CITY OF REDDING

OFFICE OF THE CITY COUNCIL
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February 28, 2014

Mary D. Nichols, Chairman
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Dear Ms. Nichols:

This letter pertains to the "In-Use On-Road Heavy-Duty Diesel-Fueled Vehicles" regulation. The City Council of the City of Redding has adopted a resolution to invoke coordination with the California Air Resources Board (CARB) with respect to this regulation (copy previously provided). The City Council of the City of Redding has selected me to represent the City of Redding. The City Council of the City of Redding has also selected the Shasta County Coordination Committee to assist the City of Redding (City) with coordination.

The City requests you meet with us to enter into coordination as required by statute and followed by all agencies, federal or state, which receive federal funding, implement federal standards, or rely on federal programs, with rules and regulations impacting the goals and objectives of local government bodies.

One goal of the City of Redding is for CARB to change its implementation mandate for older highway diesel trucks, and to permit attrition to be the driving force as to when a vehicle without particulate filters is upgraded to a newer CARB compliant engine. All punitive measures restricting freight hauled from port facilities only by 2007 or newer trucks must be eliminated. In like manner, attrition must be the method for dealing with construction, off-road, agricultural, and stationary diesel engines.

We request that you meet with us in the City's City Council Chambers located at 777 Cypress Avenue, Redding, California, either on Thursday, March 27, 2014, at 9:00 a.m. or Thursday, April 3, 2014, at 9:00 a.m. Please advise us by Thursday, March 20, 2014, as to which date, if any, is acceptable, or provide an alternate date and time, along with the name of your contact person.

The meeting will be a government to government meeting. It will be open to the public as required by California law, but there will be no public participation through comment or question. The public will be advised that they may make any comment they desire at the public comment period during the next regular City Council meeting held after the date of the government to government meeting.

The City Council may include natural resource advisers to participate with the Council, as our advisory staff, and not as members of the public. Please feel free to bring any of your Agency staff.

The City of Redding regrets that the California Air Resources Board (CARB) rejected our invitation dated November 27, 2013, to engage in government to government coordination. Such engagement would allow us to make a good faith attempt to resolve some fundamental issues. We prefer to reach resolution in "coordination", the formal, common sense process, created by the California legislature and the Congress, rather than the very costly court rooms of California or the District of Columbia.

Rest assured that our position has struck a chord among various groups throughout the nation, and we will make every effort to gain support so that we can reach resolution of the issues that threaten our community and its citizens. Our preference is to simply speak for ourselves in our position with CARB, but if national spokesmen we must be, in order to protect our citizens, so be it. Please do carefully review your position in light of our letter of November 27, which you had received when you rejected our offer in your letter of December 20.

Lest we be misunderstood, we want it clear that we are interested in maintaining good air quality in our environment. We live here, we work here, and we raise our children here. The law requires primary focus be placed on the "human environment" as defined by the Council on Environmental Quality. We will not sit silently as you impose regulations that are not based on sound, current, relevant evidence, or regulations that severely damage the human environment of our citizens.

You assert that the City is contentiously trying to require CARB to "obtain the approval of the City of Redding before it can adopt or enforce a clean air requirement that might impact the city's residents." That premise is incorrect. We are not so naive as to believe that the City can veto an action by CARB, by EPA, or other state or federal agency lawfully acting within jurisdiction assigned legislatively. But, neither are we so naive as to believe that the state and federal legislative bodies gave CARB and EPA unfettered power to impose a stringent, economically destructive regulation without prior coordination for consideration of the impact on local government. Rather, Congress and the California legislature have mandated a coordination process through which your agency is obligated to communicate with the City of Redding. As to problems you suggest exist, you are to seek alternatives that lessen adverse impacts on the citizens.

The City attempts to impose on you no process at all. Rather the City is determined that you will follow the process established by the California legislature and the United States Congress. We will not falter in our insistence that you follow the law. If you refuse to coordinate we will seek support sufficient to ensure that Nine Justices will determine whether you have violated due process of law. If they decide you have, as we believe you have, a jury's verdict on damages will be sought.

CARB IS SUBJECT TO NEPA BECAUSE ITS CLEAN DIESEL EMISSION PROGRAM IS A MAJOR FEDERAL ACTION

As reason for rejecting our invitation, you assert that the National Environmental Policy Act (NEPA) does not apply to CARB because: (1) NEPA applies only to projects "proposed by federal agencies". (Page 1, Letter of Mary D. Nichols, December 20, 2013); and accepting federal funds does not transform CARB into a federal agency. (Ibid.)

Reason number one contains an incorrect interpretation of the law. The actual language of NEPA does not limit "federal actions" to just those **proposed by** federal agencies. NEPA applies to "**proposals for** legislation and other major federal actions", not proposals **by** federal agencies. NEPA and the implementing regulations established by the Council on Environmental Quality make it clear that projects proposed by the state, by local governments, and by private citizens and organizations are subject to NEPA if they meet the definition of "major federal action". In 40 CFR 1501.2, for example, the Council on Environmental Quality provides that the NEPA process must start as early as possible in order to provide for **"cases where actions are planned by private applicants or other non-Federal entities before Federal involvement..."**

Congress created the Council on Environmental Quality to oversee NEPA processes and assure that the national purpose is carried out. In 40 CFR 1508.18, the Council on Environmental Quality defines "major federal action" as including projects and programs, rules, regulations, plans, policies, procedures and legislative proposals "**entirely or partially financed, assisted, conducted, regulated, or approved by federal agencies"** (40 CFR 1508.18 "Major Federal Action") The Council on Environmental Quality pointed out that such projects often include actions "approved by permit or other regulatory decision as well as federal and federally assisted activities."

As we pointed out on page 3 of our November 27, 2013, letter, several federal grants were awarded to California for CARB's use to develop and advance the Clean Diesel Emission Program. We specifically identified grants amounting to over $7 million related directly to the program. So, the regulation you seek to enforce without any prior coordination with this City was and is clearly either "entirely" or "partially" financed and assisted by federal agencies. That alone is sufficient to make CARB's regulatory effort a "major federal action". We in the City are also not so naive as to believe that with such funding the federal agencies seek no "approval" authority over the regulation(s) created by CARB. We believe examination of the grants would show such authority. We know examination of the record shows federal approval of CARB's diesel particulate mandates. The issuance of the regulations and the attempts to enforce them, constitute "major federal action".

The close linkage between CARB and the Environmental Protection Agency (EPA) underscores the "major federal action" nature of the program and regulations. The January 12, 2004, letter from Terry Tamminen, Agency Secretary for the California Environmental Protection Agency to the United States EPA, strongly urged that EPA "develop and adopt improvements to the nationwide diesel fuel standards for on-road and off-road applications." The letter concluded:

> "We hope that you will have your staff review it carefully [information forwarded by CAL EPA], and initiate a rulemaking process to gain the support of other stakeholders. If

> we can provide assistance in the effort, please contact me [Terry Tamminen] or Dr. Alan C. Lloyd, Chairman, California Air Resources Board…"

In our November 27, 2013, letter, we detailed other evidence of the entanglement of CARB and the federal EPA: EPA waiving federal preemption, and CARB serving as a "cooperating agency" to EPA.

It is also telling that CARB has contended in the United States District Court for the Eastern District of California that its truck and bus rule is in fact a federal rule. In the lawsuit filed against CARB by the California Dump Truck Owners Association, CARB moved to dismiss because CDTOA did not include the EPA, and insisted that EPA was an indispensable party because it had "federalized" the rule by approving California's State Implementation Plan, which included the rule. Judge England agreed and dismissed the action. The dismissal is on appeal to the Ninth Circuit, but in the meantime, CARB cannot take inconsistent positions by arguing on the one hand in court that its regulation has been federalized, and in Redding that there is not even a major federal action involved.

Because your regulatory actions fall within the definition of "major federal action", and because of CARB operating as an extension of the federal EPA, CARB is subject to NEPA and its procedural requirements which include coordination.

As to CARB's second reason, you state that accepting federal funds does not "transform" CARB into a federal agency under NEPA. Of course CARB does not get magically transformed into a federal agency by taking federal funds. But accepting such funds certainly transports CARB's actions into the parameters of major federal action. Within those parameters, CARB is subject to NEPA and Council on Environmental Quality provisions which require coordination with the City of Redding.

The tone of your rejection letter is that unless an agency is a federal agency, and unless it proposes an action as a federal agency, NEPA is inapplicable. Such a conclusion would narrow the intent, purpose and letter of NEPA to a point of insignificance. If such were the case, all the federal EPA would have to do is fund projects to state agencies, let them develop restrictive programs, and NEPA would be evaded. Neither the language of NEPA nor the regulations issued by the Council on Environmental Quality permit such tortured logic.

These points are elementary; they are obvious from the face of NEPA and Title 40 of CFR; they are supported by myriad cases decided by courts at all levels of the judiciary; and you and CARB's staff are aware of them. We thus view your rejection rationale as a superficial excuse for failure to follow the law.

CALIFORNIA STATUTES REQUIRE COORDINATION WITH LOCAL GOVERNMENT AS TO ENVIRONMENTAL AND PLANNING PROJECTS SUCH AS THE CLEAN DIESEL EMISSION PROGRAM

As you say, CARB is subject to the California Environmental Quality Act (CEQA). However as California public officials, you also know CARB is subject to the general planning statutes. The California legislature intended elected officials at all levels of government to adhere to consistent planning concepts. The statutes require state agencies to "coordinate" with local governments,

local officials, and organizations of local governments. The statutes also require local governments to coordinate with state agencies. The statutes are not satisfied by "public involvement through commenting at public meetings", meetings run much like a public meat market, first come first served.

Transcripts from CARB Board meetings demonstrate that most often the Board hears a disjointed array of comments on several different issues. We find no evidence that serious consideration is given to such presentations by CARB members or staff.

We have studied environmental statements and public meeting records for more than a decade. Rarely, if ever, have we seen significant change result to any decision document based on public comments taken at these "listening session" public meetings.

We have observed that only through coordination with local governments does such change occur. The reason is very clear, and has been recognized by the Council on Environmental Quality---local government officials, their advisers and staff have unique knowledge and information about the economy and social structure of their town or county or district. They know and observe the impact that an environmental act has on the human environment of their constituents. Congress defined coordination, as it did in the Federal Land Policy Management Act (FLPMA) to take advantage of such local knowledge and expertise.

CEQA was enacted within months of NEPA. In most ways it mirrors the national act promoted and signed by former President Nixon, former congressman and senator from California. In most ways CEQA follows the pattern of NEPA as pointed out in a joint publication on the two acts published by the EPA and CEQA.

As to coordination, the California legislature provided in CEQA, Section 21104:

> "Prior to completing an environmental impact report, the state lead agency shall consult with, and obtain comments from, each responsible agency, trustee agency, any public agency that has jurisdiction by law with respect to the project, and any city or county that borders on a city or county within which the project is located..."

CARB, as the state lead agency, did not consult or coordinate with the City of Redding prior to the planning for issuance of the diesel emission mandates. To this day CARB has not consulted with, or coordinated with, the City of Redding.

The planning components in the California Government Code and Public Resources Code, require coordination with local governments. In addition, California courts have pointed out that "coordination" means more than just allowing local officials to present comments on a time limited basis in a public meeting. State and federal officials have a special duty to coordinate with local governments, which carry the burden of protecting the human environment of their constituents.

In California Native Plant Association v. City of Rancho Cordova, 172 Cal. App. 4th 603, 91 Cal Rptr 3d 571 (2009), the California Appellate Court made it plain that "coordination" as required by California law is not satisfied by "consultation" or simple meetings. Rancho Cordova argued that it met its coordination responsibility by "trying to work together with [a federal agency] by

soliciting, carefully considering, and responding to comments from [the agency]". The Court disagreed, holding that "coordination" means more than trying to work with someone. It said that to "coordinate" is:

> "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 'coordination' defines the word 'coordination' as 'cooperative effort resulting in an effective relationship.'. . .by definition 'coordination' implies some measure of cooperation that is not achieved merely by asking for and considering input or *trying* to work together."

We know that you and CARB's staff are familiar with the California statutes that govern your actions, and are familiar with the concept of coordination inherent therein.

As a matter of fact, the concluding sentence in your staff's Initial Statement of Reasons for Rulemaking, Staff Report, June, 1998, after recommending identification of diesel exhaust as a Toxic Air Contaminant (TAC), states:

> "Staff further recommends that the Board direct staff to begin the risk management phase of the program for diesel exhaust and form a diesel exhaust risk management working group to coordinate efforts *with the U.S. EPA, industry, environmental groups, and other interested parties."*

No mention was made of the need or desirability of coordinating with local governments, those units of government that will bear most of the cost, socially and economically, of the adverse impacts. But, your staff recognized a duty to "coordinate" with "interested parties" and one would have reasonably thought that the City of Redding was an "interested party". To make the record clear: The City is interested, and calls on you now to begin coordinating with us, as your staff began coordinating with environmental groups sixteen years ago.

WORKING THROUGH THE COORDINATION PROCESS MIGHT ALLEVIATE THE NEED TO PURSUE OUTSIDE LITIGATION EFFORTS TO REMEDY EXISTENT PROCEDURAL AND SUBSTANTIVE FLAWS

We were, and still are, hopeful that CARB will engage the City in government to government coordination. If so, we are confident that we can demonstrate why there must be some action to alleviate the harsh economic impact on our citizens. If so, we can hopefully alleviate the need to pursue outside litigation avenues for relief as to the following issues:

THE ENTIRE ENVIRONMENTAL ANALYSIS PERFORMED BY CARB IS FLAWED BY THE FAILURE TO CONSIDER AND EVALUATE THE "HUMAN ENVIRONMENT"

In 40 CFR 1508.14 the Council on Environmental Quality defines the "human environment" as including the "natural and physical environment and the relationship of people with that environment." To explain what it meant by the "human environment", the Council referred to Section 1508.8 (effects) to demonstrate that the "human environment" includes interests in and

matters of "ecological…aesthetic, historic, cultural, economic, social, or health, whether direct or indirect."

At no point in the history of the development of the program or the inherent rules, does CARB give attention to the various elements of the human environment set forth by CEQ's rule. In fact, in the Initial Statement of Reasons for Rulemaking by CARB's staff, issued in June, 1998, the statement is made that "The identification of diesel exhaust as a TAC will not directly have any economic impact on mobile sources of diesel exhaust because the act of identifying a TAC does not mandate any specific risk management action." That statement is disingenuous at the very best because CARB knew and knows that the identification was not impotent, but was the first step toward regulation. At that point in time, because of CARB's on-going work with EPA, CARB and its staff knew that identification was simply the first step in the establishment, implementation and enforcement of regulations. That is made clear from the much later letter from CARB to Michael Leavitt, Administrator of the EPA urging that EPA adopt expanded, "improved" standards for diesel fuel. That letter, the Initial Statement of Reasons, and every other document issued by CARB ignores the core of the "human environment" made critical by 40 CFR 1508.14 and 1508.8.

The "economic impact assessment" found in the Initial Statement of Reasons for Rulemaking, supra, pages 14-16 manages to avoid economic assessment altogether, even though it consists of seven full paragraphs. As pointed out, economic assessment ends in the first sentence with "The identification of diesel exhaust as a TAC will not directly have any economic impact".

By ignoring the "human environment", CARB also evaded the requirement of producing a true economic analysis of the impact of the program and the regulations on the City, or on any other local government jurisdiction. Time and again, courts have set aside actions because of an agency's failure to produce an adequate economic study. In one of the most important Environmental Impact Statements to the federal government in the last decade, the Department of Interior delayed release and recalled the Final Draft because local governments protested the lack of adequate economic analysis. That action occurred regarding the Secretary's withdrawal of the public lands in Northern Arizona from uranium mining; the effort was extremely politically important to former Secretary Salazar. The District Manager of the BLM admitted at a public hearing that the Study was called back because of an inferior economic study, and then was delayed because of the difficulty in finding a qualified economist to complete the study. The economic harm in that case to the local town and county was as severe as will be CARB's program and regulations to Redding and surrounding areas in rural California.

There is no adequate economic analysis regarding the impact of CARB's program and regulations; the issue would be one appropriate for coordination. If coordination is not available, then the issue must be raised in litigation. It cannot be ignored. To do so would imperil the City's economy and human environment; the damage to truck operators and owners would result in escalating economic and social harm to reliant businesses and services in the City and surrounding area.

CARB HAS PRODUCED NO EVIDENCE THAT THE DATA USED IN THE INITIAL DETERMINATIONS AND NOW IN THE IMPLEMENTATION PERIOD HAS BEEN OR COULD BE VERIFIED AS SOUND AND CREDIBLE UNDER THE DATA QUALITY ACT

There is no evidence that the data on which the diesel emission program and regulations are based has ever been verified in accord with the Data Quality Act. The Act, which was passed as a critical part of the General Appropriations Act of 2001, requires that data on which any federal action is disseminated meet the quality guidelines which were set by the Office of Management of the Budget in accord with the Act. Failure to satisfy the quality guidelines is sufficient cause to prevent implementation of any action or plan based on unqualified data.

The City has the right to insist on such verification by you, as the lead agency on this major federal action. The reason Congress passed the Act was their outrage at the specter of an environmentalist group planting a fake lynx hair in order to gain designation of a critical habitat. The Act required OBM to issue guidelines that must be followed in all major federal actions---- guidelines that assure that data used will be relevant by subject and time, credible, objective and meaningful. You have provided no evidence of verification that the data on which you have relied, or the data or product you have disseminated based on that underlying data meets the requirements developed under the Act. Even the Scientific Review Panel Report that accompanies the Initial Statement of Reasons, supra, contains no such evidence re the Data Quality Act. Again, this is an issue which could be dealt with in the coordination process during which the City would request such verification. If you continue to reject the opportunity to coordinate, then the City or any of its citizens or organizations of citizens will be left to pursuing verification in a litigation process.

The documentation included even on your own Website shows the direct connection between EPA and CARB regarding the diesel emission program; the federal dollars that have flowed to CARB to be used in this program which is an EPA flagship program; the ties that are inevitable in all federal grants to fund particular projects of interest to the federal EPA agency, all link CARB at the hip to EPA and to NEPA and thus to the Data Quality Act.

Even a cursory review of your documentation of the Program shows that data disseminated by federal agencies has been used by you and your staff in developing, implementing, enforcing and disseminating information about the program. All that information is subject to verification under the Data Quality Act, sometimes known as the Information Quality Act, which was passed by Congress as Section 515(a) of the Consolidated Appropriations Act of 2001. Rulings by Congressional counsel and an Inspector General have assured that provisions of substantive law contained in a general appropriations act survive the appropriations year and become the general law of the land until repealed or amended. The Data Quality Act of 2001 has not been repealed or amended. You must deal with it.

THE PROGRAM AND THE RULE INTERFERE WITH THE REGULAR FLOW OF INTERSTATE COMMERCE TO THE DETRIMENT OF THE CITY OF REDDING, AND IS THEREFORE UNCONSTITUTIONAL AND IS A VIOLATION OF THE TENTH AMENDMENT RIGHTS OF THE CITIZENS OF REDDING.

As you know, and certainly would have been advised had you coordinated with the City of Redding, your rules which are part of the program, interfere with Interstate Commerce which is a subject matter delegated to the Congress by the Constitution. Trucks that serve businesses in the City of Redding move in interstate commerce and deliver and transport goods to and from Redding that move in Interstate commerce. Had you performed an adequate economic analysis as required by both NEPA and CEQA, you would know that many of the truck companies serving Redding cannot continue to operate because of the exorbitant cost of compliance. During the entire process of development and then implementation, CARB made no attempt to find an alternative that would have been less onerous as required by CEQA. By designing and adopting a regulation and program that will result in shut down of interstate vehicles, and by refusing/failing to find an alternative that will allow interstate commerce to continue unabated to Redding, you have taken a federal action that deprives the citizens of Redding of their right to equal protection of the law, and due process of law under the 14th Amendment.

The citizens of Redding are subjected to a deprivation of the benefits of interstate commerce that the citizens of Green Bay Wisconsin are not; they are subjected to a deprivation of interstate commerce that the citizens of Grants Pass, Oregon are not; they are even subjected to a deprivation of interstate commerce that other citizens of northern California not so dependent on interstate commerce are not. The equal protection clause of the 14th Amendment to the United States Constitution forbids such unequal, unjustified disparity.

The citizens of Redding have been deprived of due process of law by having interstate commerce disrupted without an adequate hearing that is "fair" under the laws of California and the United States of America. The issue of whether due process has been allowed demands a "fair" hearing. The judicially established elements of such a "fair" hearing are: Specific advance notice of the action planned and its effect in removing a right or benefit of the citizen (in the nature of income, a job, property, a government benefit, as described by federal courts), adequate time for the citizen to prepare to meet the issue of deprivation, an adequate opportunity to fully present his or her answer in opposition to the proposed deprivation and an objective, impartial determination of the facts and law.

This due process claim is not a uniquely devised claim; it is simply based on centuries of judicial decisions that require due process hearings before a citizen loses a right or benefit. The cases in our modern America have enjoined or forced restitution for loss of income, of jobs, of vehicles, of homes, and even of welfare benefits. From the impact of CARB's program and regulations, the citizens of Redding have been, and will continually be, deprived of full access to interstate commerce, a right to which they have a constitutional guarantee that a state will not block. The claim is based on one of the very earliest constitutional rulings of the United States Supreme Court.

The Tenth Amendment guarantees to the citizens of Redding that they will not be subjected to federal exercise of power in matters not granted to the federal government by the body of the Constitution. By stretching the Clean Air Act as it has, EPA has set the stage for agencies like CARB to issue abusive, arbitrary and capricious rules that economically harm local businesses owned and used by citizens of Redding. The harm in this case is present in the direct impact of the cost of compliance and in the direct and indirect costs of interference with interstate commerce.

CARB can only justify its participation in a major federal action on EPA's interpretation of the Clean Air Act. Therefore, it imposes on Redding's citizens a federal action that is beyond what is allowed under the stated constitutional powers of the executive branch of the federal government. That amounts to a violation of the Tenth Amendment, a violation for which remedy can be sought by the City of Redding for its citizens and/or by individual citizens of Redding. See Bond v. United States where the United States Supreme Court held, for the first time in history, that an individual has the right to raise a claim or defense based on violation of the Tenth Amendment.

WITH THE PASSAGE OF NEPA AND THE CREATION OF THE COORDINATION PROCESS CONGRESS PROVIDED THE MEANS FOR A LOCAL GOVERNMENT TO ACHIEVE THE BENEFITS OF FUNCTIONING IN A TRUE FEDERALIST GOVERNMENT----TO TAKE ITS PLACE AT THE TABLE TO REPRESENT ITS CITIZENS AND THEIR RIGHTS IN A MEANINGFUL WAY

With the passage of the National Environmental Policy Act, Congress acted to assure compliance with the federalism that is fundamental to our Constitutional government. It included in NEPA a requirement that major federal actions be preceded by coordination between federal, state and local governments. In 42 USC 4331, Congress declared it to be:

"the continuing policy of the Federal Government, **in cooperation with State and local governments...to use all practicable means and measures**, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic and other requirements of present and future generations of Americans."

Congress then provided that such "cooperation" be achieved through the process of coordination:

"(b) In order to carry out the policy...it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate federal plans, functions, programs, and resources..."

In 42 USC 4332, the Congress further provided that "to the fullest extent possible" the coordination policy set forth in Section 4331 be pursued through decision making based on "economic and technical considerations" as well as environmental values and after taking into account the views of local governments affected by the major federal action.

In the Federal Land Policy and Management Act, Congress defined what it means when it requires "coordination". In requiring the Secretary of Interior to "coordinate" with local governments, Congress defined the term as including the following elements: (1) be apprised of local policy, (2) assure that consideration is given to that local policy, (3) provide for meaningful public involvement of local officials in the development of the federal proposal, (4) assist in resolving inconsistencies between the federal proposal and the local policy, and (5) reach consistency between the federal proposal and the local policy "to the maximum extent" consistent with Federal law.

That element of "consistency" is of the utmost importance to a federalist system of government. True federalism must include fair consistency between interests of each level of government-----

if such effort to reach consistency is not present and available, the top level of government can and will dominate the lower two. The federal government has the most resources by the very nature of the tax structure. The states cannot match resources, yet the States can do most jobs of governing better than the federal. Local governments cannot match either in resources because tax revenue defies gravity and flows upward in government. But local governments deliver the necessary services to the people: law enforcement, emergency services, road repairs, garbage pick-up, drinking water, irrigation water. There must be a way for local government to have a meaningful role in development of the myriad rules and regulations that unelected agencies impose---otherwise, those who deliver the critical services lose out to those who have the most toys. Congress set out to cure the situation with the coordination process for seeking consistency of impact throughout the federal levels.

Naturally, FLPMA is not itself applicable to your program. But, when Congress defines a term such as "coordination", the same definition applies to the term when used in all statutes of a like nature. FLPMA involves management of grazing in a manner to protect the economic viability of ranchers but also to protect the natural environment. The purposes of FLPMA, with regard to grazing, mirror the purposes of NEPA with regard to the broad sweep of environmental actions. They are statutes that would be considered "in para materia", and the terms should be read consistently.

Professor Sutherland's definitive work "*Statutory Construction***"** states: "Statutes are considered in 'pari materia' to pertain to the same subject-matter when they relate to the same person or thing, or the same class of persons or things, or have the same purpose and object. They may be independent or amendatory in form, they may be complete enactments dealing with a single, limited subject matter or sections of a Code or revision; or they may be a combination of these." Sutherland, "Statutory Construction", Section 5202.

He holds that the "principle that statutes in 'pari materia' should be construed together is merely an extension of the principle that all parts of a statute should be construed together. . ." Ibid.

FLPMA and NEPA are statutes in "pari material' because they both set forth processes, procedures and directives from Congress by which environmental decisions must be made.

The United States Supreme Court has enunciated this principle on scores of occasions. Leading cases are cited as supporting authorities for the statements made by Professor Sutherland.

Each state offers a variety of case decisions holding the same principles. A series of cases from the courts in Virginia sets forth the various principles related to in "pari material" that are applicable to FLPMA and NEPA. The cases state the same principles enunciated by Sutherland and by case decisions in each of the states:

Peerless Ins. Co. v. County of Fairfax, 274 Va. 236, 645 S.E.2d 478; Prillaman v. Commonwealth, 199 Va. 401, 405, 100 S.Ed.2d 4 (1957) quoting an extensive American Jurisprudence encyclopedic collection of cases at 50 Am. Jurisdiction, "Statutes" Section 349 at 345; Washington v. Commonwealth, 46 Va. App. 276, 616 S.E.2d 774; Benton, J. & Fitzpatrick, C.J., dissenting; Smith v. Kelley, 162 Va. 645, 174 S.E. 842 (1934); Zamani v. Commonwealth, 26 Va. App. 59, 492 S.E.2d 854, affirmed at 256 Va. 391, 507 S.E. 2d 608 (1998); Lillard v.

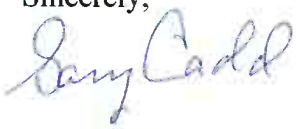
Fairfax County Airport Authority, 208 Va. 8, 155 S.E. 2d 338 (1967); ACB Trucking, Inc. v. Griffin, 5 Va. App. 542.

The statutory and regulatory "concept of 'coordination'" to which you refer is in fact a process of intergovernmental consultation and communication created originally by Congress to assure that local governments are not swept under a metropolitan government wave of SUPER government. The process is designed to ensure that the doctrine of "federalism", a fundamental core of our Constitution, is implemented consistently with the seminal mandate of the Tenth Amendment to the United States Constitution: Federal and state laws must assure that the due process rights of citizens remain formidable.

As I noted above, I am the City Council's liaison for all communications in this matter. I have had a long interest in matters of air and water quality affecting Shasta County and look forward to working with you on this issue. My contact information is:

Gary Cadd
City of Redding
777 Cypress Avenue
Redding, CA 96001
(530) 225-4447
gcadd@ci.redding.ca.us

Sincerely,



Gary Cadd
Council Member

c: City Council
Shasta Coordinating Committee