

Case Summary **Uintah County v. Norton**

Civil No. 2:00-CV-0482J

United States District Court for the District of Utah

On October 25, 2001, the Federal District Court for the District of Utah specifically recognized a local government's statutorily mandated place in federal land management planning. *Uintah County v. Norton*, Civ. No. 2:00-CV-0482J (D. Utah Oct. 25, 2001). In that case, the court made significant pronouncements on the importance of participation of counties and local governments in the Bureau of Land Management's ("BLM") land use planning process. The case stands as a strong reinforcement of BLM's obligation to meaningfully involve counties and local governments in land use planning for Federal public lands to assure consistency between BLM's own plans and those of local governments.

FACTS AND COURT DECISION

In 1985, BLM issued the Book Cliffs Resource Management Plan ("BCRMP") covering a large portion of Uintah County, Utah. The BCRMP directed that any wild horses in the Bonanza Area (an area in the central portion of the Book Cliffs Resource Area) should be removed and placed in another area or adopted. When BLM attempted to gather horses from the Bonanza Area, the Ute Indian Tribe and others initiated court action, arguing that the horses belonged to them. A wild horse advocacy group intervened in the lawsuit, and eventually the BLM and the Ute Tribe entered into a Consent Decree in which BLM turned over all of the captured horses to the Tribe, and the Tribe provided 20 horses from a reservation in Nevada, which were placed in the Bonanza Area. However, no amendment was ever made to the BCRMP to reflect any change in management and land use, in spite of the fact that the new wild horses began to propagate exponentially and becoming a serious concern to the local residents and to the county government.

Beginning in November 1999, after an outbreak of equine infectious anemia ("EIA"), BLM gathered and tested nearly 250 wild horses from the Bonanza Area. This was the first time since 1985 that BLM had complied with the BCRMP directive to remove all wild horses from the Bonanza Area. BLM euthanized the test-positive horses and continued to hold the test-negative horses. In spite of an unexpected high number of test-positive horses and the express provisions of the BCRMP, BLM decided to return all test-negative horses to the Bonanza Area. Although Uintah County was prepared to appeal the reintroduction decision at the time, the Utah State Veterinarian placed a quarantine on the horses on November 23, 1999, effectively keeping the horses off of the Bonanza Area and thereby inadvertently implementing the controlling BCRMP provisions. When the quarantine was lifted on April 4, 2000, BLM issued a new environmental assessment proposing to release 80 test-negative horses back into the Bonanza Area. This action was to occur without formally amending the BCRMP and in direct violation of the provisions of the BCRMP. Uintah County, the Ute Indian Tribe and ranchers in the area filed suit in Federal District Court to challenge the decision to release 80 test-negative horses in violation of the BCRMP.

The challenge to BLM's action was made on procedural and substantive grounds. Both Uintah County and the Ute Indian Tribe had enacted land use plans that specifically excluded the use of any of the Bonanza Area for wild horse habitat. In that context, the court found some "teeth" in the provisions of 43 U.S.C. § 1712(c)(9) requiring BLM to coordinate its land use planning with the land use plans of state and local governments and Indian tribes in order to "assure that consideration is given to " non-BLM land use plans, to "assure that consideration is given to those plans that are germane to the development of resource management plans for public use," to "assist in resolving...inconsistencies" between BLM and other plans, and to "provide meaningful public involvement of" state and local governments and Indian tribes in the development of resource management plans.

In addition, the court found “teeth” in the provisions of 43 C.F.R. § 1610.3 -1(b) and (e), and specifically quoted § 1610.3-2(a) requiring that “resource management plans... shall be consistent with official approved or adopted resource related plans, and the policies and programs contained therein, of other federal agencies, State and local governments and Indian tribes...” The court explained that the consistency requirement applies not only when BLM is enacting a new resource management plan (“RMP”) or formally amending an existing RMP, but also “when the Secretary is making decisions directly affecting the actual management of the public lands,” whether formally characterized as “resource management plan” activity or not, citing *State of Utah v. Babbitt*.

The court found that the BLM decision directly affected the management of the public lands, and could not be taken as an “interim step” in amending the BCRMP without first undertaking the formal amendment process. The court held that BLM was required to coordinate and consult with local governments and Indian tribes. The court found specifically that BLM’s action in attempting to release the 80 test-negative horses back into the Bonanza Area was taken without meeting the procedural requirements described above relating to “consistency review” with the county and tribal land use plans.

The court also struck down BLM’s action on two substantive grounds. First, the court specifically found that BLM’s action was not in conformance with the directives laid out in the BCRMP, and specifically found that the Federal Land Policy Management Act (“FLPMA”) as well as 43 C.F.R. § 1610.5-3 require that all BLM actions conform to the approved federal land use plan. Second, the court found that BLM’s actions were lacking a clearly reasoned basis in the factual materials found in the record, and struck down BLM’s actions as arbitrary and capricious and not supported by substantial evidence under the provisions of the Administrative Procedure Act.

CONCLUSION

Uintah County v. Norton is one of the first court cases to discuss BLM’s obligations to assure consistency review with county and local government land use plans. The level of power that counties have in BLM land use planning as provided by statute and regulation has now come into clearer focus. Counties can take advantage of *Uintah County v. Norton* by enacting specific ordinances relating to land use planning covering those areas of concern where the county’s desires might run contrary to BLM’s. In *Uintah County v. Norton*, for example, the county’s land use plan originally did not specifically prohibit wild horses in the Bonanza Area. After concerns continued to mount over the problems with EIA, the county amended its land use plan to enact such a prohibition. Specific provisions covering sensitive issues in land use planning will create specific obligations on the part of BLM to assure more specific consistency review.

In addition, *Uintah County v. Norton* places BLM on the narrow path of having to comply with its own land use plans. This will provide for more predictability and clarity in uses on the public lands. Thus, to the extent BLM interim policies are contrary to approved land use plans, they will be subject to being struck down under the principles of *Uintah County v. Norton*.