

Sublette County, Wyoming Land Use Policy Process

How we got here:

With many counties in the public land states of the West containing large parcels of public lands, residents in these areas understand that the activities that occur on public lands can have significant impacts on local communities. The enactment of various environmental protection laws in the 1970s, paired with increased demand for resources, combined to create resource conflicts. The result was that many local governments felt that the concerns and needs of local communities were being ignored in favor of other interests.

In attempt to quell mounting frustrations and gain some control, counties throughout the West began instituting land use ordinances. In some cases, rather than helping to guide land use in their counties, the county ordinances only created more conflict with federal officials because they overstepped the county's authority.

With Congress granting the management authority of public lands to federal agencies, what has become increasingly important is the accompanying Congressional mandate to federal agencies to ensure that local governments are consulted with as planning occurs, and that federal plans are consistent with local plans, to the extent consistent with law. This is where the county public lands policy comes into play. For federal agencies to know what is expected from county governments, they must be notified. Counties are to make decisions and adopt policy positions that are not in conflict with existing laws, and then notify federal agencies of these policies. Counties then have the opportunity for meaningful involvement in decision-making, gaining a seat at the table *with* federal agencies.

Can it really make a difference?

Yes, it can. A federal court decision in favor of Uintah County, Utah, demonstrates it made a difference in that county. The 2001 decision was hailed as a victory for local governments since it validated the role of county land-use plans by overturning a Bureau of Land Management decision for lack of consistency with local plans.

The Utah case example:

The U.S. District Court for the District of Utah, Central Division held that a county government and Indian tribe have standing to challenge a Bureau of Land Management decision; when the Secretary of the Interior is making decisions affecting management of public lands, it must seek consistency with local land-use plans; and that the coordination and consultation requirements of a federal law require the BLM to have a narrowly focused discussion with local governments, including a specific description of the places or values at issue.

The case stemmed from a lawsuit brought forth by Uintah County, Utah, and the Ute Indian Tribe.

In 1985, the BLM adopted its Book Cliffs Resource Management Plan (BCRMP) which called for the removal of all wild horses from the Bonanza area and established a two-year period for this removal.

"In the ensuing years, the BLM maintained a herd of horses in the Bonanza Herd Area, despite the clear mandate of the BCRMP," the court opinion stated.

In 1986, the BLM attempted to gather the Bonanza horses, but the Ute Indian Tribe sued the BLM, arguing that the horses belonged to them. Eventually the BLM and the Tribe entered into a consent decree by which the BLM turned over all of the captured horses to the Tribe and the Tribe agreed to relinquish claims to 13 horses still in the Bonanza area. The Tribe also provided the BLM with 20 wild horses from a reservation in Nevada, which were placed in the Bonanza area.

Following an outbreak of equine infectious anemia (EIA) in 1999, the BLM gathered and tested nearly 250 wild horses for the disease. "This was the first time since 1985 that the BLM complied with the BCRMP directive to remove all wild horses from the Bonanza Herd Area," the court noted. "The BLM euthanized the test-positive horses, and continued to hold the test-negative animals.

"The agency's original decision was to remove all test-negative horses from the Bonanza Herd Area," the court opinion, written by U.S. Senior District Judge Bruce S. Jenkins, stated. "However, due to the high number of test-positive horses, the BLM amended its decision, determining to return all test-negative horses to the Bonanza Herd Area."

The BLM had decided to return 80 test-negative animals back to the Bonanza area, a decision the county and the Tribe decided to challenge as a violation of the 1985 BCRMP.

The Uintah County land-use plan called for a desired population level of zero wild horses in the Bonanza area. The county reminded the BLM of this in a letter one week prior to the agency's decision to return the 80 horses to the Bonanza, and "also raised valid health, safety and environmental concerns," according to the court opinion. The letter noted that the BLM proposal was inconsistent with the county land use plan and that the reservoirs of the EIA infection were still present in the area, posing a threat to the welfare of livestock within the county's jurisdiction.

The Ute Indian Tribe argued that the BLM failed to consult with the Tribe, and that the decision lacked consistency with tribal land use plans.

The Federal Land Policy and Management Act requires federal land managers create land use plans that "shall be consistent with state and local plans to the maximum extent ... consistent with federal law and the purposes of the Act," which is to manage the public lands under the "principles of multiple use and sustained yield." It also requires federal managers to coordinate their land use planning activities with "the land use planning and

management programs of other federal departments and agencies and of the states and local governments within which the lands are located ... and of or for Indian tribes." The federal government argued that since the decision did not concern a BLM land use plan, the government was not required to consult with the Tribe.

The court disagreed with the federal government's arguments, stating, "However, FLPMA's coordination and consistency review requirements apply when the Secretary is making decisions directly affecting the actual management of the public lands, whether formally characterized as resource management plan activity or not."

The court held: "The BLM has no discretion to operate outside of the directives laid out in the BCRMP ... BLM actions must conform to the approved plan. As the decision does not conform with the BCRMP, the court cannot sustain its validity."

The conclusion of the court is that both Uintah County and the Ute Indian Tribe had standing to challenge the BLM decision, although livestock permittees in the area did not. "Further, the County and the Tribe are entitled to consultation and coordination with the BLM, plus the required consistency review. It is important that the land and resource management plans effectively protect the interests of all of the involved parties," the court opinion stated. The BLM was "ordered to comply with the BCRMP by immediately and permanently removing all wild horses from the Bonanza Area pending any formal amendment to the BCRMP."

But the Bonanza wild horse saga continued, with the BLM quickly drafting an amendment to the BCRMP to reflect the current situation, with no intention of removing the horses. Judge Jenkins, on Oct. 26, then issued a judgment giving the BLM 30 days to remove all the wild horses from the Bonanza area and permanently enjoining and prohibiting the BLM from introducing or reintroducing any wild horses to the Bonanza area "until such time as the BCRMP is formally amended in conformity with applicable statutes and regulations to permit such introduction or reintroduction of wild horses on the Bonanza Herd Area.

"In the event the defendants continue their efforts to amend or replace the BCRMP, the BLM shall provide adequate consultation and coordination with the County and Tribe regarding such amendment or replacement, and the BLM shall conduct the consistency review called for by applicable statutes and regulations with regard to such amendment or replacement of the BCRMP."

Bill Howell of the Southeastern Utah Association of Local Governments reflected on the importance of the decision: "The outgrowth of this decision is that local plans, if they are in place and if the locals have the tenacity to enforce them, cannot be ignored and, barring a clear conflict with law, the federal plan must be consistent with them."