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# NATIONAL FOREST PLANNING: AN OPPORTUNITY FOR LOCAL GOVERNMENTS TO INFLUENCE FEDERAL LAND USE

John W. Hart\*

It's becoming increasingly clear that National Forests have major impacts on the lands around them—on their value and their environments. At the same time, National Forests are strongly affected by the uses to which adjacent and intermingled lands are put, and the effects are not always good. Conflicts are going to intensify unless our land management planning is coordinated with state and local planning and zoning.<sup>1</sup>

## I. INTRODUCTION

Wresting management authority over public lands from the federal government has been a constant pastime for western communities and politicians, with a history as old as some federal land agencies.<sup>2</sup> In the Sagebrush Rebellion of the late 1970s and early 1980s,<sup>3</sup> western ranchers and politicians demanded that the federal government relinquish management authority over the public domain and grant it to individual states.<sup>4</sup>

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\* B.A. 1990, University of Montana; J.D. 1995, University of Montana School of Law. The author wishes to thank Lisa Hallenbeck and Beth Brennan for their willingness to assist even the most grammatically challenged, and his parents who instilled in him (sometimes against his will) an interest in planning.

1. Former Forest Service Chief John McGuire, *quoted in* Arthur Cooper et al., *Forest Service Coordination with States and Local Governments*, in *A CITIZEN'S GUIDE TO THE FRRRPA* 161 (William E. Shands ed., 1981).

2. Thomas D. Lustig, *Recent Struggles for Control of the Public Lands: Shall We "Deliver it up to Wild Beasts"?*, 57 U. COLO. L. REV. 593, 593-95 (1986); Bruce Babbitt, *Federalism and the Environment: An Intergovernmental Perspective of the Sagebrush Rebellion*, 12 ENVTL. L. 847, 853 (1982); *see also* SAMUEL T. DANA & SALLY K. FAIRFAX, *FOREST AND RANGE POLICY* 90-91 (2d ed. 1980). Dean Dana suggests that the first major blow to the authority and independence of the nascent Forest Service came at the hands of county governments in 1906. Pushed by western politicians hostile to the new forest reserves, Congress decided that 10% of gross revenue generated from national forest lands within a county's jurisdiction must be given to the state to benefit of the county. *Id.* Congress increased this payment to 25% in 1908. *Id.* at 90.

3. *See generally* John D. Leshy, *Unraveling the Sagebrush Rebellion: Law, Politics and Federal Lands*, 14 U.C. DAVIS L. REV. 317 (1980) [hereinafter Leshy, *Sagebrush Rebellion*] (thoroughly analyzing the legal, cultural, and political underpinnings of the Sagebrush Rebellion).

4. This would not have been an insignificant gratuitous transfer on the part of the United States. Nearly 83% of Nevada is federally owned, and even the most privately held state in the west, Montana, is 28% public land. Overall, slightly more than one-half (53.7%) of the land in the western United States is owned by the federal government. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, *STATISTICAL ABSTRACT OF THE UNITED STATES* 225 (114th ed. 1994).

Due in part to a predominately rural population and an overwhelming proportion of public land, the state of Nevada led the rebel charge by enacting a statute that claims ownership and jurisdiction over unappropriated public land in Nevada.<sup>5</sup>

Although this statute remains in effect,<sup>6</sup> a Nevada federal district court has rejected its legal foundation.<sup>7</sup> As a result, Nevada's efforts to codify state ownership of public land stand largely as symbolic gestures. Nevertheless, similar efforts continue to surface occasionally.<sup>8</sup> So long as the rebels lack congressional support,<sup>9</sup> efforts to usurp title to the public domain appear doomed.<sup>10</sup>

Title to federal land is probably less important to western states than control over its use and management.<sup>11</sup> In fact, given that state ownership of federal lands could be financially disadvantageous to state and local governments,<sup>12</sup> the recently expanding county control movement<sup>13</sup> at

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5. NEV. REV. STAT. §§ 321.596-321.599 (1991).

6. Recently, the Justice Department filed suit in federal court against Nye County, Nevada, seeking a declaratory judgment that the Supremacy Clause of the U.S. Constitution preempts this Nevada statute. Nye County relies on the statute as a basis for management control over public lands within the county. *United States v. Nye County*, [1995] 25 *Env'tl. L. Rep. (Env'tl. L. Inst.)* 66,385 (D. Nev. filed Mar. 6, 1995).

7. *Nevada ex rel. Nevada State Bd. of Agric. v. United States*, 512 F. Supp. 166 (D. Nev. 1981), *aff'd*, 699 F.2d 486 (9th Cir. 1983).

8. See H.R. 4157, 103d Cong., 2d Sess. (1994) (seeking transfer of lands administered by the Bureau of Land Management to the state in which the lands are located). The Nevada Association of Counties recently endorsed efforts to turn control of federal lands over to state governments. See Ernie Thompson, *They're Fed Up, and Aren't Going to Take it Anymore*, HIGH COUNTRY NEWS, Feb. 21, 1994, at 7.

9. Rep. Don Young (R-Alaska), chair of the House Resources Committee, informed members of the National Mining Association on February 13, 1995 that he supports giving federal land to individual states. *'Wise Use, Conservation' of Resources Needed, Alaskan Lawmaker Tells Mining Group*, [Current Developments] *Env't Rep. (BNA)* 2010 (Feb. 17, 1995). The staff director for the National Parks, Forests, and Lands Subcommittee is currently analyzing such a proposal for BLM land. *Id.* See also *Foundation Would Dump Most Public Lands; Young Welcomes*, PUB. LANDS NEWS, April 27, 1995, at 1-2 (reporting on Heritage Foundation proposal to transfer all but "crown jewel" public lands to states, which received accolades from Rep. Young); *Dems May Try to Add Land Switch Proviso to BLM 4-Year Bill*, PUB. LANDS NEWS, April 13, 1995, at 5-6 (reporting on the Democrats' attempt to slow down any attempt to transfer public land to the states).

10. See *infra* notes 23-42 and accompanying text.

11. See, e.g., Babbitt, *supra* note 2, at 848; cf. WILLIAM E. SHANDS, *FEDERAL RESOURCE LANDS AND THEIR NEIGHBORS* 34-35 (1979) (implying that federal ownership would be more palatable to local government officials if federal land were included in the local tax base and more readily available for revenue-generating activities).

12. See Babbitt, *supra* note 2, at 850-51; see also SHANDS, *supra* note 11, at 34. A 1978 study by the Advisory Commission on Intergovernmental Relations concluded that: 1) public land counties receive about the same property taxes per capita than nonpublic land counties, 2) federal land ownership adds negligible cost burdens to local government budgets, and 3) public land counties receive on average greater federal and state revenue sharing and other aid than nonpublic land counties. SHANDS, *supra* note 11, at 34. Some of these conclusions result in part from a 1976 law providing for a per-acre payment in lieu of local property taxes for the benefit of local governments adjacent to

tempts to exact the benefits of land management authority over federal lands without the burdens of ownership. The objectives of the county control movement are to preserve the "custom and culture" of rural communities in the West and to limit the ability of federal land agencies to make decisions that will negatively affect local economic sectors dependent on public land.<sup>14</sup>

Pursuant to this movement, scores of county governments<sup>15</sup> have enacted land use plans and ordinances that ostensibly apply to federal land within their jurisdictions. The plans are designed to restrict the decision-making authority of federal land management agencies such as the U.S. Forest Service (FS) and the Bureau of Land Management (BLM).<sup>16</sup> In addition, and in marked contrast to the Sagebrush Rebellion, the county control movement seeks control over state as well as federal lands.<sup>17</sup> While it may be unwise for local governments to antagonize their traditional ally, state government, at least this revived group of rebels has forsaken any outright claim to federal land title.<sup>18</sup>

public land. See Payment For Entitlement Land (Payment In Lieu of Taxes Act), 31 U.S.C. §§ 6901-6907 (1988 & Supp. V 1993).

13. This reaction has been termed variously the county supremacy movement, the custom and culture movement, and the wise use movement. The term "county supremacy" has a fascist connotation, "custom and culture" is too nebulous, and "wise use" refers to a much broader political philosophy extending beyond the context of local communities. For these reasons, this Comment will use the term "county control movement" to refer to local government attempts to impose management authority and traditional uses on public lands.

14. In this context, "custom and culture" refers to economic and social lifestyles of traditional rural communities in the West. Employment in logging, mining, ranching, and farming dominates this lifestyle. It is this "custom and culture" that local communities are trying to maintain. See Robert B. Keiter, *Beyond the Boundary Line: Constructing a Law of Ecosystem Management*, 65 U. COLO. L. REV. 293, 322 (1994); Scott W. Reed, *The County Supremacy Movement: Mendacious Myth Marketing*, 30 IDAHO L. REV. 525, 549 (1993-94).

15. See Reed, *supra* note 14, at 527 (citing a claim by the National Federal Lands Conference of 175 to 200 counties); see also Michele Meske, *U.S. Files Suit to Quash 'Sagebrush Rebellion II'*, ENVTL. NEWS BRIEFING (Envtl. News Network, Inc., Sun Valley, Idaho), March 1995, at 1 (claiming about 75 counties).

16. The county control movement began in New Mexico with the Catron County Land Use Plan. For a history of the movement and text of the Catron County plan, see Anita P. Miller, *All Is Not Quiet on the Western Front*, 25 URB. LAW 827 (1993); Florence Williams, *Sagebrush Rebellion II: Some Rural Counties Seek to Influence Federal Land Use*, HIGH COUNTRY NEWS, Feb. 24, 1992, at 1.

17. See, e.g., Letter from Joseph P. Mazurek, Attorney General, State of Montana, to Mike McGrath, Lewis and Clark County Attorney, & Keith D. Haker, Custer County Attorney, Montana, at 1, 4 (June 11, 1993) [hereinafter Mazurek Letter] (rejecting county board of commissioners' authority to prevent state of Montana from acquiring lands within a county) (on file with author); 1991 Idaho Op. Att'y Gen. 36, no. 91-3 (1991) (allowing Idaho State Land Board to acquire Benewah County land despite county ordinance to the contrary).

18. States that do claim public land title, such as Nevada, rely on severely limited authority. See *Nevada State Bd. of Agric.*, 512 F. Supp. at 166, 171 (D. Nev. 1981) *aff'd*, 699 F.2d 486 (9th Cir. 1983) (recognizing the "greatly weakened" precedent on which Nevada based its argument). The state

In Part II, this Comment examines the legal foundation that supports county control efforts, and concludes that the movement lacks a substantive legal basis. Part III explores legitimate alternatives by which local government officials may influence the Forest Service and national forest management within local government jurisdiction.<sup>19</sup> These alternatives are outlined in the legislative history of federal laws governing the management of national forest lands and in the regulations promulgated by agencies to carry out these laws. Additionally, provisions of the National Environmental Policy Act (NEPA)<sup>20</sup> provide opportunities for local governments to influence national forest land use when the Forest Service proposes activities significantly affecting the human environment. The Comment concludes that, while the county control movement has no legal basis for its efforts to directly manage the use of national forests, counties have many opportunities to meaningfully influence Forest Service land use decisions.

## II. THE LEGAL FOUNDATION OF THE COUNTY CONTROL MOVEMENT

Legal jurisdiction over federal lands rests solely with the federal government as provided by the Constitution, legislated by Congress, defined by agencies, and upheld by courts. According to the Constitution, "Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States."<sup>21</sup> There have been numerous challenges over the years to the federal government's authority to exclusively manage public lands;<sup>22</sup> the county control movement is merely the most recent of these.

The language of the Property Clause is clear and unambiguous.

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of Nevada relied on the equal footing doctrine as announced in *Pollard's Lessee v. Hagan*, 44 U.S. (3 How.) 212 (1845). 512 F. Supp. at 170. Nevada argued that it entered the Union with the same understanding as the original thirteen colonies: Unappropriated lands ceded to the federal government were to be sold to the citizens for the benefit of the nation. *Id.* at 168. Nevada relies on the equal footing doctrine to support its statutory claim to unappropriated land within the state. See NEV. REV. STAT. § 321.596 (1991). While state governments may have a scintilla of a legal argument for control over public land, local governments have less or none.

19. Language in the Federal Land Policy and Management Act of 1976 (FLPMA) contains coordination responsibilities applicable to the BLM that are arguably stronger and grant more influence to local governments than requirements which bind the Forest Service. See 43 U.S.C. § 1712(c)(9) (1988). In the interest of brevity and clarity, this Comment focuses on national forest planning and project implementation coordination obligations imposed on the Forest Service by the Forest and Rangeland Renewable Resources Act of 1974 (RPA), § 6, 16 U.S.C. § 1604(a) (1988), and the National Environmental Policy Act of 1969 (NEPA), § 102, 42 U.S.C. § 4332 (1988). See *infra* note 56 and Section IIIA for a discussion of the relationship between RPA and the National Forest Management Act (NFMA), §§ 1600-1614 (1988 & Supp. V 1993).

20. 42 U.S.C. §§ 4321-4370(d) (1988 & Supp. V 1993).

21. U.S. CONST. art. IV, § 3, cl. 2 (Property Clause).

22. See *supra* note 2.

Courts have interpreted this clause as giving Congress the power to manage federal lands. In *Kleppe v. New Mexico*,<sup>23</sup> for example, the unanimous Court noted, "We have repeatedly observed that 'the power over the public land thus entrusted to Congress is without limitations.'"<sup>24</sup> This decision led one distinguished law professor to conclude "that the power of Congress over federal lands is . . . as well settled as any [principle of constitutional law] can be."<sup>25</sup> Any attempt by a local government entity to assert dual or concurrent land use authority over management of federal lands runs counter to the U.S. Constitution.<sup>26</sup>

Although federal authority is clear, local governments may be able to regulate activities on federal land so long as the restrictions are based on environmental protection. In *California Coastal Commission v. Granite Rock Co.*,<sup>27</sup> the Court refused to exempt a mining company from state regulation and mining-permit requirements, even though the activity would occur on national forest land in compliance with Forest Service regulations and the company had received a federal permit.<sup>28</sup> Justice O'Connor made much of an elusive but critical distinction between environmental regulation and land-use planning: So long as a state does not exercise authority over federal lands to such a degree that it "mandate[s] particular uses of the land," a state is free to regulate private use of public land.<sup>29</sup> The Court did not clearly define the parameters within which the state may

23. 426 U.S. 529 (1976).

24. *Kleppe*, 426 U.S. at 539 (quoting *United States v. San Francisco*, 310 U.S. 16, 29 (1940)). The *Kleppe* Court held that Congress's paramount authority over federal land extended to resident wildlife. *Id.* at 541. It is this reiteration of Congress's plenary power over public lands that many western communities resent even more than federal ownership. See Babbitt, *supra* note 2, at 858.

25. John D. Leshy, *Sharing Federal Multiple-Use Lands: Historic Lessons and Speculations for the Future*, in RETHINKING THE FEDERAL LANDS 235, 236-37 (Sterling Brubaker ed., 1990).

26. Reed, *supra* note 14, at 553. Reed compares county control ordinances to 'cow chips' and 'methane.' *Id.* at 527. See also Mazurek Letter, *supra* note 17 ("Congress's power over Article IV Federal public lands is paramount"). But see Rene Erm II, Comment, *The 'Wise Use' Movement: The Constitutionality of Local Action on Federal Lands Under the Preemption Doctrine*, 30 IDAHO L. REV. 631, 669 (1994) (maintaining that some aspects of Boundary County, Idaho's land use plan are constitutionally valid exercises of environmental regulation and land use planning authority so long as they do not conflict with existing federal law).

27. 480 U.S. 572 (1987).

28. *Granite Rock*, 480 U.S. at 593. For excellent discussions and analyses of the decision, see John D. Leshy, *Granite Rock and the States' Influence Over Federal Land Use*, 18 ENVTL. L. 99 (1988) [hereinafter Leshy, *Granite Rock*]; Eric T. Freyfogle, *Granite Rock: Institutional Competence and the State Role in Federal Land Planning*, 59 U. COLO. L. REV. 475 (1988) [hereinafter Freyfogle, *Granite Rock*]; Richard H. Cowart & Sally K. Fairfax, *Public Lands Federalism: Judicial Theory and Administrative Reality*, 15 ECOLOGY L.Q. 375 (1988); Theodore E. Worcester, *Land Use Planning and Regulation After Granite Rock: State and Local Control of Operations on Federal Lands*, 36 ROCKY MTN. MIN. L. INST. 19-1 (1990).

29. *Granite Rock*, 480 U.S. at 587. Furthermore, the state regulation cannot "conflict[] with the operation or objectives of federal law." *Id.* at 593 (citing *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 248 (1984)).

exercise its regulatory powers, but it did admit that state regulation could, under the guise of environmental regulation, economically defeat an activity. The substantive result would be, of course, indistinguishable from land use planning, which was ruled impermissible by the Court.<sup>30</sup>

While the pivotal but narrow issue in *Granite Rock* was whether federal law preempted an otherwise applicable state law,<sup>31</sup> the decision clearly suggests that state and local governments may not promulgate plans, policies, or regulations proscribing or mandating activities on federal land.<sup>32</sup> Any attempt to impose or restrict use of federal lands—whether it be grazing, wilderness preservation, motorized recreation, or other activities—is beyond state or local authority.<sup>33</sup>

A federal district court in Idaho recently reiterated this holding in a challenge to the county control movement. In *Boundary Backpackers v. Boundary County*,<sup>34</sup> the court struck down a local ordinance requiring federal and state land management agencies to comply with an Idaho county's interim land use plan.<sup>35</sup> The Boundary County plan sought to limit federal land acquisition within the county and required local approval of changes in land use involving wildlife, timber sales, livestock grazing, mining, road closures, primitive or wilderness designation, wild and scenic river designation, recreation, waste storage, wetlands, or water use.<sup>36</sup> The

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30. *Id.* at 587.

31. *Id.* at 575; see also GEORGE CAMERON COGGINS ET AL., FEDERAL PUBLIC LAND AND NATURAL RESOURCES LAW 219 (3d ed. 1993) (stating that the Court "decided only that the miner on federal land had to apply for a state permit").

32. See 480 U.S. at 587.

33. One law professor does not agree that state or local government land use planning should be impermissible per se. See Eric T. Freyfogle, *Federal Lands and Local Communities*, 27 ARIZ. L. REV. 653, 683-690 (1985) [hereinafter Freyfogle, *Federal Lands*]. Professor Freyfogle argues that preemption should occur only when an actual conflict arises between federal and nonfederal land management objectives, plans, or policies. *Id.* at 683. In the absence of an actual conflict, state and local governments should be allowed and even encouraged to exercise planning authority over federal lands. *Id.* at 689-90. In fact, Freyfogle contends, a federal land management decision to preempt inconsistent state and local plans should be careful, deliberate, and reflect recognition of the legitimate objectives embodied in the conflicting policy. *Id.* at 680-82. See also Freyfogle, *Granite Rock*, *supra* note 28, at 477 (arguing that the reasoning in *Granite Rock* was mistaken because the Court did not limit preemption of land use planning to actual conflicts but formulated a blanket prohibition).

34. *Boundary Backpackers v. Boundary County*, [1994] 24 *Envtl. L. Rep.* (Envtl. L. Inst.) 20,522 (D. Idaho Jan. 27, 1994).

35. *Boundary County, Idaho*, Ordinance No. 92-2 (1992) [hereinafter *Boundary County Plan*].

36. *Boundary Backpackers*, [1994] 24 *Envtl. L. Rep.* (Envtl. L. Inst.) at 20,523. *Boundary* and other counties enacting land use policies that purportedly restrict federal control of public land have done so to maintain and expand traditional extractive industries—logging, mining, ranching, etc. This Comment assumes that most counties seeking to influence Forest Service land use will do so in order to further natural resource commodity uses and encourage traditional economic activities. However, the goals underlying the county control movement are not limited to commodity-dependent communities. It is important to keep in mind that local governments which, for economic reasons, discourage natural resource development and nurture the amenities of public land preservation may also benefit by direct

court recognized that some statutes direct federal agencies to consult with local governments before developing land use plans.<sup>37</sup> These consultation obligations, however, “do not require federal officials to follow local government plans or ordinances . . . [that] conflict with federal land use or federal law.”<sup>38</sup> Refusing to consider Boundary County’s request to examine the constitutionality of each provision of the Boundary County Plan and uphold those that did not conflict with federal law,<sup>39</sup> Judge Michaud found the county’s efforts so broad and egregious as to make impractical any judicial attempt at salvaging constitutional remnants.<sup>40</sup>

*Boundary Backpackers* is the first federal court opinion to directly address the county control movement.<sup>41</sup> Decisions such as *Kleppe* and *Granite Rock*, which prohibit sovereigns other than the federal government from dictating land uses on federal land, make it legally difficult for judges to uphold county ordinances and plans like those enacted in Boundary County. Such plans and ordinances are unlikely to survive future legal challenges.<sup>42</sup>

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influence over public land planning. See SHANDS, *supra* note 11, at 36, 38 (noting that many local communities depend on federal land management to preserve and foster local tourist economies, curb urban sprawl, and maintain accessible open space).

37. *Boundary Backpackers*, [1994] 24 *Envtl. L. Rep.* (Envtl. L. Inst.) at 20,525. The court did not specifically cite nor reference the source of these obligations; however, it did discuss these obligations in the context of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1784 (1988 & Supp. V 1993), and the Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA), 16 U.S.C. §§ 1600-1610 (1988 & Supp. V 1993), amended by the National Forest Management Act of 1976 (NFMA), Pub. L. No. 94-588, 90 Stat. 2949 (codified at 16 U.S.C. §§ 1600-1614 (1988 & Supp. V 1993)). *Id.* For a more thorough discussion of federal coordination obligations, particularly in the RPA, see *infra* notes 72-111 and accompanying text.

38. *Boundary Backpackers*, [1994] 24 *Envtl. L. Rep.* (Envtl. L. Inst.) at 20,525.

39. The court declined Boundary County’s invitation to apply the ordinance’s “severability” clause because to do so would violate the preemption doctrine. *Id.* The preemption doctrine derives from the Supremacy Clause of the Constitution and overrides or nullifies state law. Courts apply the preemption doctrine when Congress legislates in such a way that existing state law conflicts with federal law, or Congress includes in legislation express language forbidding application of state law. JOHN E. NOWAK & RONALD D. ROTUNDA, *CONSTITUTIONAL LAW* § 9.1 (4th ed. 1991).

40. *Boundary Backpackers*, [1994] 24 *Envtl. L. Rep.* (Envtl. L. Inst.) at 20,525.

41. In an effort to reaffirm the federal government’s management and authority over public lands, the U.S. Department of Justice recently sued Nye County, Nevada. *United States v. Nye County*, [1995] 25 *Envtl. L. Rep.* (Envtl. L. Inst.) 66,385 (D. Nev. filed Mar. 6, 1995). Actions in Nye County illustrate the extreme defiance with which local officials pursue control over federal lands. County officials have condoned bulldozing national forest lands, desecrating historic sites, reopening closed national forest roads, and intimidating federal employees. Meske, *supra* note 15, at 2. One Nye County commissioner went so far as to file criminal charges against a federal employee who tried to stop the opening of a closed road in the Toiyabe National Forest. *Id.*

42. *But cf.* Erm, *supra* note 26, at 669 (arguing that under traditional preemption analysis, some provisions of the Boundary County Plan should have survived constitutional scrutiny).



## III. LEGITIMATE ALTERNATIVES FOR LOCAL GOVERNMENT INFLUENCE

Although the U.S. Constitution denies local governments opportunities to control public land use, history shows that local officials can exert substantial influence within the political structure of federal land management.<sup>43</sup> For most of this century, community and economic leaders voicing local economic interests have advised public land managers<sup>44</sup> to the exclusion of other voices.<sup>45</sup> These local economic interests have histori-

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43. Leshy, Granite Rock, *supra* note 28, at 250-51 (suggesting Congress's power over public lands is supreme and exclusive but that absolute assertion of that authority is generally viewed as politically unwise and elusive); *see also* Reed, *supra* note 14, at 528 (characterizing the traditional relationship between western ranchers and federal managers as one based on friendship and good-old-boy understanding); *cf.* Sally K. Fairfax, *Beyond the Sagebrush Rebellion: The BLM as Neighbor and Manager in the Western States*, in WESTERN PUBLIC LANDS: THE MANAGEMENT OF NATURAL RESOURCES IN A TIME OF DECLINING FEDERALISM 89 (John G. Francis & Richard Ganzel eds., 1984) (acknowledging the paramount authority of Congress to make land use decisions, but as a matter of political necessity, "demurr[ing]" to a locally inclusive land planning procedure).

Some critics have, in the past, accused the Bureau of Land Management of being too inclusive, particularly susceptible to local stockgrowers' wishes, and lacking the political will to challenge local interests that dominate grazing advisory boards. *See, e.g.*, WESLEY CALEF, PRIVATE GRAZING AND PUBLIC LANDS: STUDIES OF THE LOCAL MANAGEMENT OF THE TAYLOR GRAZING ACT 259-60 (1960). Likewise, the Forest Service maintains, at least historically, a decentralized agency hierarchy that emphasizes the role of the district ranger and the importance of making decisions on the ground, placing local needs first. *See, e.g.*, GLEN O. ROBINSON, THE FOREST SERVICE: A STUDY IN PUBLIC LAND MANAGEMENT 281 (1975). A bottom-up, decentralized management hierarchy creates an opportunity for local officials to exert tremendous pressure on federal managers. For a discussion of this phenomenon, termed administrative personnel capture theory, as it applies to Forest Service district rangers, see HERBERT KAUFMAN, THE FOREST RANGER: A STUDY IN ADMINISTRATIVE BEHAVIOR 76-80 (1960). Professor Kaufman maintains that district rangers have admirably avoided falling captive to local government and economic interest groups that exist in the communities in which they serve. Nevertheless, Kaufman admits that "[e]ven the most devoted forest officer might understandably yield to these constraints [local pressure] now and then." *Id.* at 77. *See also* JULIA M. WONDOLLECK, PUBLIC LANDS CONFLICT AND RESOLUTION: MANAGING NATIONAL FOREST DISPUTES 3-4 (1988) (claiming that the Forest Service and other professional land managers have successfully supplanted politically based management with scientific decision making).

44. "Land managers," in this context, refers to the Forest Service (FS) and the Bureau of Land Management (BLM). These agencies have authority over a large percentage of the public domain. More importantly, the FS and the BLM administer lands devoted to multiple uses, including natural resource development. COGGINS ET AL., *supra* note 31, at 137-39. While both agencies have been accused in the past of favoring local economic interests and needs, the BLM has received more widespread criticism. *See e.g.*, PAUL J. CULHANE, PUBLIC LANDS POLITICS: INTEREST GROUP INFLUENCE ON THE FOREST SERVICE AND THE BUREAU OF LAND MANAGEMENT 328-330 (1981) (citing several seminal BLM critiques written in 1960 attributing the disparate perception of the BLM in relation to the FS to fewer professionally trained personnel and lack of a well-defined agency mission).

45. *See* Gordon L. Bultena & John C. Hendee, *Foresters' Views of Interest Group Positions on Forest Policy*, 70 J. FORESTRY 337, 337-342 (1972). Bultena and Hendee present results of a survey of 118 Forest Service professionals. The authors asked each individual what position he or she believed 16 types of interest groups would assume on the issues of (1) increasing or decreasing timber harvests and (2) opening or closing forest trails to motorbikes. In addition, each individual was asked what position his or her immediate supervisor had on the issue. The authors reported:

Nearly all (94 percent) respondents saw their superiors in the Forest Service as favoring

cally overshadowed other groups' concerns.<sup>46</sup> Moreover, local communities expect privileged treatment, and to have federal land management tailored to local needs.<sup>47</sup>

Despite its historic prominence, the influence local interests have enjoyed is eroding, or at least sharing company with interest groups less focused on—and often opposed to—natural resource development.<sup>48</sup> One of the primary means by which competing interest groups have forced their way into the decision-making process is through statutorily guaranteed public participation provisions.<sup>49</sup> While it is clear that comprehensive public participation has broadened local interest group composition, whether those groups advocating resource protection have a greater voice at the local level is subject to debate.<sup>50</sup> Interest groups opposed to the

increased allowable cuts of timber to the extent permissible. This cast the Forest Service on the side of small logging companies, the forest products industry, city and county officials, local chambers of commerce, and local small town officials, for whom there also was substantial agreement by the foresters as to their respective positions.

*Id.* at 339; see also T. Randall Fortenbery & Harley R. Harris, *Public Participation, the Forest Service, and NFMA: Hold the Line*, 4 PUB. LAND L. REV. 51, 68 (1983) (claiming that the historical constituency of the Forest Service has been the timber industry, road and construction companies, and county governments).

46. Bultena & Hendee, *supra* note 45, at 337 (suggesting that emerging recreational interests have been slow to gain credibility with Forest Service officials).

47. SHANDS, *supra* note 11, at 33. An excellent example of the Forest Service's administrative bias in connection with these local economic interests is the well-established policy of managing national forests to promote local community stability. See Charles F. Wilkinson, *The Forest Service: A Call For A Return to First Principles*, 5 PUB. LAND L. REV. 1, 9-10 (1984). Professor Wilkinson cites a particularly telling Forest Service policy:

On National Forest [sic] the present and future local demand [for timber] is always considered first. The Government tries to see that there shall always be enough timber and wood on hand for use by the home builder, the prospector, the miner, the small mill man, the stockman and all kinds of local industries. If local needs promise to consume it all, nothing is allowed to be shipped out. . . .

*Id.* at 9 n.41 (quoting U.S. DEP'T. OF AGRIC., FOREST SERVICE, *THE USE OF THE NATIONAL FORESTS* 19 (1907)). Professor Wilkinson claims that rangers had considerable latitude within the agency to manipulate forest outputs in response to the economic needs of the local community. *Id.* at 10; see also ROBINSON, *supra* note 43, at 68-69 (suggesting size and terms of Forest Service timber sales are manipulated to ensure local competition); Bultena & Hendee, *supra* note 45, at 340. In the past, this emphasis on community interests has buoyed the weight of local influence at the expense of national interests. See ROBINSON, *supra* note 43, at 281.

48. See, e.g., Charles F. Wilkinson & H. Michael Anderson, *Land and Resource Planning in the National Forests*, 64 OR. L. REV. 1, 77 n.399 (1985), reprinted as CHARLES F. WILKINSON & H. MICHAEL ANDERSON, *LAND AND RESOURCE PLANNING IN THE NATIONAL FORESTS* 1, 77 n.399 (1987) (noting the National Forest Products Association's testimony at the National Forest Management Act hearings calling for strict national timber harvest goals because the Forest Service had allowed local interest groups to limit output at the expense of national goals).

49. See, e.g., NFMA, § 14, 16 U.S.C. § 1612; FLPMA, § 202(a), (f), 43 U.S.C. § 1712(a), (f). Public participation is not a new concept. Historically, federal land management agencies involved only select public groups in planning and developing projects. CULHANE, *supra* note 44, at 332-33; ROBINSON, *supra* note 43, at 45-46. Long excluded from these informal advisory groups, environmental organizations have sought mandatory participation. ROBINSON, *supra* note 43, at 46-47.

50. See ROBINSON, *supra* note 43, at 281-82; cf. CULHANE, *supra* note 44, at 258-59 (sug-

preservation of public land and in favor of its traditional use and development certainly perceive that their economic needs and expectations carry less weight with federal officials than they once did.<sup>51</sup>

The county control movement directly addresses the erosion of historical influence wrought by the environmental movement and changing societal values.<sup>52</sup> But if local governments do not have title to the lands in which they have clear economic interests, what can they do to have a meaningful and truly influential voice in federal land management? In relation to the Forest Service, the answer lies in binding coordination obligations between the Forest Service and local governments during national forest land use and project planning. Local community and government leaders may be unable to reverse the recent trend in favor of resource protection. Likewise, local interest groups may never regain the prominent and exclusive advisory position they once held. But they can use collaborative opportunities afforded by Congress to the fullest.

Several public land management statutes acknowledge the collaborative and influential role local governments can and should play in the land-use and planning process. For instance, in the Forest and Rangeland Renewable Resources Act (RPA),<sup>53</sup> Congress obligated the Secretary of Agriculture to "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 . . . local governments."<sup>54</sup> Similarly, the national forest planning process<sup>55</sup>

gesting that public participation has increased the legitimacy and influence of environmentalists but has not substantially modified prior public land management policy).

51. This is one of the unifying perceptions of the wise use movement. See Jon R. Luoma, *Eco-Backlash*, WILDLIFE CONSERVATION, Nov.-Dec. 1992, at 26-37. The principles underlying the county control movement reflect the agenda of the wise use movement. See Keiter, *supra* note 14, at 321-22.

52. Reed, *supra* note 14, at 528-29.

53. See, e.g., RPA, § 6(a), 16 U.S.C. § 1604(a); NEPA, § 101(a), 42 U.S.C. § 4331(a); FLPMA, § 202(c), 43 U.S.C. § 1712(c)(9).

54. 16 U.S.C. § 1604(a). Language in FLPMA contains coordination responsibilities arguably stronger than the NFMA provisions. See 43 U.S.C. § 1712(c)(9). FLPMA requires that "[l]and use plans of the Secretary [of the Interior] under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act." *Id.* (emphasis added). This same section obligates the Secretary "to the extent consistent with the laws governing the administration of the public lands, [to] coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of . . . local governments within which the lands are located." *Id.* With this mandate in mind:

[T]he Secretary shall, to the extent he finds practical, keep apprised of . . . local . . . land use plans; assure that consideration is given to those . . . local . . . plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and . . . provide for meaningful public involvement of . . . local government officials . . . in the development of land use programs, land use regulations, and land use decisions for public

*Id.* lands. . . .

55. For a comprehensive discussion of national forest planning, see generally Wilkinson &

offers local governments an opportunity sanctioned by Congress to draw the attention of Forest Service decision makers to legitimate concerns and objectives regarding public land management.<sup>56</sup>

### A. RPA and NFMA

#### 1. The Public Land Law Review Commission

Unfortunately, no agency or court has articulated the substantive role these statutory coordination provisions provide local governments.<sup>57</sup> The National Forest Management Act of 1976 (NFMA),<sup>58</sup> which amended the RPA and provided specific details and guidelines for local forest planning,<sup>59</sup> fails to clarify the substantive implications of the coordination provisions. No federal court has interpreted the precise scope of the RPA's coordination obligations. A generic term like "coordinate" is vulnerable to self-serving interpretations.<sup>60</sup>

To understand the significance of local government coordination provisions in public land management, it is helpful to examine the Public Land Law Review Commission (PLLRC) Report.<sup>61</sup> Established by Con-

Anderson, *supra* note 48. National forest planning is the product of two major pieces of legislation: RPA, 16 U.S.C. §§ 1600-1610, which laid the groundwork for local forest planning but primarily addressed planning and resource inventory on a national scale, and NFMA, 16 U.S.C. §§ 1600-1614. *Id.* at 36-45. RPA included local government coordination provisions at 16 U.S.C. § 1604(a), but because NFMA amendments clarified and emphasized individual forest planning, it provides local governments with a local and thus more inviting and influential context in which to provide land use objectives. *See id.* at 76-90 (contrasting the top-down orientation of the RPA with the bottom-up decision-making emphasis of the NFMA, at least in regard to timber harvest levels).

56. Professor Wilkinson has synthesized three legitimate interests of local governments on federal lands: 1) the right to receive a share of the revenue generated from federal lands, 2) the freedom to exercise police powers not inconsistent with federal programs, and 3) the right to have special notice and an opportunity to be heard when local interests are implicated and the local government is unable or prevented from exercising police power. *See* Charles F. Wilkinson, *Cross-Jurisdictional Conflicts: An Analysis of Legitimate State Interests on Federal and Indian Lands*, in *THE WESTERN PUBLIC LANDS: THE MANAGEMENT OF NATURAL RESOURCES IN A TIME OF DECLINING FEDERALISM* 92, 99-100 (John G. Francis & Richard Ganzel eds., 1984).

57. Professor Keiter maintains that so long as local communities do not violate the preemption doctrine they "retain some yet unspecified authority to regulate federal land management practices." Keiter, *supra* note 14, at 322. Other authorities recognize coordination obligations but do not postulate their substantive value. *See, e.g.*, Wilkinson & Anderson, *supra* note 48, at 68-69.

58. 16 U.S.C. §§ 1600-1614.

59. It is common for provisions in both acts to be collectively referred to as the NFMA.

60. County control leaders point to the legal definition of "coordinate" as "[e]qual, of the same order, rank, degree or importance; not subordinate." *BLACK'S LAW DICTIONARY* 303 (6th ed. 1990). Accordingly, they contend that policy ordinances like the Boundary County Plan deserve more good-faith agency consideration. On the other hand, the Solicitor General (on behalf of the Forest Service) interprets coordination obligations as giving local governments merely "an advisory role in federal land management decisions." *California Coastal Comm'n v. Granite Rock Co.*, 480 U.S. 572, 585 (1987).

61. U.S. PUBLIC LAND LAW REVIEW COMM'N, *ONE THIRD OF THE NATION'S LAND* (1970).

gress in 1964, the PLLRC was a bipartisan congressional commission that included prominent representatives of public land user groups empowered to conduct a comprehensive study of public land laws.<sup>62</sup> While the PLLRC did not offer any statutory language and its recommendations do not carry the persuasive weight of legislative history, it is generally considered to have provided the statutory incentive and framework for both FLPMA and RPA, particularly with respect to local government coordination requirements.<sup>63</sup>

It took six years of tumultuous, politically charged meetings, hearings, and debate<sup>64</sup> before the PLLRC issued recommendations to Congress concerning reform of public land law.<sup>65</sup> Broadly speaking, the PLLRC recognized that large tracts of federal lands are excluded from local counties' tax bases, and acknowledged that local governments have a legitimate economic interest in receiving some other remuneration from the federal government.<sup>66</sup> Furthermore, in light of the adverse impacts federal decisions may have on community stability, infrastructure, and economic health,<sup>67</sup> the PLLRC concluded that federal land managers should give considerable weight to community needs and objectives in order to preserve local government stability and economic expectations.<sup>68</sup>

Specifically, the PLLRC recommended that federal land use planners give local governments an advisory role in federal land use planning:

Federal land use plans should be developed in consultation with these governments, circulated to them for comments, and should conform to state and local zoning to the maximum extent feasible. As a general rule, no use of public land should be permitted which is prohibited by state or local zoning.<sup>69</sup>

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62. H.R. REP. NO. 1008, 88th Cong., 1st Sess. 8 (1964); S. REP. NO. 1444, 88th Cong., 2d Sess. 5 (1964), *reprinted in* 1964 U.S.S.C.A.N. 3741.

63. Cooper et al., *supra* note 1, at 161.

64. COGGINS ET AL., *supra* note 31, at 12.

65. U.S. PUBLIC LAND LAW REVIEW COMM'N, *supra* note 61, at 9-16.

66. *Id.* at 37.

67. For a discussion of the development and history of the community stability concept in Forest Service policy, see Sarah F. Bates, *Public Lands Communities: In Search of a Community of Values*, 14 PUB. LAND L. REV. 81, 92-98 (1993). An example of this traditional (but contemporary with the PLLRC) Forest Service notion of responsibility "for ensuring the continued economic well-being of local communities" has announced in a statement by one district ranger in 1967: "We have an established timber industry in this town which is totally dependent upon the continued access of private companies to public forests." Bultena & Hendee, *supra* note 45, at 340. The ranger offered this statement in an attempt to justify the Forest Service's overriding emphasis on natural resource development. *Id.*

68. U.S. PUBLIC LAND LAW REVIEW COMM'N, *supra* note 61, at 37.

69. *Id.* at 61 (recommendation 13). One could argue that the PLLRC intended this recommendation to prohibit land uses on federal land adjacent to nonfederal land when such activities result in a zoning violation on nonfederal land. See *id.* at 37 (discussing environmental pollution originating on

As a rationale for endorsing what would on the surface appear to be more than an advisory role for local governments, the PLLRC noted that those individuals living near public lands bear the primary burden of land use decisions.<sup>70</sup> Furthermore, inconsistent land use planning may thwart the objectives of either federal or nonfederal planning teams.<sup>71</sup>

## 2. RPA Legislative History

The PLLRC recommendations are not legally binding interpretive authority as to what Congress intended by the coordination obligation language found in statutes such as the RPA, but because of the influence the recommendations had on the legislation, they serve as a sound background reference. On the other hand, the legislative history of the RPA<sup>72</sup> provides more authoritative insights into what Congress intended by the RPA coordination obligations found at section 1604(a).<sup>73</sup> Unfortunately, while the PLLRC recommendations lack authority, the RPA legislative history lacks clarity. The fact that Congress included language requiring the Forest Service to coordinate with local governments illustrates the importance congressional sponsors placed on the principle of coordination, but the sparse, obscure record they left makes it difficult to flesh out the specific agency duty.

The initial bill introduced in the Senate on July 31, 1973 included substantially the same wording as the final law.<sup>74</sup> Local government coordination language survived RPA debate and received Senate approval.<sup>75</sup> During the floor debate on the Senate bill, an explanation for the coordination provision stated that the duties applied to local governments "to the extent that they have such [land use] plans."<sup>76</sup> According to congressional sponsors, coordination responsibilities would avoid repetitive planning

federal land and resulting in a nonfederal zoning violation).

70. *Id.* at 61.

71. *Id.* While acknowledging a disparity among localities in the quality and sophistication of the land use planning process, the PLLRC predicted that federal coordination obligations would invigorate the effectiveness of land use planning at all government levels. *Id.*

72. The entire legislative history of the RPA was conveniently compiled in SENATE COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY, 96TH CONG., 1ST SESS., COMPILATION OF THE FOREST AND RANGELAND RENEWABLE RESOURCES ACT OF 1974 (Comm. Print 1979) [hereinafter COMPILATION OF THE RPA]. Citations will be given to this publication as well as to congressional reports.

73. See Cooper et al., *supra* note 1, at 166.

74. S. 2296, 93d Cong., 1st Sess. § 103(a) (1973), reprinted in COMPILATION OF THE RPA, *supra* note 72, at 8 (ordering the Secretary to undertake a land use planning process "coordinated with . . . other land use plans . . . of . . . local governments").

75. See 120 CONG. REC. 3827 (1974) (reprint of Senate Bill 2296), reprinted in COMPILATION OF THE RPA, *supra* note 72, at 123. National forest land use planning shall be "coordinated with the land use planning processes of . . . local governments." *Id.*

76. 120 CONG. REC. 3816 (1974), reprinted in COMPILATION OF THE RPA, *supra* note 72, at 104.

efforts and force each government entity<sup>77</sup> to consider the planning procedure and objectives of other government entities, thus ensuring more effective planning.<sup>78</sup> Senator Humphrey, the bill's chief sponsor, stated his desire that "plans on the lands within the [National Forests] give major consideration to their impact on plans developed by . . . local governments."<sup>79</sup> The record suggests that RPA's congressional sponsors envisioned at most a collaborative but clearly advisory role for local governments in the federal land planning process.<sup>80</sup> Whatever position Congress envisioned for local governments, the voice it provided for them is to be at least as loud and influential as other entities included in the planning process.

When the House of Representatives took up the forest planning legislation, it considered language seemingly less forceful or restrictive than that approved by the Senate.<sup>81</sup> Rather than coordinate, the House bill directed the Secretary to "*consult* with the appropriate . . . local officials in devising and implementing" national forest plans.<sup>82</sup> It is not clear whether any significance should attach to this word choice.<sup>83</sup> However, in the context of a mandate to coordinate, the duty to 'consult' would arguably diminish the importance of the status afforded local governments.

The difference in language between the two congressional bills is now merely an historical footnote. The two bodies eventually enacted the wording of the Senate bill, "coordinate."<sup>84</sup> In the eyes of the RPA's sponsor, Senator Hubert H. Humphrey, the decision to use the Senate bill language constituted "only [a] minor perfecting word change[]." <sup>85</sup> Senator

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77. The RPA also requires coordination with "State and . . . other Federal agencies." 16 U.S.C. § 1604(a). This Comment discusses the role local governments occupy in national forest land use planning. References to other entities with which the Forest Service must coordinate are omitted unless it affects the role or influence of local governments.

78. 120 CONG. REC. 3816 (1974), *reprinted in* COMPILATION OF THE RPA, *supra* note 72, at 104.

79. *Id.*

80. See *California Coastal Comm'n v. Granite Rock Co.*, 480 U.S. 572, 585 (1986) (Solicitor General arguing that coordination provisions in the RPA provide at most an advisory role for local governments, based on interpretation of congressional intent).

81. See H.R. 15283, 93d Cong., 2d Sess. (1974), *reprinted in* COMPILATION OF THE RPA, *supra* note 72, at 141-152.

82. H.R. 15283, 93d Cong., 2d Sess. § 5(a) (1974), *reprinted in* COMPILATION OF THE RPA, *supra* note 72, at 146 (emphasis added).

83. See H.R. REP. NO. 1163, 93d Cong., 2d Sess. 7 (1974), *reprinted in* COMPILATION OF THE RPA, *supra* note 72, at 171 ("The bill would also require . . . cooperation with . . . [local governments] in resource planning.").

84. RPA, Pub. L. No. 93-378, § 5(a), 88 Stat. 476, 477 (1974), *reprinted in* COMPILATION OF THE RPA, *supra* note 72, at 220. See also S. REP. NO. 1067, 93d Cong., 2d Sess. 9 (1974), *reprinted in* COMPILATION OF THE RPA, *supra* note 72, at 202.

85. 120 CONG. REC. 26555 (1974) (statement of Sen. Humphrey), *reprinted in* COMPILATION OF THE RPA, *supra* note 72, at 210.

Humphrey attached no significance to the decision to use the word "coordinate" rather than the word "consult." In fact, he reiterated that the Secretary's duty is "to consult and give careful consideration to the impact of these [RPA-mandated] plans on . . . local jurisdictions."<sup>86</sup> Congress apparently viewed the decision as to which verb to use as less important than the overall principle, i.e., that local governments should be included—and listened to—in the forest planning process.

Ultimately, the RPA legislative history does not clarify Congress's instruction to the Forest Service to coordinate the national forest planning process with local government plans. Advocates of the county control movement will search the legislative record in vain for substantive language commanding the Forest Service to give local governments more than an advisory role. However, the opportunity to advise the Forest Service on land use planning policies and objectives is an invitation local governments should not neglect. Indeed, other than local governments, the invitation is extended only to states and federal agencies.<sup>87</sup> Coordination duties may not restore local governments and community leaders to their prominent and influential positions, but they do provide a valuable opportunity to be heard.

### 3. RPA Regulations

As with any major piece of legislation, Congress left to the agency the task of giving flesh to the statutory skeleton. The Forest Service has issued regulations implementing the RPA,<sup>88</sup> and proponents of the county control movement may be disheartened by the absence of local authority to impose land use decisions on federal land. The regulations support the reality that coordination obligations do not place more than a procedural duty on the Forest Service, nor do they confer any substantive authority on local governments to demand that the Forest Service accommodate its land use decisions to local government concerns.<sup>89</sup> The regulations do, however, clarify the scope and recognize the importance of local government's role in national forest planning.

One of the eleven enumerated principles guiding forest planning

86. *Id.*

87. Compare 16 U.S.C. § 1604(a) with 16 U.S.C. § 1612(a). The public is invited to participate in other stages of forest planning and project implementation, but not in the land use coordination phases. However, it is assumed that local citizens are or can be involved in the initial development of a local government land use plan.

88. The Department of Agriculture adopted final regulations implementing the RPA and the NFMA on September 30, 1982. 47 Fed. Reg. 43,026 (1982) (codified at 36 C.F.R. § 219).

89. See 36 C.F.R. §§ 219.1-219.29 (1994).



regulations is coordination with local government planning efforts.<sup>90</sup> In addition to the obligatory order to coordinate with local governments,<sup>91</sup> a designated Forest Service official<sup>92</sup> must notify county government leaders adjacent to a national forest of the Service's intent to prepare or amend a plan.<sup>93</sup> The Forest Service must thoroughly evaluate each local government's land use plans and policies and document its findings in the environmental impact statement (EIS) for the plan.<sup>94</sup> In addition to other

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90. 36 C.F.R. § 219.1(b)(9) (basically restating 16 U.S.C. § 1604(a)).

91. 36 C.F.R. § 219.7(a).

92. 36 C.F.R. § 219.3 (defining a "responsible line officer" as "[t]he Forest Service employee who has the authority to select and/or carry out a specific planning action").

93. 36 C.F.R. § 219.7(b). The regulations in subpart 219 apply to forest plan revisions. 36 C.F.R. § 219.1(a).

94. 36 C.F.R. § 219.7(c); *see also* 40 C.F.R. §§ 1502.16(c), 1506.2 (1994) (requiring publication of unresolved inconsistencies between federal and nonfederal land use policies). The author examined the Bitterroot, Gila, and Idaho Panhandle National Forest Plans for documentation of this mandate. Each of these forests lies within one or more counties comprised predominantly of federal land and home to a strong county control movement. However, these county movements all emerged subsequent to the completion of the applicable forest plan.

Ravalli County, Montana, surrounded by the Bitterroot National Forest, unsuccessfully attempted to enact a 'custom and culture' land use plan and corresponding ordinances. Interview with Steven Powell, Ravalli County Commissioner (November 15, 1994). *See also* RAVALLI COUNTY INTERIM LAND USE PLAN (modeled on Catron County Plan) [hereinafter RAVALLI COUNTY INTERIM PLAN] (on file with author). Nothing in the Forest Plan EIS indicates that a review of Ravalli County's land use planning efforts occurred. The EIS states that "local government agencies have been informed and consulted." U.S. FOREST SERV., DEP'T OF AGRIC., ENVIRONMENTAL IMPACT STATEMENT FOR THE BITTERROOT NATIONAL FOREST LAND AND RESOURCE MANAGEMENT PLAN VI-1 (1987). The Ravalli County Commissioners wrote a three line-letter in support of an alternative slightly different than the one actually chosen. *Id.* at VI-175.

Boundary County, Idaho, lies in the center of the Idaho Panhandle National Forest. Boundary County adopted a custom and culture plan in 1992, five years after the Forest Service promulgated the Idaho Panhandle National Forest Plan. Boundary County lost a constitutional challenge to the plan. *See supra* notes 34-42 and accompanying text. The Idaho Panhandle Forest Plan states that "[a]lthough many of the [county/municipal] plans are still in the process of being formulated, no conflicts were identified during the review." U.S. FOREST SERV., DEP'T OF AGRIC., ENVIRONMENTAL IMPACT STATEMENT FOR THE IDAHO PANHANDLE NATIONAL FOREST LAND AND RESOURCE MANAGEMENT PLAN VI-11 (1987). The agency received numerous comments from local government leaders, all in opposition to forest plan policies such as additional wilderness designation, endangered species protection, and inadequate timber harvest levels. *Id.* at VI(96)-VI(116).

Catron County, New Mexico, is the birthplace of the county control movement and home to the Gila National Forest. The Gila EIS states that "county and local agencies in the area were contacted during the initial public involvement phase in the fall of 1980 and coordination has continued since that time." U.S. FOREST SERV., DEP'T OF AGRIC., ENVIRONMENTAL IMPACT STATEMENT: GILA NATIONAL FOREST LAND AND RESOURCE MANAGEMENT PLAN 4 (1986). The Forest Service made a strenuous and well-documented effort to contact and involve local agencies, including the Catron County Commissioners, throughout the planning process. *See id.* at 191-94.

These examples suggest that at the time forest planning occurred, local government land use planning was nascent or non-existent, the required review did not occur, or no inconsistencies between the forest plan and local land use plans surfaced. At the least, this cursory examination reveals that resolving conflicts between federal and local land use policies may not have been an important component of forest planning. However, given the current strength and activism of the local county control

guidelines set forth in the regulations,<sup>95</sup> the Forest Service must identify, consider, and include in the EIS any conflicts between federal objectives and local plans, and must list alternatives to resolve the incongruities.<sup>96</sup>

After notifying a local government of its intent to develop or revise a forest plan and considering local land use policies, the Forest Service must meet with local governments at least three different times during the planning process: at the beginning of the planning process, after public issues and management concerns have been identified, and prior to recommending the preferred alternative.<sup>97</sup> Throughout development of a forest plan, local governments may raise "management concerns in the planning process and . . . identify areas where additional research is needed."<sup>98</sup> The Forest Service should include these local government suggestions "in the discussion of the research needs of the designated forest planning area."<sup>99</sup> After approving a forest plan, the Forest Service must initiate "[a] program of monitoring and evaluation . . . that includes consideration of the effects of National Forest management on land, resources, and communities adjacent to or near the National Forest."<sup>100</sup> This monitoring provision acknowledges the substantial impact that federal land management has on local communities.<sup>101</sup>

### B. Forest Service Interpretation of the RPA

The Department of Agriculture finalized the local government coordination regulations in 1982,<sup>102</sup> but the regulations may not have had much impact on the first generation of forest plans.<sup>103</sup> Local governments, es-

groups, it is likely to be more important in the next round of forest plans.

95. 36 C.F.R. § 219.7(c)(1)-(3). These include becoming aware of local government objectives, assessing interrelated impacts between federal and local government plans, and determining how the individual plan will handle the identified disharmony.

96. 36 C.F.R. § 219.7(c)(4). The EIS "should describe the extent to which the agency would reconcile its proposed action with the [local] plan or law." 40 C.F.R. § 1506.2(d).

97. 36 C.F.R. § 219.7(d). The final sentence of this section emphasizes the elevated importance accorded local government. Conferences may be consolidated with other public participation efforts if "the opportunity for government officials to participate in the planning process is not thereby reduced." *Id.* These conferences are an important opportunity to identify and evaluate public issues that contribute to the criteria guiding the forest planning process. Local government plans and programs may contribute to development of forest planning criteria. 36 C.F.R. § 219.12(b), (c)(4).

98. 36 C.F.R. § 219.7(e).

99. *Id.*

100. 36 C.F.R. § 219.7(f).

101. *See also* 36 C.F.R. § 221.3(a)(3) (requiring timber management to facilitate community stabilization).

102. 47 Fed. Reg. 43,026, 43,037 (1982) (adopted Sept. 30, 1982 and codified at 36 C.F.R. § 219).

103. *See supra* note 94 (discussing several forest plan EISs that were examined for evidence of coordination); *cf. SHANDS, supra* note 11, at 51-52 (acknowledging that unsophisticated, limited, and

pecially those counties asserting coordination rights as fundamental to their land use plans, need not let the opportunity slip by again.<sup>104</sup> The Forest Service appears ready to accommodate local government demands to coordinate land use policies. In fact, in a recent letter from a Forest Service official to forest supervisors, the Forest Service acknowledged "several clear responsibilities for coordination with local" government land use objectives.<sup>105</sup> Recognizing an imperative for "collaborative efforts . . . [that] focus on mutually beneficial long-term relationships," the Forest Service straightforwardly admits a duty "to recognize local issues and assess the impacts of [its] . . . activities on local requirements."<sup>106</sup> The bureaucratic language the Forest Service uses to announce these responsibilities should in no way diminish their significance. Nevertheless, in spite of these vague but friendly administrative overtures, the Forest Service continues to reserve the ultimate authority to make land use decisions on National Forests.<sup>107</sup>

The RPA regulations coupled with recent Forest Service policy statements illustrate how the Forest Service must initiate and implement planning efforts with local governments. In contrast with the RPA legislative history, these regulations set out clear procedural obligations and define the procedural standards by which the Forest Service must coordinate with local governments.<sup>108</sup> The RPA regulations, however, contain no language reversing or even questioning the conclusion that final land use decisions on national forest land are made by the Forest Service. Thus, this clearly delineated administrative procedure may not satisfy county control advocates whose ultimate goal is to make land use decisions on federal lands.

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ill-considered local land use planning retards effective coordination with the federal government).

104. The Department of Agriculture recently proposed new regulations to guide national forest land and resource planning. 60 Fed. Reg. 18,886 (proposed Apr. 13, 1995). The proposed regulations renumber and rename the regulations dealing with local government coordination. *Id.* at 18,889. Much of the language cited in this Comment is absent from the new regulations. However, the Department stands behind its commitment to coordinate planning efforts as much as possible with local governments. *Id.* at 18,891. The Department offered the need to incorporate ecosystem management principles into the national forest planning process as one justification for regulatory change. *Id.* The Department also stressed the importance of comprehensive interagency and intergovernment involvement in order to successfully manage forests on an ecosystem scale. *Id.* If the Department is truly committed to adopting ecosystem management as the principal land use philosophy, communities near national forests should enjoy a scientifically based opportunity and responsibility to participate in federal land use planning.

105. Letter from James L. Hagemeyer, U.S. Forest Service Director of Land and Financial Planning, to forest supervisors and staff directors (Sept. 23, 1993) (on file with author) [hereinafter Hagemeyer Letter].

106. *Id.*

107. *Id.*

108. *See, e.g.*, 36 C.F.R. § 219.7(d).

As harsh as this conclusion may appear for county control proponents, it would be foolish to decline an opportunity to educate the Forest Service when they have openly invited participation. Admittedly, some of these procedural duties are analogous to duties the Forest Service must afford the public at large.<sup>109</sup> But many of the regulations provide for face-to-face meetings that do not apply to—and in fact exclude—the general public.<sup>110</sup> Those counties that sincerely seek to influence federal land management must prepare to participate actively in the forest planning process.<sup>111</sup>

### C. National Environmental Policy Act

In addition to participating in the development of forest plans within their jurisdiction, local governments can influence proposed projects and programs through the NEPA process.<sup>112</sup> So long as local governments have environmental assessment requirements “comparable” to NEPA, the Forest Service must cooperate with the local requirement “to the fullest extent possible.”<sup>113</sup> In doing so, the Forest Service may grant the local government joint lead agency status, which in turn promotes parity in the planning, environmental research, public hearing, and environmental assessment process.<sup>114</sup>

The county control movement has attached considerable significance to NEPA coordination opportunities.<sup>115</sup> Advocates of county control maintain that once a county enacts an appropriate land use plan and adopts an environmental protection ordinance, NEPA coordination requirements are triggered and the federal government must cooperate with the county.<sup>116</sup> These county plans and ordinances often include substantive re-

109. Section 14 of the RPA requires the Forest Service to develop notice procedures through which the public can offer comments during the forest planning process. 16 U.S.C. § 1612. Regulations implementing this requirement are found at 36 C.F.R. § 219.6. The fact that the Forest Service must (1) conduct a review of local government land use plans and policies, (2) attempt to resolve differences between local goals and federal goals, and (3) hold meetings with local government officials (exclusive of the public if necessary) distinguishes local government participation from other notice and comment public participation. Compare 36 C.F.R. § 219.6 with 36 C.F.R. § 219.7.

110. See e.g., 36 C.F.R. § 219.7(d).

111. The Chief of the Division of Environmental and Planning Coordination with the BLM notes that “the availability of a well-thought-out county land-use plan would make it easier for the land manager to accommodate local interests.” SHANDS, *supra* note 11, at 51-52.

112. See 42 U.S.C. §§ 4321-4370(d); 40 C.F.R. §§ 1502.16(c), 1506.2 (1994).

113. 40 C.F.R. § 1506.2(c). The regulation does not provide a qualifying definition for the comparable requirement, but at any rate, this section does not apply in cases in which the local requirement is “in conflict with those in NEPA.” *Id.*

114. 40 C.F.R. § 1506.2(b).

115. See *Using County Government to Protect Your Customs, Culture, and Economy*, FED. LANDS UPDATE, Aug. 1993, at 3-4 [hereinafter *Using County Government*].

116. See Williams, *supra* note 16, at 11; *Using County Government*, *supra* note 115, at 4. See

strictions on federal agency actions.<sup>117</sup> If they go so far as to render cooperation with federal agencies too difficult, they may not trigger coordination.<sup>118</sup> Nevertheless, many county leaders firmly believe that "NEPA . . . requires federal agencies to preserve culture and heritage," and that if NEPA coordination obligations are triggered, the preservation of local culture will be more effectively ensured.<sup>119</sup>

On the contrary, the Forest Service does not agree that adoption of a policy similar to NEPA by a local government triggers joint environmental assessment regulations and mandates coordination.<sup>120</sup> The Forest Service recommends that counties seize every opportunity for "joint planning, studies, hearings, and environmental assessments" with an eye toward "identify[ing] and accommodat[ing] . . . local agency needs."<sup>121</sup> Ultimately the level of coordination afforded during the planning and environmental assessment stages of a project depends on whether NEPA governs the project, the extent to which a local requirement duplicates the NEPA process, and the existence or absence of a conflict between NEPA and the local requirement.<sup>122</sup>

Even where there are no local requirements that mirror NEPA, local governments have several additional opportunities to influence project development and environmental assessment.<sup>123</sup> Concurrent with an activity proposal, the Forest Service must notify local government officials who have an interest in forest activities,<sup>124</sup> request local government participa-

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also RAVALLI COUNTY INTERIM PLAN, *supra* note 94. Although the Ravalli County Commissioners did not enact this plan, it is an example of the types of plans approved by other counties.

117. See *Boundary Backpackers v. Boundary County*, [1994] 24 *Envtl. L. Rep.* (Envtl. L. Inst.) 20,522, 20,523 (D. Idaho Jan. 27, 1994) (plan would prohibit additional wilderness designation, federal land acquisition, etc.).

118. Hagemeyer Letter, *supra* note 105. The Forest Service believes that it has the discretion to judge "whether or not cooperation is possible." *Id.*

119. *Using County Government*, *supra* note 115, at 3. For an informative synopsis of how county movement leaders conclude that NEPA protects the local custom, culture, and heritage, see Reed, *supra* note 14, at 550.

120. Hagemeyer Letter, *supra* note 105.

121. *Id.*

122. *Id.* Hagemeyer references a Council on Environmental Quality (CEQ) interpretation of NEPA coordination regulations, which acknowledges the possibility of disharmony between federal and local environmental assessment demands. When encountering incongruities, the CEQ recommends "a flexible, cooperative approach" accommodating "local interests and missions" and continued coordinated planning if at all possible. The Forest Service should document inconsistencies between local and federal interests within the EIS or EA. *Id.*

123. See U.S. FOREST SERV., DEP'T OF AGRIC., FOREST SERVICE HANDBOOK, TITLE 1900-PLANNING, § 1909.15-NATIONAL ENVIRONMENTAL POLICY AND PROCEDURE HANDBOOK (1992) [hereinafter NEPA HANDBOOK].

124. *Id.* § 11.3.

tion,<sup>125</sup> identify and discuss effects of the action with local leaders,<sup>126</sup> review and consider constructive comments and suggestions received from local officials, develop ways to involve local governments in the analysis process,<sup>127</sup> and update local officials throughout the process by delivering to them pertinent environmental documents such as Findings of No Significant Impact.<sup>128</sup>

Many avenues exist for influential, assertive, and mandatory local government involvement in Forest Service land use planning and development. RPA and NEPA regulations explicitly obligate the Forest Service to solicit and consider local land use plans and policy objectives whenever a decision will have a potential effect on adjacent communities.<sup>129</sup> Indeed, local government officials can saturate Forest Service officials with reminders of their policy goals and objectives regarding National Forest management. However, neither NEPA nor the RPA/NFMA alter the conclusion that local governments serve only an advisory function in federal land management. Neither Congress nor the Forest Service has extended to local governments the power and authority clearly reserved by the Property Clause of the United States Constitution. Regardless of the stage at which coordination obligations occur, the Forest Service retains absolute discretion and authority to make forest planning and use decisions.<sup>130</sup>

The powerlessness of an advisory position contributes to the popularity and mission of the county control movement. Even though counties' efforts to directly and singularly control federal land use are futile, the movement has likely spawned awareness of opportunities to influence Forest Service decisions.<sup>131</sup> Earnest local governments should be better prepared to actively participate in future forest plan revisions and in the second generation of forest plans, with well-documented land use objec-

125. *Id.* § 11.31(a).

126. *Id.* § 11.51.

127. *Id.* § 11.52.

128. Hagemeyer Letter, *supra* note 105.

129. The Forest Service is charged with maintaining a continuous supply of timber resources. 36 C.F.R. § 221.3(a)(1) (1994). In part this supply policy is designed "to facilitate the stabilization of communities and of opportunities for employment." 36 C.F.R. § 221.3(a)(3). NFMA compounds this politically difficult obligation to maintain community stability. *See generally* Con H. Schallau & Richard M. Alston, *The Commitment To Community Stability: A Policy or Shibboleth?*, 17 ENVTL. L. 429 (1987) (examining the deficiencies of an economic analysis of community stability in light of the highly political process of forest planning).

130. *See Boundary Backpackers*, [1994] 24 Envtl. L. Rep. (Envtl. L. Inst.) at 20,525; Hagemeyer Letter, *supra* note 105; Reed, *supra* note 14, at 553.

131. The county control movement is usually citizen-initiated and has spread through grassroots networks. *See generally* Williams, *supra* note 16. Assuming that activists read the proposed plans, ordinances, and accompanying literature, which references the statutory and regulatory obligations of the Forest Service, they should become familiar with these NFMA and NEPA coordination obligations.

tives in hand.<sup>132</sup> More active participation in forest planning may intensify the political difficulty of the Forest Service's duties,<sup>133</sup> but Congress and the Forest Service have provided local governments a distinct and influential role that should be neither neglected nor diminished by the mere prospect of difficulty.<sup>134</sup>

#### D. Memoranda of Understanding

In addition to preparing for the opportunity to influence future forest programs, local governments should ensure that the Forest Service fulfills its procedural obligations to them.<sup>135</sup> The county control movement should encounter no resistance enforcing NFMA and NEPA regulations.<sup>136</sup> In fact, the Forest Service encourages individual forests to initiate collaborative planning efforts, develop memoranda of understanding detailing cooperative planning procedures, and extend an extra effort to keep local government officials informed of agency actions.<sup>137</sup> A memorandum of understanding (MOU) with a local national forest is a particularly positive relationship for local governments to forge. MOUs clearly delineate the responsibilities of each party using language more solicitous to local governments than the RPA and NFMA regulations.<sup>138</sup>

For example, an MOU between Ravalli County, Montana and the Bitterroot National Forest aims "to achieve common goals of enhancing the economic, social and natural resource conditions . . . [and to] facilitate better communication and understanding of how each entity's individ-

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132. SHANDS, *supra* note 11, at 51-52.

133. NFMA imposed substantive restrictions on the Forest Service and limited the range of forest planning options. See generally Jack Tuholske & Beth Brennan, *The National Forest Management Act: Judicial Interpretation of a Substantive Environmental Statute*, 15 PUB. LAND L. REV. 53 (1994). Realistically, the Forest Service may not be able to legally accommodate all local government policies and objectives because of the strictures Congress has placed on national forest planning and use.

134. One well-recognized expert on natural resource conflict resolution noted that problems which may initially appear irreconcilable often lead to unexpected but mutually beneficial and innovative solutions. WONDOLLECK, *supra* note 43, at 2.

135. The Public Land Law Review Commission recommended that Congress include statutory procedures for judicial review of federal land activities when a party can demonstrate that federal officials did not follow coordination obligations. U.S. PUBLIC LAND LAW REVIEW COMM'N, *supra* note 61, at 63.

136. See Hagemeyer Letter, *supra* note 105.

137. *Id.*

138. See, e.g., U.S. Forest Serv., Dep't of Agric., Memorandum of Understanding Between Catron County Commissioners, Catron County, New Mexico and the U.S. Forest Service, Gila National Forest (Feb. 15, 1994) (on file with author) [hereinafter Catron County MOU]; U.S. Forest Serv., Dep't of Agric., Memorandum of Understanding Between Ravalli County and the United States Department of Agriculture, Bitterroot National Forest (Oct. 21, 1993) (on file with author) [hereinafter Ravalli County MOU].

ual actions benefit the area's resources and people."<sup>139</sup> Similarly, the flowery introduction of the MOU between Catron County, New Mexico and the Gila National Forest<sup>140</sup> recites both parties' desire to "appropriately consider the impacts of various decisions on the economic and social stability and culture of the County and its residents" in all forest-related activities.<sup>141</sup> In addition, the Catron County MOU creates an Environmental Analysis Calendar updated and mailed quarterly to the county commissioners, which "provides the status of all on-going and proposed environmental analyses on the Forest."<sup>142</sup> An Environmental Analysis Calendar is one of several specific mechanisms developed to better facilitate planning and mutual understanding, and to fulfill the obligations outlined in the Forest Service regulations.<sup>143</sup>

Neither of these MOUs indicate that the Forest Service is willing to relinquish more authority than allowed by law. For instance, each MOU reserves to the Forest Service the authority to make final decisions on land use issues,<sup>144</sup> and each MOU may be terminated by either party upon written notice to the other.<sup>145</sup> Ultimately, the value of the MOU may lie more in the process of collaborative drafting than in any unique and permanent procedural obligations that the parties may create.<sup>146</sup> The Forest Service has recommended that all forest supervisors develop MOUs with local governments interested in initiating and defining joint planning efforts.<sup>147</sup> Indeed, despite reinforcement of a local government's advisory position, MOUs provide a valuable opportunity to air local objectives in a more structured process, and encourage the Forest Service to "fully consider the impacts of proposed actions on the physical, biological, social and economic aspects" of local communities.<sup>148</sup>

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139. Ravalli County MOU, *supra* note 138, at 1.

140. The MOU process is an excellent tool to defuse tension and animosity and initiate a dialogue between federal land managers and county control advocates. It is also a peace offering to counties that have been unsuccessful in enforcing land use plans on the public domain.

141. Catron County MOU, *supra* note 138, at 2.

142. *Id.* at 3.

143. *See id.* at 2-8. The Catron MOU commits the Forest Service to implementing the regulations at 36 C.F.R. § 219.7(a)-(e) and adds to the post-plan requirement of § 219.7(f) an additional monitoring component of "possible social, economic and cultural impacts which may occur as a result of" the plan's implementation. *Id.* at 8. The county may seek plan revision or amendment depending on the monitoring results, but the Forest Service retains discretion to reject such a request. *Id.* at 9.

144. *Id.* at 2; Ravalli County MOU, *supra* note 138, at 3.

145. Catron County MOU, *supra* note 138, at 10; Ravalli County MOU, *supra* note 138, at 3.

146. *See* Hagemeyer Letter, *supra* note 105.

147. *Id.*

148. Catron County MOU, *supra* note 138, at 1.



## IV. CONCLUSION

The Forest Service willingly acknowledges that its obligation to coordinate national forest management with local governments is as much an agency duty as a political necessity.<sup>149</sup> The circumstances spawning the county control movement show no signs of dissipating.<sup>150</sup> Federalism and the political rhetoric advocating a transfer of federal authority and responsibility to the states play into the hands of the county control movement. Judicial setbacks like *Boundary Backpackers* are unlikely to daunt local governments bent on controlling federal lands.<sup>151</sup> In short, the Forest Service and other federal land managers should expect future defiant actions from local governments.<sup>152</sup> Unfortunately, defiance is counterproductive to government coordination. Local governments intent on successfully re-establishing or reinforcing an influential relationship with federal land managers should understand that this is best accomplished with an assertive but amenable attitude.

Bruce Babbitt, former Arizona Governor and current Secretary of the Interior,<sup>153</sup> has voiced strong views on the potential opportunities for sharing management of public lands.<sup>154</sup> Decrying the "intolerable" posi-

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149. See Leshy, Granite Rock, *supra* note 28, at 266 (noting the constitutional prerogative vested in Congress to occupy state fish and game and water law as applied on federal land but also acknowledging the political rebellion that would ensue if exercised).

150. Indeed, the conservative trend in American politics is viewed as a welcome development by leaders of the environmentally hostile wise use movement. Federal land managers can expect increasing pressure from these groups, as they sense they are on the brink of major policy reversals and victories. See Scott W. Hardt, *Federal Land Management in the Twenty-First Century: From Wise Use to Wise Stewardship*, 18 HARV. ENVTL. L. REV. 345, 345-47 (1994).

151. A pervasive tenet of the wise use and county control movements is that federal courts have abandoned the Constitution, particularly the 10th Amendment, and allow federal authority never envisioned by the framers. See, e.g., *Using County Government*, *supra* note 115, at 2 ("Clearly, the Tenth Amendment was designed to protect states' rights and the rights of individual citizens. The Founding Fathers intended the U.S. Constitution to be a charter protecting our 'inalienable Rights' . . . [u]nfortunately, that agreement is being violated repeatedly. . . .").

152. See Meske, *supra* note 15, at 2 (reporting on threats of criminal prosecution and intimidation of federal employees in Nye County, Nevada, which have led the Justice Department to file suit against the county). Voters in several Oregon counties recently enacted county control ordinances. *They Are Federal Lands*, THE OREGONIAN, Jan. 15, 1995, at B2; Dana Tims, *4 Counties Voting on Sagebrush Rebellion*, THE OREGONIAN, Mar. 26, 1995, at D1.

153. The Secretary of the Interior has jurisdiction over, among others, the Bureau of Land Management, U.S. Fish and Wildlife Service, and the National Park Service. The Secretary of the Interior does not have jurisdiction over the Forest Service, which is under the Department of Agriculture. As a result, any views expressed by the Secretary of the Interior on federal land management would not extend to national forest policy or the RPA. However, the Secretary's past observations are instructive on the current administration's land management philosophies and very persuasive for those wishing to influence planning under FLPMA. See *supra* note 54 for a discussion of FLPMA coordination language.

154. Babbitt, *supra* note 2, at 857-61. Governor Babbitt's article was published in 1982, toward the end of the Sagebrush Rebellion. While personally opposed to the wholesale disposition of federal

tion state and local governments are placed in by the "continually changing parade of federal administrators" who dictate public land management decisions,<sup>155</sup> then-Governor Babbitt has recommended "a more meaningful role" for state and local governments in federal land planning.<sup>156</sup> In order to accommodate a heightened planning role for state and local governments, Babbitt has suggested that, absent "an overriding national interest," public lands should be "subject to the same state zoning, leasing, and permitting requirements that apply to private land owners."<sup>157</sup>

Congress and federal land managers should embrace Babbitt's recommendations, as they may ameliorate some of the tension between local governments and federal land managers. People in the West live on the doorstep of our nation's public lands. The federal government holds these lands for the benefit of all Americans; public land management ought to consider all of their interests. Statutory mandates limit the extent to which the Forest Service and other federal land agencies may accommodate local community requests, but nothing should deny local governments a more influential, more weighted voice in public land management. The PLLRC clearly supported this notion, legislation like the RPA enacts it, federal agencies encourage it, and for years western politicians have clamored for it. The opportunity and responsibility are now on local governments to claim it.

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land to individual states, he viewed the movement as an opportunity for meaningful reform of public land law aimed at giving state and local government a partnership interest in decisions. *Id.*

155. *Id.* at 858.

156. *Id.* Gov. Babbitt apparently means a role that is above and beyond that afforded by statutes like the RPA and FLPMA.

157. *Id.*

