



COUNTY OF SISKIYOU

Board of Supervisors

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February 7, 2012

VIA FAX 707-825-9840

Irma Lagomarsino
Northern California Office Supervisor
National Marine Fisheries Service
1655 Heindon Road
Arcata, CA 95521-4573

Re: Coho Salmon Recovery Plan

Dear Ms. Lagomarsino:

You are aware that Siskiyou County has insisted that your agency engage in coordination regarding your Coho Salmon Recovery Plan. Yet, by email of August 22, 2011, you refused to meet with the Board of Supervisors for meaningful discussions regarding the Plan. Thus, the Board presumes that it is not clear to you that refusal to coordinate is not an option allowed by law.

On June 9, 2011, President Obama directed you to coordinate with Siskiyou County. In Executive Order 13575 he clearly set forth your mission to “coordinate and increase the effectiveness of Federal engagement with rural stakeholders, including... law enforcement, State, local, and tribal governments regarding the needs of rural America;”

President Obama has also directed you to engage in “the open exchange of information and perspectives” with this Board as the governing body of Siskiyou County. His Executive Order 13563, issued on January 18, 2011, requires you to engage in that “open exchange” through a coordination process:

Jim Cook
District 1

Ed Valenzuela
District 2

Michael Kobseff
District 3

Grace Bennett
District 4

Marcia H. Armstrong
District 5

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“Greater coordination across agencies could reduce these requirements, thus reducing costs and simplifying and harmonizing rules. In developing regulatory actions and identifying appropriate approaches, each agency shall attempt to promote such coordination, simplification, and harmonization.”

(Ex. Order 13563, Section 3)

The terms “coordination”, “coordinate” , “harmonizing” and “harmonization” used by the President were the focus of the decision in California Native Plant Society v. City of Rancho Cordero, 172 Cal. App. 4th 603, 91 Cal. Rptr. 3d 571 (Certified for publication May, 2009). The Court there made it clear that a “coordination” process requires far more than mere cooperation, consultation or consideration of input. In that case the City of Rancho Cordova argued that “coordination” was satisfied when the city consulted with the United States Fish and Wildlife Service. It argued that it met a “coordination” responsibility by “trying to work together with [fish and wildlife] by soliciting, carefully considering, and responding to comments from the [Service].”

The Court disagreed. It held that “coordination” means more than *trying* to work together. The court said “coordinate” means:

“to bring into a common action, movement, or condition”; it is synonymous with “harmonize.” (Merriam-Webster’s Collegiate Dict., *supra*, at p. 275, col. 1.) Indeed, the very dictionary the City cites for the definition of the word “coordinate” defines the word “coordination” as “cooperative effort resulting in an effective relationship.” (New Oxford Dict., *supra*, at p. 378, col. 3.) Although the City suggests “coordination” is synonymous with “consultation” -- and therefore the City satisfied its “coordination” obligation under the general plan at the same time it satisfied its “consultation” obligation under the plan-- that is not true. While the City could “consult” with the Service by soliciting and considering the Service’s comments on the draft EIR, the City could not “coordinate” with the Service by simply doing those things. . . .

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“ . . .by definition “coordination” implies some measure of cooperation that is not achieved merely by asking for and considering input or *trying* to work together.”

The President did not attempt in either Executive Order to specifically define “coordination” or “coordinate” to mean more or less than the normal, regular meaning of the words as discussed in California Native Plant Society v. City of Rancho Cordero.

The National Environmental Policy Act (NEPA), which governs your work on the “Recovery Plan”, requires you to cooperate with this Board to “the fullest extent possible” to “coordinate Federal plans, functions, programs, and resources...” (42 U.S. 4331 (a) and (b) and 4332). In NEPA, Congress directs you to review your agency’s “statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this chapter...” (42 U.S. 4333)

That review required by NEPA is consistent with the definition of “coordinate” and “coordination” provided by Congress in the Federal Land Policy Management Act (FLPMA) which requires that the Secretary of Interior coordinate in an earnest effort to reach consistency between federal and local policies and plans. FLPMA, of course, focuses on range management by the Secretary of Interior, but the extensive definition of the term “coordination” expresses the policy of Congress that federal agencies managing natural resources and lands work with local governments to reach consistency. There is nothing in either Executive Order to even imply that the President intends the coordination process to mean other than as defined by Congress.

The Council on Environmental Quality (CEQ) applies the FLPMA definition when it requires that every DEIS demonstrate on its face “possible conflicts between the proposed action and the objectives of . . .local land use plans, policies and controls” and any means available to resolve the conflicts. (40 CFR Part 1500, particularly 1502.16) CEQ also directs that your agency prepare Draft Environmental Impact Statements in concurrence and integration with Executive Orders and “other environmental review laws” to “the fullest extent possible.” FLPMA is certainly in the category of

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“environmental review laws”. It requires the “coordination” process which seeks consistency. The Executive Orders discussed above require “coordination”, and neither Order shows an intent to define the process other than as Congress has defined it. The CEQ “fullest extent possible” requirement therefore directs you to coordinate your Report process with this County.

Your email message in which you stated your refusal to meet with the Board, expresses an agency position that is certainly inconsistent with the Presidential Directives to coordinate and the Congressional mandate to cooperate with us “to the fullest extent possible” on this Recovery Plan.

Your email stated:

“As a courtesy, on May 17, 2011, NMFS provided a draft of the Southern Oregon/Northern California Coast Coho Salmon Recovery Plan (Plan) to Siskiyou County staff and invited your comments. As that letter states, NMFS is considering your comments prior to release of the Plan for public comment this fall, when Siskiyou County will have an additional opportunity to provide input on the public draft. At that time, we also will request comments from members of the public, including those that reside in Siskiyou County. NMFS will also hold public meetings seeking comments on the Plan once we issue the public draft. During the public review phase of the Plan, NMFS will participate in a Siskiyou County Board of Supervisors meeting should we receive such a request at that time.”

The coordination effort we expect is not a matter of “courtesy.” It is a matter of law both in the form of Directives to you by the President and statutes enacted by Congress. Your message makes it clear that you believe, as did the City of Rancho Cordero, that “asking for and considering input” satisfies the requirement of “coordination”. The plain meaning of that term, and the meaning provided by Congress and the Council on Environmental Quality, shows the error of your position.

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In a meaningful attempt to allow you to engage in the coordination process, we again ask that you arrange to meet with the Board on one of the following dates to consider and discuss major issues regarding the Recovery Plan and its impact on the natural and human environment in Siskiyou County: March 13, 2012 or March 20, 2012.

Please contact us no later than March 2, 2012, to schedule our meeting on one of these dates.

We look forward to a productive, on-going coordination relationship with you and your staff regarding the impact of the Recovery Plan on the economic, ecological, historic, cultural, social and health components of the environment in Siskiyou County.

Very truly yours,

A handwritten signature in cursive script that reads "Grace Bennett". The signature is written in black ink and includes a long horizontal flourish extending to the right.

Grace Bennett, Chair
Siskiyou County Board of Supervisors