



Montana Legislative Services Division

Legislative Environmental Policy Office

To: EQC
From: Joe Kolman, staff
Re: SJ15 agenda item local interaction with federal land management agencies
March 17, 2014

The SJ15 Work Group wanted the EQC to hear perspectives on how local governments may influence federal land management decisions.

The first speaker is Doyel Shamley, the CEO of Veritas Research Consulting specializing in natural resources and the lines of jurisdiction of varying levels of government involved in natural resource management. Mr. Shamley was a panelist at the January EQC meeting.

The other speaker is Randy Phillips. Mr. Phillips represents the Chief of the Forest Service as Liaison to the National Association of Counties in Washington, D.C., and is responsible for developing programs of mutual interest between county governments and the Forest Service.

What follows is a brief overview of laws that govern local involvement in federal land management.¹ Attached to the email are three documents written by legislative attorney Todd Everts that are the basis for this overview. Also attached in the email is information provided by the Forest Service and the BLM.

Management of federal lands in Montana and other states is the responsibility of federal agencies under powers granted by Congress. However, states and local entities may influence decisions in a number of ways.

Many land management decisions are subject to the National Environmental Policy Act, which requires federal agencies to integrate environmental considerations into the planning and decision-making process. Federal agencies required to comply with NEPA must do so in "cooperation with state and local governments" or other entities that have jurisdiction by law over the subject action or special expertise.²

A cooperating agency can expect to be asked to provide information to the lead agency as well as providing some staff support. A cooperating agency will normally use its own funds. In short, cooperating agency status allows a state or local government a seat at the table when it comes to identifying issues and developing information.³ Cooperating agency status may provide a state and local government with better legal standing should court action ensue.⁴

¹ This is excerpted from the SJ15 Primer the presented to the EQC in September 2013.

² 42 U.S. Code § 4331

³ 40 CFR 1501.6

⁴ Everts memo, September 2008.

Laws governing the Forest Service and the BLM also speak to state and local influence. The Forest Service, under the Multiple-Use Sustained Yield Act of 1960 and the BLM under the Federal Land Policy and Management Act of 1976 are required to coordinate their natural resource and land planning processes with those of state, local, and tribal jurisdictions.

Changes to land and resource management plans on forest service lands must be coordinated with state and local governments.⁵ The Forest Service is required to discuss the inconsistencies and document the extent to which the agency would reconcile its proposed action with the state or local plan or law.⁶ When designating roads and trails on Forest Service lands, the agency shall coordinate with counties, local governments, and tribal governments.⁷ However, federal regulations state that the forest service retains decision making authority and management may not be conformed to meet non-Forest Service objectives or policies.⁸

The BLM planning process should be consistent with state and local plans to the "maximum extent" allowed by federal law. However, it should be noted that BLM regulations provide that where "state and local government policies, plans, and programs differ, those of the higher authority will normally be followed."⁹

In addition to state, county, or city governments, other units of local government are eligible to coordinate. That includes school districts, irrigation districts, water quality districts, and fire districts. Coordination with federal land management agency planning processes can occur either through county growth policies or other local government authorized plans, policies, or laws.

State and local entities have operated under these laws and regulations. Madison and Beaverhead counties were cooperating agencies for the revision of the Beaverhead-Deerlodge National Forest Plan.

The counties of Jefferson, Madison, Beaverhead and the communities of Dillon and Whitehall were cooperating agencies on a proposal to build a transmission line.¹⁰

⁵ 16 U.S. Code § 1604

⁶ 40 C.F.R. 1506.2(d)

⁷ 36 CFR 212.53

⁸ 36 CFR 219.4

⁹ 43 C.F.R. 1610.3-2

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