

Freedom Matters

A News & Opinion Paper

Dane County, Wisconsin

Preserving Property Rights

Vol. 7, No. 3

Monday, August 20, 2007

Our republic limits government to securing individual unalienable rights to life, liberty, and property. These rights are eroded by legislatures, and by courts complicit with them. To encourage wise jurists and journalists to help, *Freedom Matters* dedicates itself to the fight to restore our republic.

Coordination Plans: a Federal Invention for Local Control against a Central Government

by Bob Bowman

In the last quarter of the 20th century, private property rights groups emerged in the eastern and western United States, in response to federal implementation of an international political movement to abolish private ownership of land. The most successful such groups occurred in states with the most confiscatory government policies for collective ownership and control of land. Preeminent among these groups is Oregonians in Action (OIA) in the State of Oregon, who recently achieved passage of state statutes that restore the rights of private landowners to the free use of their land, or to just compensation from any governmental unit that infringes the free use of land. That highlights that citizens may need the law in their own hands in order to protect property rights.

Thus, the overwhelming majority of American citizens support property rights after experiencing 20-30 years of confiscatory seizure and control of land by state and regional governments. However, in many states (e.g., Wisconsin is one), the tyrant to overcome is not just regional or state government; it is the federal government as well. Particularly in western states, federal agencies actively promote the collectivization of land. In western states, the private groups that have sprung up to fight for individual property rights have found an approach enabling local resistance to federal land-grab agencies via a device that congress has written into federal law, namely, the **local coordination plan**.

The political, economic and moral wisdom of coordination planning still needs assessment, since it appears on the surface to be an example of beating the collectivists by joining them. Yet, one can argue, especially after reading *The Mystery of Capital* by H. De Soto, that coordination planning is in keeping with the history of how pioneers settled our United States and secured strong legalized property rights. Besides, local planning does put the law in the hands of local landowners.

Federal law via the Federal Land Policy Management Act (FLPMA) sets forth the congressional declaration of policies for managing public lands, and for coordination with local planning, which by federal and constitutional law are binding on the federal agencies. That law likely is binding on state agencies that use federal dollars. Otherwise such funding would circumvent federal law.

The following is a fair excerpt of the United States Code at 43 U.S.C. § 1712, namely:

"In the development and revision of land use planning, the Secretary shall ... coordinate the land use inventory, planning, and management activities ... with [those] of the States and local governments within which the lands are located ... and of or for Indian tribes Land use plans ... under this section shall be consistent with State and local plans to the maximum extent ... consistent with Federal law and the purposes of this Act."

The federal law on coordination plans is spelled out in the most detail in the Code of Federal Regulation for the Bureau of Land Management, and that law has been held by federal courts to apply to any other federal agency which is required by federal statute to coordinate its policies and management with local governments that have acted to participate in coordination.

Definitions of key terms are found in 43 C.F.R. § 1601.0-5. Thus, under (e):

"Local government means any political subdivision of the State and any general purpose unit of local government with resource planning, resource management, zoning, or land use regulation authority."

Thus, in Wisconsin, a county, a town, a ditch or lake district, etc. may qualify for doing coordination planning.

The federal statutes contain many minutiae regarding public participation and coordination with local plans. In addition to publication in the federal register, this includes actual notice to local governments which have informed the agencies of their coordination plans. In coordination of planning efforts, 43 C.F.R. § 1610.3-1 requires that the agencies resolve "to the extent practicable, inconsistencies between Federal and non-Federal government plans ..." The term "extent practicable" does not open the door to unfettered agency discretion; i.e., this subsection further specifies:

"(c)(2) Identify areas where the proposed guidance is inconsistent with such policies, plans or programs and provide reasons why the inconsistencies exist and cannot be remedied; ..."

Thus, such reasons must be grounded in federal statutes. As stated by Fred Grant, legal adviser to Owyhee County, Idaho, these strict procedures thus enabled its ranchers to survive in business by using coordination to mitigate endangered species status for the sage grouse.

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*** Published by Freedom Matters, Inc., Cross Plains, WI. 53528, Elena Byrne, Editor ***
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