grazing and wrote a notice of intent to sue letter. They advised the Department of Justice (DOJ) that they intended to sue USFS since they were not *coordinating* to the point of reaching consistency with their proposed policy. They pointed out that any USFS policy to end grazing there would be inconsistent with the County's own adopted policy (the previous USFWS biological opinion).

...over 100 counties, cities, towns, irrigation districts, and natural resource conservation districts have initiated the *coordination* process...

A few days later, after legal review, DOJ called Modoc County Counsel and advised that the government was willing to settle the matter without going to court. Ultimately, the fish were not negatively impacted by grazing, no new biological opinion was issued, and grazing was allowed to continue there.

From then on, the relationship between the County and the federal agencies has been amicable and productive, benefitting the agencies, the County, its citizens, and the resources.

Who's *coordinating* ?

In 2006, additional local governments began implementing *coordination*. Now, over 100 counties, cities, towns,

irrigation districts, and natural resource conservation districts in the United States have initiated the process.

Unfortunately, some Forest Supervisors steadfastly refuse to *coordinate*, backed by their Regional Forester. Consequently, Glenn Lake Irrigation District in Montana and Siskiyou and Shasta Counties in California are preparing lawsuits to force compliance.

Successful *coordination* processes have been put in place in:

- Fremont County, Wyoming (BLM, Forest Service);
- Logan County, Kansas (USFWS);
- Lincoln County, Colorado (Colorado Department of Transportation);
- Custer County, Idaho (USFS);
- Del Norte County, California (USFS, NPS);
- Eastern Central Texas Sub Regional Planning Commission (Texas Department of Transportation, US Environmental Protection Agency);
- Okanogan County, Washington (USFS);
- Borough of Wrangle, Alaska (USFS);
- Winkleman Natural Resource Conservation District, Arizona (USFS, BLM);
- Mason Sub Regional Planning Commission, Texas (USFWS);
- Owyhee County, Idaho (BLM, USFWS);
- Modoc County, California (with USFS, BLM); and
- Multiple Wisconsin Towns (USFS, EPA).

USFS and BLM must *coordinate*

USFS must *coordinate*

The National Forest Management Act (NFMA) requires the Secretary of Agriculture (USDA) and thus, its USFS:

"...shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, coordinated with the land and resource management planning process of ...local governments and other federal agencies."

Congress didn't spell out a long, detailed definition of *coordination* in NFMA since it was at the time being written into the Federal Land Planning and Management Act (FLPMA). It simply mandated *coordination* between the USFS and local governments. There is nothing in the legislative history to show that Congress intended a different definition of *coordination* to bind the USFS.

...1982 Planning Rules lay out the duty to coordinate with local governments every bit as inclusively as did FLPMA...

In fact, after adopting the definition of *coordination* in FLPMA, Congress later passed the Range Land Renewable Resources Planning Act which states that the Secretary:

"shall develop, maintain and, as appropriate, revise land use and resource management plans for units of the National Forest System *coordinated with the land and resource management planning processes of State and Local governments.*" (emphasis added)

The USFS Planning Rules are official rules the USFS must follow to implement NFMA until new rules and regulations are issued in compliance with the National Environmental Protection Act (NEPA). The USDA Secretary obviously believed that the Congressional definition of *coordination* bound the USFS, because his 1982 Planning Rules lay out the duty to *coordinate* with local governments every bit as inclusively as did FLPMA.

The brief summary of the *coordination* process contained in the 1982 Planning Rules says the responsible official:

a. shall *coordinate* regional and forest planning with ... local governments...;

b. shall give [...local governments...] notice and... schedule of anticipated planning actions;

c. shall review planning and land use policies of... local governments... [and] display [them] in the EIS for the plan.... The review shall include—

1. Consideration of the objectives of ...local governments...as expressed in their plans and policies;
2. Assessment of interrelated impacts of their plans and policies;
3. A determination of how each USFS plan should deal with impacts identified; and,
4. Where conflicts are identified, consideration of alternatives for their resolution.

d. shall meet with the designated... representatives of... local governments... at the beginning of the planning process to develop procedures for coordination...

(e) shall seek input from... local governments... to help resolve management concerns in the planning process and identify areas where additional research is needed...

f. shall conduct monitoring and evaluation that includes consideration of effects on land, resources, and communities... and the effects upon... activities on nearby lands... under the jurisdiction of local governments. (emphasis added)

The USFS' more recent Travel Management Rules also require *coordination* with local governments in the "*designation of roads, trails and areas for motor vehicle use.*

Among a number of currently coordinating forests are several in Custer and Owyhee Counties in Idaho, a forest in Wisconsin, and another in Wrangle, Alaska. In California, the Modoc Forest

has worked *coordinately* with Modoc County Supervisors for almost two decades.

BLM must *coordinate*

The Congressional mandate for *coordination* by Department of Interior (DOI) agencies including BLM appeared in the Federal Land Policy Management Act (FLPMA) in 1976. FLPMA requires DOI agencies to *coordinate* with local governments.

...the Secretary is required to keep apprised of local governments' land use plans germane to the development of agency land use plans for public lands...

Further, FLPMA requires the Secretary to keep apprised of local governments' land use plans which are germane to the development of agency land use plans for public lands. The Secretary is also to provide meaningful involvement of local government officials and is required to be:

"consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act." (emphasis added)

In summary, Congress mandated that the USDA's USFS and DOI agencies including BLM *coordinate* with local government in real, good faith efforts to reach consistency between federal and local plans, policies and management actions. USDA and DOI Secretaries have complied, emphasizing in agency regulations the requirement to comply with the Congressional mandates and establishing clearly specified steps that their responsible officers must take in order to comply with the law.

Had Congress intended that the BLM and USFS only cooperate or *consult* with local governments, it certainly would have said so. Instead, Congress ordered the agencies to *coordinate* and spelled out steps that must be taken to do so. ☛

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Serving community and government,
advancing balance and resolving conflict
between the human and natural
environments.

Shepherd's Creek

TO:

Coordination REPORT



The Owyhee Initiative: *coordination* can end conflict, benefit natural and human environments

Coordination influences federal agency planning and management processes and can lead to benefits not likely to result from litigation, cooperation, consultation, or other means. In Idaho, County Commissioners previously engaged in *coordination* with BLM proposed the Owyhee Initiative, a collaborative effort to resolve contentious, decades-long land use conflicts between environmental groups and ranchers.

The County joined with diverse groups including Idaho Wilderness Society, Nature Conservancy, Idaho Conservation League, Owyhee Cattleman's Association, Soil Conservation Districts, Owyhee Borderlands Trust, Sierra Club, Rocky Mountain Big Horn Sheep Association, Owyhee County Farm Bureau, and Idaho Backcountry Horsemen to form a work group. Together, they hammered out an historic agreement establishing:

- A non-biased science review process (for protection of grazing) and

a conservation center in Owyhee County (addressing natural resource management issues);

- Designation of 517,000 acres of Wilderness and 316 miles of Wild and Scenic Rivers;
- Release for multiple uses of nearly 200,000 acres of Wilderness Study Areas (ending management for wilderness characteristics);
- Statutory responsibility for environmental organizations to provide monetary compensation to ranchers in exchange for permanent retirement of livestock grazing permits in and adjacent to wilderness areas;
- An account to fund purchase of lands or interests within or adjacent to wilderness areas in Owyhee County with the proceeds from public land sales elsewhere within the BLM's Boise District;
- BLM *coordination* with Shoshone-Paiute Tribes to implement the Shoshone-Paiute Cultural Re-

source Protection Plan; and

- Completion of travel management plans for Owyhee County.

Without the County's *coordination* history, the Owyhee Initiative would not have been possible. Environmental groups knew the best opportunity to gain compromise of any kind was through *coordination* with the agencies and the County via the Owyhee Initiative process. The agreement among Work Group participants led to development of the Owyhee Public Lands Management Act, a bill sponsored by Idaho Senator Mike Crapo. The bill was signed into law by President Obama in March, 2009.

Coordination has great potential in California and nationwide for taking positive steps to end long term land use conflicts over public and private land and resource issues. In the process, as indicated above, it can lead to enormous benefits to natural and human environments. ♪