

**Kane County, Utah Board of Commissioners  
Garfield County, Colorado Board of Commissioners  
Chaves County, New Mexico Board of Commissioners  
Big Horn County, Wyoming Board of Commissioners  
Custer County, Idaho Board of Commissioners  
Modoc County, California Board of Supervisors  
Winkelman Natural Resource Conservation District, Arizona  
Hereford Natural Resource Conservation District, Arizona  
Doña Ana Soil and Water Conservation District, New Mexico**

May 24, 2016

**VIA FEDERAL EXPRESS AND  
U.S. MAIL, RETURN RECEIPT REQUESTED**

Ms. Kristen Bail  
Acting Assistant Director  
Resources and Planning  
Bureau of Land Management  
1849 C Street NW, Rm. 5665  
Washington DC 20240

**Re: Coordination Request; 8300 (WO200)**

Dear Ms. Bail:

We are writing you on behalf of Kane County, Utah; Garfield County, Colorado; Chaves County, New Mexico; Big Horn County, Wyoming; Custer County, Idaho; Modoc County, California; Winkelman Natural Resource Conservation District, Arizona; Hereford Natural Resource Conservation District, Arizona; and, Doña Ana Soil and Water Conservation District, New Mexico (the Coordinating Local Governments) in response your letter of May 10, 2016. For the reasons set forth below, the Coordinating Local Governments are extremely disappointed by your letter, which glosses over their request for coordination pursuant to Section 202(c)(9) of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1712(c)(9).

The Coordinating Local Governments have written to the Bureau of Land Management (BLM) Director on two occasions, requesting that the Director coordinate on the BLM's Resource Management Planning Rules, 81 Fed. Reg. 8674 (Feb. 25, 2016) (the Proposed Planning Rules). Our first letter requesting coordination was dated April 12, 2016, and was sent to Director Kornze by Federal Express and by certified mail. Our second letter was dated May 4, 2016. It was also sent to the Director by Federal Express and by certified mail.

Both letters requested coordination on the Proposed Planning Rules, not a “webinar” or someone to answer questions. As explained in our prior letters, under FLPMA Section 202(c)(9), the BLM is required to coordinate its “land use inventory, planning, and management activities” pertaining to the public lands “with the land use and planning programs” of State and

local governments. 43 U.S.C. § 1712(c)(9). Among other things, this provision requires the BLM to “assure that consideration is given” to relevant State and local government plans and programs, to attempt to resolve conflicts and inconsistencies between BLM land use plans and State and local government land use plans, and to provide State and local governments with meaningful involvement “in the development of land use programs, land use regulations, and land use decisions for public lands.” *Id.*

Thus, coordination under FLPMA requires far more than allowing comments on a proposal. The verb “coordinate” means “to put in the same order or rank” or “to bring into common action, movement, or condition: HARMONIZE.” Merriam-Webster’s Collegiate Dictionary 255 (10th ed. 2000). In other words, the requirement to “coordinate” requires that the BLM treat the land use planning and management activities of State and local governments as equal in rank and harmonize its land use inventory, planning, and management activities with the activities of State and local governments.

The requirements imposed by FLPMA Section 202(c)(9) were not an accident. In its seminal report to the President and to the Congress, which provided the underpinning for much of FLPMA, the Public Land Law Review Commission recommended that State and local governments have an integral role in federal agency land use planning. The Commission explained that these units of government “represent the people and institutions most directly affected by Federal programs growing out of land use planning.” *One Third of the Nation’s Land* 61 (1970).<sup>1</sup> The Commission felt so strongly about this point that it recommended:

To encourage state and local government involvement in the planning process in a meaningful way, as well as to avoid conflict and assure the cooperation necessary to effective regional and local planning, the Commission believes that consideration of state and local impacts should be mandatory. To accomplish this, *Federal agencies should be required to submit their plans to state or local government agencies. . . .*

The coordination [between federal agencies and State and local governments] which will be required if the Commission’s recommendations are adopted is so essential to effective public land use planning that it should be mandatory. . . . *The Commission recommends, therefore, that Congress provide by statute that Federal action programs may be invalidated by court orders upon adequate proof that procedural requirements for planning coordination have not been observed.*

*Id.* at 63 (italics in original).

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<sup>1</sup> Available at <https://archive.org/details/onethirdofnation3431unit> (visited May 21, 2016). The Public Land Law Review Commission was established as an independent federal agency by an act of September 19, 1964 (78 Stat. 982). Its function was to review the federal public land laws and regulations and recommend a public land policy. For more background see National Archives, Records of the Public Land Law Review, available at <http://www.archives.gov/research/guide-fed-records/groups/409.html>.

The Proposed Planning Rules are subject to these coordination requirements. The development of the Proposed Planning Rules are a “land use inventory, planning, and management activit[y]”—indeed, the rules are intended to change the way the BLM manages the public lands. The Proposed Planning Rules also constitute “land use regulations” for the public lands and “land use guidelines, land use rules, and land use regulations for the public lands” within the meaning of the statute. They must be coordinated with State and local governments.

And, as explained in our previous requests for coordination, each of the Coordinating Local Governments are “local governments” within the meaning of FLPMA Section 202(c)(9). They are recognized units of local government, and their respective areas of jurisdiction contain substantial amounts of public lands managed by the BLM. As such, the BLM is legally obligated to coordinate its land use planning and management activities, including the development of rules governing land and resource management planning, with the Coordinating Local Governments. To date, however, the BLM has ignored this requirement.

Your letter, unfortunately, continues to ignore the plain language of FLPMA Section 202(c)(9). You state that the “BLM takes seriously” its responsibility under FLPMA “to provide for meaningful public involvement of State and local government officials in the development of land use regulations.” However, you then assert that the BLM’s obligations were satisfied by hosting public “listening sessions” in Denver and Sacramento in 2014, which were attended by just over 100 persons in total. These sessions involved a very general presentation by a BLM employee followed by “small group” meetings led by facilitators to control the discussion. A total of 50 unique written comments were subsequently provided, according to your agency’s summary report. To our knowledge, ensuring consistency with State and local land use plans and policies was not addressed, nor did the BLM engage in any specific coordination efforts directed at State and local governments in developing the Proposed Planning Rules.

You also state that the BLM conducted two public “webinars” on March 21, 2016, and April 13, 2016—after the Proposed Planning Rules were issued—and hosted a public meeting in Denver on March 15, 2016—again, after the Proposed Planning Rules were issued. FLPMA Section 202(c)(9) requires that State and local governments be provided “early public notice of proposed decisions which may have a significant impact on non-Federal lands,” which allows meaningful input to be provided before the decision-making process has proceeded beyond the point where coordination cannot be accomplished.<sup>2</sup> Finally, you note that the BLM extended the public comment deadline on the Proposed Planning Rules by 30 days.

Your letter states that “the BLM” will be attending a meeting sponsored by the National Association of Counties, being held in Jackson Hole, Wyoming on May 25-27, 2016, and that “we look forward to engaging in dialogue.” Putting aside the fact that most of our coalition members will not be attending this event, coordination is not a casual discussion. Effective and

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<sup>2</sup> Representatives of our coalition members watched these “webinars” and also attended the meeting in Denver. Again, there was no mention of coordinating the development of the Proposed Planning Rules with State and local governments, and no discussion about potential conflicts with State and local land use plans and policies or how these conflicts would be resolved in connection with this rulemaking.

meaningful coordination requires serious effort and necessarily involves face-to-face meetings between the decision-makers on both sides.

Finally, you have offered to set up a conference call or “webinar” with representatives from our coalition. The purpose of this call would be to “listen to their concerns and answer any questions regarding the proposed rule.” Again, this is not coordination. Coordination isn’t a listening session or opportunity to comment. Instead, it involves a meaningful government-to-government dialogue. For this reason, we have requested a meeting with the Director in a major western city, preferably Albuquerque, New Mexico. This will allow the elected officials from the members of our group to attend the meeting and participate in the discussion.

The bottom line is that none of these activities described in your letter satisfies the requirements of FLPMA Section 202(c)(9). In fact, what your letter demonstrates is that the BLM believes that State and local governments are just like any other member of the public, with, at most, a right to comment on proposed rules affecting the management of the public lands. This belief conflicts with the plain language of FLPMA Section 202(c)(9) and would effectively read the coordination requirements imposed by that provision out of the Act.

Margaret Byfield, who is serving as the facilitator for the Coordinating Local Governments and has previously contacted Director Kornze regarding coordination logistics, was told by an agency representative that a coordination meeting cannot take place because the BLM is very busy. We don’t doubt that Director Kornze and other senior agency officials are very busy—the local government officials representing our coalition members are also very busy. However, if the decision-makers cannot find time for coordination, the BLM will be unable to finalize the Proposed Planning Rules without violating FLPMA. Our members’ officials are committed to working with Director Kornze to effectively coordinate.

Accordingly, we urge the Director to set aside time for coordination. As stated in our prior letters, we will do our best to accommodate his schedule. In the alternative, we urge the BLM to put the Proposed Planning Rules on hold until the Director’s schedule permits him to devote time to meaningful coordination. There is no compelling need for an immediate revision of the current resource management rules, and none has been provided in the preamble of the Proposed Planning Rules.

We appreciate your assistance in responding to our previous coordination requests. Please confirm the Director’s willingness and availability to conduct coordination within 14 days, and advise us of your preferred meeting day. Also, please contact Ms. Byfield as soon as possible so that we can make the necessary meeting arrangements.


Alternatively, please confirm that this rulemaking will be postponed until coordination has been properly completed.

Thank you for your cooperation and assistance. We look forward to working with you.

Very truly yours,



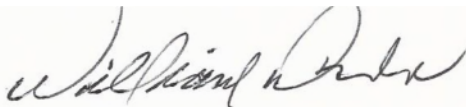
Dirk Clayson, Chair  
Kane County, Utah Board of Commissioners



Kathie Rhoads, Chair  
Board of Supervisors  
County of Modoc



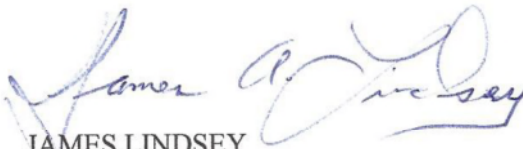
John Martin  
Garfield County Commissioner, Chairman




William Dunn,  
Chairman,  
Winkelman Natural Resource Conservation District




Robert Corn, Chairman  
Chaves County Board of Commissioners



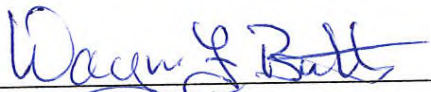
JAMES LINDSEY  
Chairman  
Hereford Natural Resources  
Conservation District



Jerold S. Ewen, Chairman  
Big Horn County, Wyoming



Joe Delk, Chairman  
Doña Ana Soil and Water Conservation District  
New Mexico

  
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Wayne Butts, Chairman  
Custer County, Idaho

cc: The Honorable Rob Bishop, Chairman, House Natural Resources Committee  
The Honorable John Barrasso, M.D., Chairman, Senate Western Caucus  
The Honorable Lisa Murkowski, Chairman, Senate Environment and Related Agencies  
The Honorable Steve Pearce, Chairman Emeritus, Congressional Western Caucus  
Leah Baker, Acting Branch Chief, Planning and NEPA (BLM WO)  
Shasta Ferranto, Planning 2.0 Project Manager (BLM WO)

COORDINATING LOCAL GOVERNMENTS

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