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Also sent via email

Dear Messrs. Crawford, Brummer, Barney:

Professor Blumm wrote you on August 26, 2016, making comments on your proposed natural resources plan for federal lands in Crook County. That comment urged you not to adopt the proposed plan without a careful legal review, as a poorly framed plan would waste county resources and lead to unnecessary confrontations with the federal land managers and, ultimately, expensive litigation in which the county has little or no chance of prevailing. Please consider these latest comments on the revised pending ordinance before you decide to adopt it.

Although we understand that you commissioned a legal review of the plan—and some small changes are evident—the thrust of the plan attempts to promote the county plan as a document with which federal land management must be consistent. That is a position without warrant in federal law and will mislead county residents about the limited role the county actually possesses in federal land management.

The county's authority does not extend to requiring federal land managers to adopt county plans or county prescriptions for timber, grazing, or road management. Those are roles that are clearly within the statutory authority of federal land managers. There is no credible constitutional claim to local control over federal lands, as reflected in numerous Supreme Court decisions stretching back for 175 years, as the attached article published this year in the Public Lands and Resources Law Review (at the University of Montana) illustrates (@ pp. 10-16).

Although, as the article points out, the federal land management statutes do require "coordination" with "equivalent" county land plans, they neither require "consistency" nor county "consent," and the applicable Forest Service regulations expressly say so. These matters are discussed in a perceptive memorandum from Grant County Counsel Ron Yockim, written to the Grant County Court on October 15, 2015, which I believe you have in the record, and which Professor Blumm referenced in his earlier comment. We urge you to take seriously Mr. Yockim's conclusion concerning the meaning of the "consultative role" that counties have under the federal land management statutes and applicable regulations.

The current version of the plan suffers from numerous defects, epitomized by the fact that it references outdated Bureau of Land Management (BLM) regulations implementing the Federal Land Policy and Management Act. The plan relies on a 2009 version of the regulations, which were updated in 2012.

FLPMA requires coordination with state and local plans but only "to the extent consistent with laws governing with the administration of public lands," and only to the extent the Secretary "finds practical." 43 U.S.C. § 1712(c)(9). The statute requires no required "consistency review." Moreover, FPLMA requires consistency with state and local plans only to the extent the Secretary "finds is consistent with Federal law and the purposes of [FLPMA]." *Id.* These provisions clearly do not require BLM to conform to local land plans like the Crook County natural resources plan.

BLM regulations stipulate that any consistency with local plans will occur only "so long as the guidance and resource management plans are consistent with the policies, programs, and provisions of federal lands and regulations applicable to public lands . . . ." 43 C.F.R. § 1610.3-2(b) (2016). BLM's "Desk Guide to Coordination" (2012, at p. 33) makes the federal agency's role quite plain:

> ". . . the BLM does not have an obligation to seek . . . consistency. For example, in preparing [resource management plans] the BLM is required to designate and protect areas of critical environmental concern (ACEC). The BLM would not honor a request from a county government that only ACECs consistent with the county's general plan be designated in the [resource management plan], if this would prevent the BLM from complying with its statutory obligation."

Forest Service regulations are just as clear. They state without equivocation that "the responsible [Forest Service] official will . . . [not] conform management to meet non-Forest Service objectives." 36 C.F.R. § 219.4(b)(3) (2016). Neither the National Forest Management Act nor its implementing regulations require government-to-government consultation with a county government.

Adopting a county plan without observing the federal laws mentioned above would be a disservice to Crook County residents. Such a plan would suggest to them that the county has authority over federal lands that it clearly does not have and could encourage the kind of militancy seen recently at the Malheur National Wildlife Refuge. We urge you vote no on the plan until it includes an accurate articulation of the proper role of county government under the "coordination" provisions of the federal statutes. Enacting an unenforceable ordinance does no one any good and could produce unintended consequences.

Thank you for this opportunity to comment. However, we do think that adopting the proposed plan less than a week after it was released to the public would work not only a disservice to your constituents but will generate considerable opposition to the plan on procedural grounds.

Please give the interested public more time to consider what we view as a misguided attempt to assert county control over federal land management.

Very truly yours,

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