

Wally Congdon

January 7th, 2015

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

-SOURCE-

(Pub. L. 91-190, title I, Sec. 101, Jan. 1, 1970, 83 Stat. 852.)

-MISC1-

COMMISSION ON POPULATION GROWTH AND THE AMERICAN FUTURE

Pub. L. 91-213, Secs. 1-9, Mar. 16, 1970, 84 Stat. 67-69, established the Commission on Population Growth and the American Future to conduct and sponsor such studies and research and make such recommendations as might be necessary to provide information and education to all levels of government in the United States, and

ATTORNEY GENERAL
STATE OF MONTANA

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Joseph P. Mazurek
Attorney General



Department of Justice
215 North Sanders
PO Box 201401
Helena, MT 59620-1401

June 11, 1993

Mr. Mike McGrath
Lewis and Clark County Attorney
County Courthouse
228 Broadway
Helena, MT 59623

Mr. Keith D. Haker
Custer County Attorney
1010 Main Street
Miles City, MT 59301

Dear Mr. McGrath and Mr. Haker:

You have requested my opinion concerning questions I have consolidated as follows:

Does a board of county commissioners have the authority to: (1) regulate land uses upon federal or state lands; and (2) prevent the acquisition of land by the federal or state government?..

These questions have arisen in the context of proposals submitted for the adoption of a package of county land use ordinances. The exact proposed ordinances vary, but a general movement exists to promote the adoption of county ordinances that establish, inter alia:

1. that federal agencies must notify the county a set number of days prior to issuing land management decisions;
2. limitations upon the federal government's ability to designate additional wilderness areas and wild and scenic rivers;
3. that the amount of federal or state land within the county may not be increased;
4. that all federal natural resource decisions shall be dictated by principles protecting private property rights, protecting local custom and culture, and opening new economic opportunities through reliance on free-markets; and



File Code: 1900

Date: March 25, 2009

Mr. Steve Curtiss
Chairman
Glen Lake Irrigation District
P.O. Box 297
Eureka, MT 59917

Dear Mr. Curtiss:

On January 29, 2009, District Ranger Betty Holder received a copy of the Glen Lake Irrigation District ("GLID") Natural Resource Plan ("Plan"). In a February 12, 2009 letter, I told you of my concerns about the GLID Plan, and said that I was contacting the U.S.D.A Office of the General Counsel (OGC) for their opinion and advice. I have received an opinion from OGC, and this letter incorporates their review and advice, specifically on the GLID Plan. This letter also describes Forest Service responsibilities to solicit and consider the views of GLID or any local governmental agency.

Based on our review of the Plan, we conclude: (1) the Plan exceeds GLID's authority under State law; and (2) even if the Plan was within GLID's authority under State law, it is pre-empted by federal law. The Forest Service is constrained by neither the substantive nor the procedural provisions of the GLID plan. The Forest Service does have responsibility to solicit and consider input from local governmental entities with respect to its land management decisions; however, GLID may not dictate how those responsibilities are fulfilled.

A. The Plan Exceeds GLID's Authority Under State Law

The Plan adopted by GLID relates solely to management on federal and state lands. None of the provisions relate to management on lands either owned or managed by GLID or private individuals. The Plan states:

GLID is a public corporation with local government authority as to land use, water and resource management and environmental planning processes within the boundaries of the GLID. The State of Montana has enacted statutes which authorize GLID to develop processes for determining land use, resource and water management, and environmental planning, and statutes which authorize the GLID to implement those governmental processes. Plan p. 9.

The Plan next states that:

The National Forest Management Act requires the United States Forest Service to coordinate its planning process and its management actions in implementation of its plan, with GLID, as



Bureau of Land Management

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40 C.F.R. Section 1506.2 (d)

Environmental impact statements must discuss any “inconsistency of a proposed plan with any approved state or local plan and laws (whether or not federally sanctioned).” Where inconsistencies exist, the EIS should describe the extent to which the agency would reconcile the proposed action to the plan or law.

40 C.F.R. Section 1508.20(e)

Mitigation includes (a) avoiding the impact altogether, (b) limiting the degree of the impact, (c) repairing, rehabilitating or restoring the affected environment, (d) reducing the impact by preservation opportunities, or (e) compensating for the impact by replacing or providing substitute resources or environments.

Douglas County v. Lujan 810 F. Supp. 1470 (1992)

A local government, because of a concern for its environment, wildlife, socio-economic impacts, and tax base, has standing to sue federal agencies and seek relief for violations of NEPA.

43 C.F.R. Section 1610.3-2(a)

The BLM plan must be consistent with officially approved and adopted local land use plans, so long as such local plans are consistent with federal law and regulations.

43 C.F.R. Section 1610.3-2(e)

Prior to BLM resource management plan or management framework plan approval; the BLM shall submit to the governor a list of known inconsistencies between the BLM plans and local plans.

43 C.F.R. Section 1610.3-2(c)

The BLM has no duty to make its plan consistent with a local government plan if the local government does not notify the BLM existence of its local plan.

USDA FOREST SERVICE

Pertinent parts of United States Forest Service Regulations are, as follows:

16 U.S.C. Section 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.

36 C.F.R. Section 221.3(a)(l)

The Forest Service is obligated to consider and provide for "community stability"¹ in its decision-making processes. See also S. Rept. No. 105.22; 30 Cong. Rec. 984 (1897); The Use Book at 17.

36 C.F.R. Section 219.7(a)

¹Community stability" is defined as a combination of local custom, culture and economic preservation.

The Forest Service is obligated to coordinate with equivalent and related planning efforts of local governments.

36 C.F.R. Section 219.7(d)

The Forest Service is obligated to meet with local governments, to establish a process for coordination. At a minimum, coordination and participation with local governments shall occur prior to Forest Service selection of the preferred management alternative.

36 C.F.R. Section 219.7(d)

The Forest Service in its decision-making processes is obligated to coordinate² with local governments prior to selection of the preferred management alternative.

36 C.F.R. Section 219.7(c)

The Forest Service is obligated, after review of the county plan, to display the results of its review in an environmental impact statement. See also 40 C.F.R. Sections 1502.16(c) and 1506.2

36 C.F.R. Section 219.7(c)(4)

The Forest Service is obligated to consider alternatives to its proposed alternative if there are any conflicts with county land use plans.

36 C.F.R. Section 219.7(f)

The Forest Service is required to implement monitoring programs to determine how the agency's land-use plans affect communities adjacent to or near the national forest being planned.

² coordinate is defined as "equal, of the same rank, order, degree or importance; not subordinate." *Blacks Law Dictionary 303 (5th ed. 1979).*