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For the State of Montana

Montana Coordination Act of 2011

SB117 (LC0711)

Submitted by
Senator Greg Hinkle (SD7)
5 Gable Road
Thompson Falls, Mt. 59873-8512
(406)827-4645
ghinklesd7@gmail.com

UNDERSTANDING COORDINATION

Introduction

Federal statutes mandate federal agencies to “coordinate” with local government in developing and implementing plans, policies and management actions. The agencies are directed to use every practicable means to make federal and state plans, policies and management actions “consistent”, not in conflict.

States are now beginning to enact legislation to require state agencies to coordinate with local government units. The State of Arizona is one example. The American Legislative Exchange Council supports a model statute patterned on the Arizona statute. Montana laws currently support the principles of coordination but need to be clarified and expanded to make coordination more useful.

Because local citizens feel their ideas do not count we need to give them the legal and constitutional tools required to allow for more control at the local governmental level.

Why the Process of "Coordination" is Needed

- Local government is the government closest to the people and provides most government services that are useful to the people.
- Congress has increasingly passed statutes that attempt to pre-empt state and local authority in violation of the Tenth Amendment. Local government needs a government-to-government process to level the playing field.
- Federal agencies have a history of making rules and regulations that serve their own interests rather than those of the public---often exceeding the authority given them by Congress or the legislature. These agencies issue regulations and make decisions not required by statute in order to placate special interest pressure groups---either to avoid confrontation with those special interests or because employees are pursuing personal agendas. The process of coordination gives citizens a chance to resist arbitrary, outside the law decisions through their locally elected officials. It provides local government with the tools needed to persuade compliance with the statutes and the constitution.
- The coordination process provides local government with a means of protecting local sovereignty by implementing its rights under the Tenth amendment. This is a constitutional principle and process that many federal elected officials over the past 200 years have recognized, endorsed and caused to become embedded in federal land and resource management acts.
- Federal encroachment on citizens ability to use renewable natural resources and wildlife treasure endangers the ability of the state and local governments to survive as sovereign authorities.
- Particularly in the western states, wealth and economic stability rises from land and water. Increasingly individuals and businesses have been locked out from access to the abundant natural resources on our public lands. Through coordination, local governments have the opportunity to work toward restoring and protecting access.
- Protection of public health and safety is traditionally the role of local government under the police powers reserved to it by the Tenth Amendment. Through the coordination process local government can regain a major role in developing and implementing policies regarding predators and endangered species to protect Montanans against alarming health and safety risks arising from disease, destruction of property and physical attack.

Benefits of Using Coordination

- Re-vitalization of, and where necessary re-creation of a viable working economy with jobs in local communities;
- Makes it safer for businesses to invest in Montana - businesses are waiting for release of resources;
- Protection of the health, safety and property of all Montanans;
- Stop special interest groups' behind-the-scenes undue influence on Federal agencies to shut off access to our natural resources - resources such as timber, grazing, water, minerals, wildlife and recreation;
- Recover lost funding for our schools and county infrastructure, i.e. regain lost income from sales of resources from public lands;
- Restore healthy forests rather than losing them to a "let-burn" policy in off-limits wilderness;
- Restore healthy forests by clearing out diseased, burned trees to allow strong, new growth;
- Restore health to watersheds depleted by lack of forest management;
- Stop the destruction of our forest roads and trails which allow us access to fight fires, manage timber, go hunting and fishing, gather fire wood, and protect health and safety through search and rescue;
- Aid rural communities in their effort to stop the flight of our young folks because of lack of jobs

Meaning of Coordination

Existing laws require Federal agencies to "coordinate" with local government and make federal plans consistent with local government's policies, plans and management actions. Such consistency will allow local governments to once again protect the local tax base, sustain a viable and stable local economy, and protect the public health and safety..

For these laws to be effective, local governments must formally initiate and implement the coordination process and insist that federal agencies such as the US Forest Service, the Bureau of Land Management, the U.S. Fish and Wildlife Service, the Environmental Protection Agency and Homeland Security work to remove conflicts between federal policy and local policy.

"Coordination" has been defined as "being equal in importance, rank or degree; not subordinate". Congress has further defined "coordination" as a government-to-government communication process, seeking consistency, in which local government has an equal negotiating position with the federal agencies. This government-to-government communication negotiating process allows local government to participate on an equal basis in all phases of planning and management of land, water and wildlife resources. The terms "cooperation" and "collaboration" do not mean the same as coordination. These words do not have the foundation in law as does coordination.

How the Process of Coordination Works

The process is simple.

First, the local government passes a resolution invoking or implementing coordination.

Then it formally initiates coordination meetings with a federal agency by scheduling a coordination meeting and setting an agenda of issues that require consistent resolution. The meeting is scheduled through communication between the local government body and the federal agency.

Meetings are held at meaningful intervals, relevant and meaningful data and analysis is exchanged, and proposals for resolution of conflicts are put on the table for discussion. Ultimately negotiated plans are produced.

Each coordination meeting is conducted according to a protocol that ensures only direct government-to-government interaction. Outside influences are not allowed in the coordination meetings, even though the meetings are open for the public to attend. Input from the public is encouraged through all of the other historically common avenues such as hearings, submitted comments, and participation as advisers.

A valuable tool for use in this process can be a "Natural Resource Plan", adopted by the local governing board. The Plan can provide a positive guide for the federal agency to coordinate with the local government. This can help ensure that the development and implementation of land use plans and management actions are compatible with the best interests of the local government and its constituency. The Plan is designed to facilitate continued, revitalized, and varied usage of the government managed lands, as mandated in the laws which set up the agencies in the first place.

A second method of implementing the process is simply to address an issue directly at the time it surfaces. The local government writes a letter or memorandum to the agency stating that it desires to make its position known on the issue and wishes to discuss the issue in formal government-to-government meeting(s) with the agency.

Federal laws mandate coordinated planning of federally managed land with local government. They positively support varied use of these lands. This varied usage includes continuation of the historic and traditional economic uses which have been made of public lands. Federal agencies are required to inform local government of all pending or proposed actions affecting local communities and citizens, and coordinate with local government in the planning and implementation of those actions.

Federal Laws Mandating Coordination:

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA): 42 USC 4321-4347

The National Environmental Policy Act requires that all federal agencies consider the impacts of their actions on the environment and on the preservation of the culture, heritage, and custom of local government.

FEDERAL LAND POLICY AND MANAGEMENT ACT (FLPMA): 43 USC 1701-1785

43 USC 1701(a)(13) "the Federal Government should, on a basis equitable to both the Federal and local taxpayer, provide for payments to compensate States and local governments for burdens created as a result of the immunity of Federal lands from State and local taxation."

43 USC 1712(c) "In the development and revision of land use plans, the Secretary shall...(9) to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands 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 ..."

Summary: Land use plans are to be consistent with local plans to the maximum extent consistent with Federal law.

NATIONAL FOREST MANAGEMENT ACT (NFMA): 16 USC 1604(a)

"The Secretary of Agriculture 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 processes of State and local governments and other Federal agencies."

FOREST SERVICE PLANNING RULES (CURRENTLY THE 1982 VERSION):

The regulations require coordination with management "agencies," and a county is in fact such a management agency because of the County's responsibility for the tax base, for land and road management, and for the welfare of its citizens.

Montana State Laws Dealing With Coordination

MONTANA ENVIRONMENTAL POLICY ACT (MEPA): MCA 75-1

The MEPA supports the concept of coordination and cooperation between Montana State agencies, federal and local governments.

Examples of Coordination in Use

Wherever coordination has been established and implemented properly the beneficial results have been very tangible and lasting. Below is a partial list of local governments across the United States that have initiated the coordination process. Some have just begun the process, others have carried it through successfully on one or more issues and are continuing to use the process in an ongoing basis.

Owyhee County, ID	Fremont County, WY	Uintah County, UT	Catron County, NM
Modoc County, CA	Crook County, WY	Inyo County, CA	Douglas County, OR
Del Norte County, CA	Hot Springs County, SD	Tuolumne County, CA	Flathead County, MT
Approx. 30 Wisconsin towns	Jefferson County, MT	Elko County, NV	Siskiyou County, CA
Plumas County, CA	Weld County, CO	El Dorado County, CA	Benewah County, ID
Sanders County, MT	Gray County, TX	Little River SRPC, TX	Montezuma County, CO
Wrangle Borough, AK	Reddington NRCD, AZ	Winkelman NRCD, AZ	Shasta County, CA
Custer County, ID	Okanogan County, WA	Ferry County, WA	Washington County, OR
Elmore County, AL	San Juan County, UT	Logan County, KS	Happy Camp ISD, CA
Glen Lake Irrigation District, MT	Meeteetse Conservation District, WY	Ruby Valley Conservation Dist., NV	Happy Camp Cemetery District, CA
Sub-regional Planning Commissions, TX*	Central Elmore Water Sewer District, AL	Wild County School District, CO	Happy Camp Fire District, CA

* The Trans Texas Corridor (first leg of the International NAFTA Superhighway through the heartland of America) was stopped by nine Regional Planning Commissions composed of school districts and towns in Texas using the coordination process.

Conclusions

Now is the time for the legislature to act to strengthen Montana's use of and participation in the lawful use of the principles of coordination. A bill is being drafted (LC0711) which will do just that - give local governments clear direction in their use of coordination to fairly represent the citizens of their jurisdictions in bringing back local control from runaway big governments.

This will not create bureaucratic burdens on local government as some have suggested. On the contrary, experience has shown that the proper use of coordination processes relieves burdens imposed by special interest groups and their constant harassment by lawsuits which result in getting citizens off the land, away from any productive use of natural resources, and which promote risks to life and property.

It's time to do what is right for the citizens of Montana before too many of them have completely exhausted their ability to survive. They cannot survive without jobs and the jobs come from sustainable use of Montana's abundant land-based natural resources.

In order for local citizens feel their ideas count we need to allow for more control at the local governmental level. Coordination is the legal way to give citizens a voice.