RIO ARRIBA COUNTY Advisory Board
Established for County Coordination with
Local, State, Tribal & Federal Agencies
ORDINANCE NO.2012-003
ORDINANCE NO. 2012 – 003

AN ORDINANCE ESTABLISHING AN ADVISORY BOARD FOR COUNTY COORDINATION WITH STATE AND FEDERAL AGENCIES REGARDING PROPOSED ACTIONS ON LAND WITHIN THE COUNTY UNDER THEIR MANAGEMENT

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF RIO ARRIBA COUNTY:

SECTION 1. SHORT TITLE

This Ordinance may be cited as the “Establishment of the Rio Arriba County Advisory Board (RACAB) Ordinance.”

SECTION 2. PURPOSE

The purpose of the Establishment of the RACAB Ordinance is to coordinate with Federal Departments and agencies of the State and Local Governments about the land use inventory, planning and management of natural resources on lands located within Rio Arriba County. Coordination and communication with these agencies will ensure that Local, State, Tribal and Federal Plans are given equal footing and consideration in the development of land use and resource management plans, as well as other projects taking place within the County.

SECTION 3. AUTHORITY


SECTION 4. DEFINITIONS

Coordination Protocol and Processes: Plans that lay out organized guidelines by RACAB for the collection, coordination, and delivery of information between agencies and the processes that correspondingly should be followed.

Carrying Capacity: The maximum population size for a species that the environment can sustain successfully.

Common Lands: Collectively owned lands that conventionally have been carefully managed or controlled and that contain natural resources and traditional rights, such as for pasture.
Compromised: Any degree of weakening, endangering, or destabilization either by direct or indirect actions.

Coordinate: Interactions and actions taken that seek to involve multiple and equal parties who function together during the decision-making process for any given project.

Cultural Traditions: A distinctive set of beliefs and practices, specific to the locality of Rio Arriba County and related to land-based communities, which have been passed down for more than a single generation.

Deferece: Proper consideration given to the views and opinions of another.

Federal Land Policy and Management Act: The Federal Land Policy Management Act, or FLPMA (P.L. 94-579), is a United States federal law that governs the way in which the public lands administered by the Bureau of Land Management are managed.

Forest and Watershed Health: A collaborative framework by the New Mexico State Forestry Division that based on currently determined unhealthy conditions, is seeking to maintain and improve the environment from its current state.

Historical Trend Alternatives: Alternatives based on an extrapolation of recent trends into the future to show what is likely to happen over the course of time if the same planning policies and zoning regulations that are currently in place are continued.

Intergovernmental Agreements for Water, Mineral, Timber, or Grazing: Collaboration between multiple public organizations, such as between county and federal that usually involve the purchase of rights for water, mineral, timber, or grazing on government-owned lands.

Land Use Inventory: A database of all lands and their uses within Rio Arriba County including both developed and undeveloped land.

Land Use Management: The process of managing the use and development of land and water resources within Rio Arriba County.

Land Use Planning: Regulations that manage the development of lands within Rio Arriba County, including assessments of natural resources, economic, and social conditions, and visions for the future.

Multiple-Use Activities: Use of land for more than one purpose, for example; grazing of livestock, watershed and wildlife protection, recreation, and timber production.

National Forest Management Act: The National Forest Management Act (NFMA) of 1976 (P.L. 94-588) is a United States federal law that is the primary statute governing the administration of national forests and was an amendment to the Forest and Rangeland Renewable Resources Planning Act of 1974, which called for the management of renewable resources on national forest lands.

Public Rangelands Improvement Act: The Public Rangelands Improvement Act of 1978 (P.L. 95-514) establishes a national policy and commitment to improve the conditions on public rangelands, requires a national inventory and consistent federal management policies, and provides funds for rangeland improvement projects and provides for equal status to States, Counties and ranchers in its coordination. It also amends the Wild Free-Roaming Horses and Burros Act and the Federal Land Policy and Management Act of 1976.
Rangeland Conditions: An evaluation of the current status of rangeland vegetation, used as a guide to ensure sustainable land use.

Rangeland Monitoring Programs: Programs used to describe and document the conditions of rangelands, which may look at for example; the effectiveness of management practices, the balance of forage supply and demand, effects of grazing on natural resources, current rangeland conditions, and possible rangeland improvements.

State, Local, and Tribal Plans: Assessments and determinations by state, local, or tribal agencies of land and water potentials, along with economic and social conditions, used to adopt policies about how the following agencies will choose to pattern land use within their jurisdiction.

Taylor Grazing Act: The Taylor Grazing Act of 1934 (P.L. 73-482) is a United States federal law that provides for the regulation of grazing on the lands administered by Federal agencies (excluding Alaska) to improve rangeland conditions and regulate their use.

Traditional Land Based Communities: Communities whose industries have historically been based in farming and ranching with an emphasis on agriculture and horticulture for food production.

SECTION 5. HISTORICAL CONTEXT

A. SPAIN & MEXICO 1598-1848

Hispano settlements of Rio Arriba date back to the first Spanish settlement in 1598 of Don Juan de Oñate at San Gabriel de Yunge between the banks of the Rio Chama and Rio Grande. This settlement was in addition to the established pre-Columbian Native American populations who lived in this region. When Spanish settlers came, they introduced new land use patterns, crops, livestock, farming and animal ranching practices along with the ordinances and regulations concerning them, primarily Las Siete Partidas (1256), Ordenanzes de Poblacion (1573), Las Leyes de Las Indias (1681), and the Mesta Ordenanzas, Spain (1273) Nueva España (1574).

Most of these land use practices and regulatory provisions evolved over centuries in Iberia, a region geographically identified by the Romans and which now comprises Spain and Portugal. From this region, colonies were introduced to the New World, and the Leyes de Las Indias (1681) was used as the guiding document for the establishment of these new lands.

Throughout the 16th century, the Spanish Crown allocated grants of land to establish new settlements, municipalities, private properties, and municipal common lands. Along with these lands came usufructuary rights to provide the resources needed for the survival and welfare of settlers. These resources included for example; access to water for agriculture, lands for grazing, timber, and other materials used for construction.

Prior to Don Juan de Oñate’s arrival, the Mesta Ordenanzas, or Stock Raisers Association (1568), was the legal basis for administration of ranching throughout the Southwestern region of the United States, encompassing Arizona, California, Colorado, Nevada, New Mexico, Utah, and southwestern Wyoming. These cattle laws remained in place until the period of Mexican Independence from Spain, 1812 to 1820, when offices of royal patronage were abolished, but special local and territorial laws were enacted to continue the enforcement of the Mesta Ordinances by local judges of the plains until the time of the
Mexican cession in 1848. The continuation of these ordinances included for example; stock marks, brands, watercourses, enclosures, horses, commons, and grazing lands.

B. AFTER MEXICO 1846-1912

The first United States law governing the area ceded to the United States by Mexico following the Mexican-American War was the Kearny’s Code (1846). This code was established by Brigadier General Stephen Watts Kearny and continued all the laws of the former Mexican States pertaining to estates, property rights and possession which “(were) not repugnant to, or inconsistent with the constitution of the United States.” The code also continued the prior Mexican range/water laws; and “The laws heretofore in force concerning water courses, stock marks and brands, horses, enclosures, commons and arbitrations shall continue in force.”

The Kearny Code effectively assured continuity and stability at the conquest of the ceded territory by continuing the same pre-war settlement pattern of the Spanish and Mexican periods, based on the system of acequias and other usufructuary rights of the people to the common lands, including pasture. These rights were furthermore protected by the Treaty of Guadalupe Hidalgo, which applied to all ceded territory from Mexico to the United States.

At statehood, New Mexico guaranteed the legal application of the Treaty of Guadalupe Hidalgo by its adoption into the Constitution of the State of New Mexico of Article II, Bill of Rights, Section 5, “Rights under Treaty of Guadalupe Hidalgo preserved”, which reads as follows, “The rights, privileges and immunities, civil, political and religious guaranteed to the people of New Mexico by the Treaty of Guadalupe Hidalgo shall be preserved inviolate.”

New Mexico is the only state from the Mexican territory ceded to the United States, which has ratified its state constitution with a provision requiring that, the “Treaty of Guadalupe Hidalgo shall be preserved inviolate.” Because of this, New Mexico is required to preserve “inviolable...the rights...guaranteed to the people of New Mexico” by the Treaty. It is incumbent upon the County and its native land-based residents to identify and document the local practices, customs, and traditions that are protected under the Treaty.

C. THE 20TH CENTURY

In 1907, the Forest Reserve was created, later becoming the United States Forest Service (USFS) which was entrusted with managing and administrating forest lands. In 1946, the Bureau of Land Management (BLM) was created through consolidation of the General Land Office (1812) and the U.S. Grazing Service (1934). Following the creation of these two powerful federal land management agencies, significant amounts of common lands, such as pueblo and land grant properties, were transferred to the USFS and BLM land holdings in Rio Arriba County.

Under the new management of these federal agencies, the cultural traditions of local communities, who specific to this region have come from a history of traditional land based communities, have been compromised. It is the observation of the Rio Arriba County Planning Office that valuable community members such as livestock growers who, for the past 400 years have established and maintained stock ponds, improved and maintained springs serving both livestock and wildlife, and utilized fire regimes to maintain the health of the forest, have not been given proper audience by federal agencies.
D. FEDERAL OBLIGATIONS

Federal agencies have an obligation under federal law to coordinate at all stages of the planning and management process, with state and local governments in the development, implementation and enforcement of federal plans and policies according to the Federal Land Policy and Management Act (FLPMA) of 1976. The purpose of this document is to govern the development of resource management plans or management framework plans and in doing so, "to ensure that federal land use plans are consistent with local plans to the maximum extent possible." These coordination requirements allow for both parties to keep apprised of new and existing land management plans, assuring that equal footing and consideration is given to existing plans germane in the development of resource management plans, assisting in resolving inconsistencies between county and federal agencies, and providing for meaningful public involvement, including early public notice of proposals that impact non-federal lands.

FLPMA concludes that,

The terms cooperate, coordinate and consult denote a desire by Congress that federal, state and local governments work together for the general welfare of all citizens with special emphasis on localized needs. A county's participation as a joint lead agency or at a minimum, cooperating agency in the BLM decision making processes can only produce positive effects.

The National Environmental Policy Act (NEPA) of 1969 is the foundation of our Nation's modern environmental protections. The President of the United States proclaimed its importance at the 40th Anniversary of NEPA, 2010 asserting, "Our Nation's long-term prosperity depends upon our faithful stewardship of the air we breathe, the water we drink, and the land we sow." The success of NEPA has been realized through the continued importance placed on environmental awareness and citizen participation.

A description of the NEPA Congressional Declaration is found in the opening document, Title I,

...it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, 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.

The requirements for this cooperation are defined explicitly,

NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken...Agencies shall reduce delay by: Emphasizing interagency cooperation before the environmental impact statement is prepared, rather than submission of adversary comments on a completed document.

Use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.

E. AT HOME

The County is granted the power by the State to adopt ordinances to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort, and convenience of the
County and its inhabitants. The enforcement of Rio Arriba County ordinances compiled, amended, restated, and supplemented by this ordinance are essential to providing the county with the ability to protect the health, safety and welfare of our residents. A Comprehensive Plan has been adopted as a means of creating a system of orderly development within the County and ensuring that our natural resources, land, air, water and beauty can be sustained and enjoyed by future generations and the Design and Development Regulation System Ordinance 2011-02 provides a framework for future growth, land use, and development decisions within the county.

Deference must be given to the County of Rio Arriba by federal departments and agencies of the State about the land use inventory, planning and management of lands located within Rio Arriba County. The cooperation of these agencies comes with the benefit of sustaining a non-adversarial environment with regulations that are effective, consistent, sensible, and understandable, fulfilling the constitutional principles of checks, balances, and the protection of the unalienable rights of the citizens.

SECTION 5. APPLICABILITY, SCOPE AND ADVISORY TO RIO ARRIBA BOARD OF COUNTY COMMISSIONERS

The Rio Arriba County Advisory Board (RACAB) has formal authority under this Ordinance to communicate, meet and coordinate with Federal, State and Local Governments in fulfilling the purpose of this Ordinance. The RACBC, however, is advisory in nature to the Rio Arriba Board of County Commissioners (RABCC) and is subject to its exclusive control in all matters requiring a final decision. In this advisory capacity, the RACBC can make recommendations and provide key information and materials to the Rio Arriba Board of County Commissioners (RACAB). This Ordinance applies to lands within Rio Arriba County that are currently managed by Federal and State departments and agencies. The RACBC does not apply to lands within Rio Arriba County that are within the zoning jurisdiction of a municipality or within Native American designated tribal lands. Unless a preemption argument is addressed and proven, this ordinance shall apply to lands owned by the United States or the State of New Mexico. The establishment of this Board of Coordination between the County and State and Federal agencies will:

A. GUIDE. Provide guidance to RABOC on rangeland conditions, forest and watershed health, historical trend alternatives, and actions needed to protect the County's tax base and private investments.

B. RESEARCH. Act as a conduit through which science, data and monitoring information is received by the County and dispense this information to decision makers in federal and state agencies, ensuring that the most accurate, current, and comprehensive scientific information is available for research purposes and decision making.

C. COORDINATE. Communicate and coordinate with the Bureau of Land Management (BLM), the US Forest Service (USFS) and other appropriate Federal and State agencies to communicate about relevant projects and land use plans within the county.

D. FOLLOW POLICY. Fulfill the purposes and requirements of the Organic Act of 1897, the Taylor Grazing Act, the Federal Land Policy and Management Act (FLPMA), the Public Rangelands Improvement Act, and the National Forest Management Act (NFMA).
E. RECOMMEND. Advise, recommend, consult, coordinate, and cooperate with State and federal resource agencies related to grazing, livestock operations, management and stability, elk and predator management, RS 2477 roads, travel, and access, threatened and endangered species, rangeland planning and conditions, watershed restoration, and forest health.

F. LOOK AHEAD. Assure the long-term protection of multiple-use activities and continued access per the mandates of the BLM, Forest Service, and the State.

SECTION 6. RESPONSIBILITIES

The Rio Arriba County Advisory Board (RACAB) will be responsible for keeping apprised of all new and historical information regarding the use of natural resources, land use inventory, planning, and management of lands within the county. Communication lines should be kept as close to “real time” as possible in order to provide comprehensive involvement and coordination between County, Federal and State Agencies. The following topics, in addition to others, should necessarily be addressed and monitored by RACAB:

A. INTERAGENCY PROCESSES. Intergovernmental Agreements for Water, Mineral, Timber, or Grazing and the establishment of processes to coordinate with the BLM, Forest Service and State Land Office.

B. RANGELAND MONITORING. The development and implementation of scientific and standardized rangeland monitoring programs for all Federal and State allotments and leases of livestock operations in the County.

C. LIVESTOCK OPERATIONS. The improvement of livestock operations, land stewardship practices, and rangeland management or rangeland restorations as necessary.

D. RESOURCE REGULATIONS. The determination of carrying capacities for rangelands, seasons of use, drought management, modification of boundaries, alterations of stock management practices, wild ungulate management and removal, biomass removal and management, forest restoration, and any other matters that affect local resource laws and regulations.

E. GRAZING. Recommendations on grazing permits or leases, especially for grazing renewals or re-issuances of permits or leases.

F. FUNDING. The use of rangeland improvement funds as well as other sources of funding for improving range and livestock conditions and trends.

G. NOTIFICATIONS. Notices of all existing and proposed land use and resource management activities, including the documentation of county ordinances, policy statements, and environmental assessments.
SECTION 7. MEMBERSHIP

The Rio Arriba County Advisory Board (RACAB) will stand to represent the diverse values of the community by bringing together a wealth of unique knowledge and skills and this will serve to complement the formal decision making of the Rio Arriba Board of County Commissioners (RABOCC).

A. SIZE. RACAB will consist of a minimum of seven (7) members and a maximum of nine (9) members, excluding ex-officio members to be outlined in detail in the RACAB’s bylaws once established by the RACAB.

B. APPOINTMENT. Appointments, nominations, or elections to RACAB shall be made by the Rio Arriba Board of County Commissioners (RABCC), which appointments may include consultation with other local governmental entities such as the Tribes, Pueblos, Land Grants, Acequias, Community Water Systems and Soil Conservation Districts as well as other private organizations and industries.

C. REPRESENTATION. A minimum of seven (7) members or a maximum of nine (9) members for the RACBOC will be chosen to represent the geographic and land use activities of the region, from among the following categories: one (1) Rio Arriba County Commissioner or designee; two (2) permitees from the USFS, one (1) permittee from BLM, one (1) at large local community member to represent other community interests and two (2) or four (4) other local community members to represent geographic areas of the county with experience in traditional and native community resource interests.

D. STAFF SUPPORT. The minimum of one (1) staff member from the Rio Arriba Planning and Zoning or other County Department will attend all meetings to provide administrative support to the functioning of the RACBOC.

E. TERMS. Each appointment of an RACAB member shall be for the minimum of one (1) year from the date of appointment, with none serving more than four (4) successive years. Terms shall be staggered for the initial RACBOC in order to assure continuity and historical knowledge in successive appointed RACBOC members.

F. REMOVAL. It is at the discretion of the RABOC that a member of RACAB shall lose membership for reasons such as failure to attend meetings.

G. BY-LAWS. The constitution, articles, and by-laws for RACBOC will be established and may be amended by a two-thirds majority vote of active board members and as approved by RACBOC.

H. MEETING TIMES. Regular meetings shall be held on a monthly basis at a date, time, and length to be decided through the consensus of the board members.

I. MINUTES. Records shall be kept that document: agendas, member attendance, topic discussions and recommendations, activities or actions taken, and if necessary, special meetings called.

J. TRANSPARENCY. All meetings will be open to the public in conformance with the New Mexico Open Meetings Act. Please refer to http://www.nmlegis.gov/pdf/OMAChecklist.pdf for access to a checklist, “designed to help New Mexico government operate the way it should, under full ‘sunshine’ for the benefit of all.”
REVIEWED, APPROVED, AND ADOPTED ON THIS 29th DAY OF September, 2011, BY THE RIO ARRIBA BOARD OF COUNTY COMMISSIONERS.

RIO ARRIBA COUNTY BOARD OF COUNTY COMMISSIONERS

FELIPE MARTINEZ, CHAIRMAN/COMMISSIONER, DISTRICT III

ALFREDO L. MONTOYA, COMMISSIONER, DISTRICT II

BARNEY TRUJILLO, COMMISSIONER, DISTRICT I

ATTEST: MOISES A. MORALES JR., COUNTY CLERK

CERTIFICATE OF FILING

I, Moises A. Morales, Jr. County Clerk, do hereby certify that the foregoing ordinance designated as Ordinance NO: 2012-003 was filed in my office on the 29th day of September 2011 in Book Number 534 Pages 4748.

MOISES A. MORALES JR., COUNTY CLERK