ADDENDUM

Sweetwater County Conservation District
Land and Resource Use Plan and Policy

January 2005

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LAND and RESOURCE USE PLAN and POLICY

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ADDENDUM OF STATUTORY AND REGULATORY MATERIALS
SWEETWATER COUNTY CONSERVATION DISTRICT
LAND AND RESOURCE USE PLAN AND POLICY

FEDERAL STATUTES AND REGULATIONS

1. SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT amending the REGULATORY FLEXIBILITY ACT, (Selected Sections)

§ 601. Definitions

For purposes of this chapter--

(1) the term ``agency'' means an agency as defined in section 551(1) of this title;

(2) the term ``rule'' means any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title, or any other law, including any rule of general applicability governing Federal grants to State and local governments for which the agency provides an opportunity for notice and public comment, except that the term ``rule'' does not include a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances;

(3) the term ``small business'' has the same meaning as the term ``small business concern'' under section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;

(4) the term ``small organization'' means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;

(5) the term ``small governmental jurisdiction'' means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the Federal Register;

(6) the term ``small entity'' shall have the same meaning as the terms ``small

business'', ``small organization'' and ``small governmental jurisdiction'' defined in paragraphs (3), (4) and (5) of this section; and
(7) the term ``collection of information''--
(A) means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either--
(i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, 10 or more persons, other than agencies, instrumentalities, or employees of the United States; or
(ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes; and
(B) shall not include a collection of information described under section 3518(c)(1) of title 44, United States Code.
(8) Recordkeeping requirement.--The term ``recordkeeping requirement'' means a requirement imposed by an agency on persons to maintain specified records.

§ 603. Initial regulatory flexibility analysis
(a) Whenever an agency is required by section 553 of this title, or any other law, to publish general notice of proposed rulemaking for any proposed rule, or publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States, the agency shall prepare and make available for public comment an initial regulatory flexibility analysis. Such analysis shall describe the impact of the proposed rule on small entities. The initial regulatory flexibility analysis or a summary shall be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule. The agency shall transmit a copy of the initial regulatory flexibility analysis to the Chief Counsel for Advocacy of the Small Business Administration. In the case of an interpretative rule involving the internal revenue laws of the United States, this chapter applies to interpretative rules published in the Federal Register for codification in the Code of Federal Regulations, but only to the extent that such interpretative rules impose on small entities a collection of information requirement.
(b) Each initial regulatory flexibility analysis required under this section shall contain-
(1) a description of the reasons why action by the agency is being considered;
(2) a succinct statement of the objectives of, and legal basis for, the proposed rule;
(3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;
(4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
(5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.
(c) Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives

of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as--
(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
(2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
(3) the use of performance rather than design standards; and
(4) an exemption from coverage of the rule, or any part thereof, for such small entities.

§ 604. Final regulatory flexibility analysis
(a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, or promulgates a final interpretative rule involving the internal revenue laws of the United States as described in section 603(a), the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain--
(1) a succinct statement of the need for, and objectives of, the rule;
(2) a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
(3) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;
(4) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and
(5) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.
(b) The agency shall make copies of the final regulatory flexibility analysis available to members of the public and shall publish in the Federal Register such analysis or a summary thereof.

§ 605. Avoidance of duplicative or unnecessary analyses.
(a) Any Federal agency may perform the analyses required by sections 602, 603, and 604 of this title in conjunction with or as a part of any other agenda or analysis required by any other law if such other analysis satisfies the provisions of such sections.

(b) Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register at the time of publication of general notice of proposed rulemaking for the rule or at the time of publication of the final rule, along with a statement providing the factual basis for such certification. The agency shall provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.
(c) In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purposes of sections 602, 603, 604 and 610 of this title.

§ 606. Effect on other law
The requirements of sections 603 and 604 of this title do not alter in any manner standards otherwise applicable by law to agency action.

§ 607. Preparation of analyses
In complying with the provisions of sections 603 and 604 of this title, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or alternatives to the proposed rule, or more general descriptive statements if quantification is not practicable or reliable.

§ 608. Procedure for waiver or delay of completion
(a) An agency head may waive or delay the completion of some or all of the requirements of section 603 of this title by publishing in the Federal Register, not later than the date of publication of the final rule, a written finding, with reasons therefore, that the final rule is being promulgated in response to an emergency that makes compliance or timely compliance with the provisions of section 603 of this title impracticable.
(b) Except as provided in section 605(b), an agency head may not waive the requirements of section 604 of this title. An agency head may delay the completion of the requirements of section 604 of this title for a period of not more than one hundred and eighty days after the date of publication in the Federal Register of a final rule by publishing in the Federal Register, not later than such date of publication, a written finding, with reasons therefore, that the final rule is being promulgated in response to an emergency that makes timely compliance with the provisions of section 604 of this title impracticable. If the agency has not prepared a final regulatory analysis pursuant to section 604 of this title within one hundred and eighty days from the date of publication of the final rule, such rule shall lapse and have no effect. Such rule shall not be repromulgated until a final regulatory flexibility analysis has been completed by the agency.

§ 609. Procedures for gathering comments

(a) When any rule is promulgated which will have a significant economic impact on a substantial number of small entities, the head of the agency promulgating the rule or the official of the agency with statutory responsibility for the promulgation of the rule shall assure that small entities have been given an opportunity to participate in the rulemaking for the rule through the reasonable use of techniques such as--

(1) the inclusion in an advanced notice of proposed rulemaking, if issued, of a statement that the proposed rule may have a significant economic effect on a substantial number of small entities;

(2) the publication of general notice of proposed rulemaking in publications likely to be obtained by small entities;

(3) the direct notification of interested small entities;

(4) the conduct of open conferences or public hearings concerning the rule for small entities including soliciting and receiving comments over computer networks; and

(5) the adoption or modification of agency procedural rules to reduce the cost or complexity of participation in the rulemaking by small entities.

(b) Prior to publication of an initial regulatory flexibility analysis which a covered agency is required to conduct by this chapter--

(1) a covered agency shall notify the Chief Counsel for Advocacy of the Small Business Administration and provide the Chief Counsel with information on the potential impacts of the proposed rule on small entities and the type of small entities that might be affected;

(2) not later than 15 days after the date of receipt of the materials described in paragraph (1), the Chief Counsel shall identify individuals representative of affected small entities for the purpose of obtaining advice and recommendations from those individuals about the potential impacts of the proposed rule;

(3) the agency shall convene a review panel for such rule consisting wholly of full time Federal employees of the office within the agency responsible for carrying out the proposed rule, the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel;

(4) the panel shall review any material the agency has prepared in connection with this chapter, including any draft proposed rule, collect advice and recommendations of each individual small entity representative identified by the agency after consultation with the Chief Counsel, on issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c);

(5) not later than 60 days after the date a covered agency convenes a review panel pursuant to paragraph (3), the review panel shall report on the comments of the small entity representatives and its findings as to issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c), provided that such report shall be made public as part of the rulemaking record; and

(6) where appropriate, the agency shall modify the proposed rule, the initial regulatory flexibility analysis or the decision on whether an initial regulatory flexibility analysis is required.

(c) An agency may in its discretion apply subsection (b) to rules that the agency

intends to certify under subsection 605(b), but the agency believes may have a greater than de minimis impact on a substantial number of small entities.
(d) For purposes of this section, the term ``covered agency'' means the Environmental Protection Agency and the Occupational Safety and Health Administration of the Department of Labor.
(e) The Chief Counsel for Advocacy, in consultation with the individuals identified in subsection (b)(2), and with the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, may waive the requirements of subsections (b)(3), (b)(4), and (b)(5) by including in the rulemaking record a written finding, with reasons therefore, that those requirements would not advance the effective participation of small entities in the rulemaking process. For purposes of this subsection, the factors to be considered in making such a finding are as follows:
(1) In developing a proposed rule, the extent to which the covered agency consulted with individuals representative of affected small entities with respect to the potential impacts of the rule and took such concerns into consideration.
(2) Special circumstances requiring prompt issuance of the rule.
(3) Whether the requirements of subsection (b) would provide the individuals identified in subsection (b)(2) with a competitive advantage relative to other small entities.

§ 611. Judicial review
(a)(1) For any rule subject to this chapter, a small entity that is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.
(2) Each court having jurisdiction to review such rule for compliance with section 553, or under any other provision of law, shall have jurisdiction to review any claims of noncompliance with sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.
(3)(A) A small entity may seek such review during the period beginning on the date of final agency action and ending one year later, except that where a provision of law requires that an action challenging a final agency action be commenced before the expiration of one year, such lesser period shall apply to an action for judicial review under this section.
(B) In the case where an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b) of this chapter, an action for judicial review under this section shall be filed not later than--
(i) one year after the date the analysis is made available to the public, or
(ii) where a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the 1-year period, the number of days specified in such provision of law that is after the date the analysis is made

available to the public.
(4) In granting any relief in an action under this section, the court shall order the agency to take corrective action consistent with this chapter and chapter 7, including, but not limited to--
(A) remanding the rule to the agency, and
(B) deferring the enforcement of the rule against small entities unless the court finds that continued enforcement of the rule is in the public interest.
(5) Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law or to grant any other relief in addition to the requirements of this section.
(b) In an action for the judicial review of a rule, the regulatory flexibility analysis for such rule, including an analysis prepared or corrected pursuant to paragraph (a)(4), shall constitute part of the entire record of agency action in connection with such review.
(c) Compliance or noncompliance by an agency with the provisions of this chapter shall be subject to judicial review only in accordance with this section.
(d) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise permitted by law.

§ 612. Reports and intervention rights
(a) The Chief Counsel for Advocacy of the Small Business Administration shall monitor agency compliance with this chapter and shall report at least annually thereon to the President and to the Committees on the Judiciary and Small Business of the Senate and House of Representatives.
(b) The Chief Counsel for Advocacy of the Small Business Administration is authorized to appear as amicus curiae in any action brought in a court of the United States to review a rule. In any such action, the Chief Counsel is authorized to present his or her views with respect to compliance with this chapter, the adequacy of the rulemaking record with respect to small entities and the effect of the rule on small entities.
(c) A court of the United States shall grant the application of the Chief Counsel for Advocacy of the Small Business Administration to appear in any such action for the purposes described in subsection (b).

2. ANIMAL DAMAGE CONTROL ACT, 7 U.S.C. §426; Predatory and other wild animals

The Secretary of Agriculture may conduct a program of wildlife services with respect to injurious animal species and take any action the Secretary considers necessary in conducting the program. The Secretary shall administer the program in a manner consistent with all of the wildlife services authorities in effect on the day before October 28, 2000.

3. NATIONAL HISTORIC PRESERVATION ACT, 16 U.S.C. §§470-470s (Selected Sections)

§1 (16 U.S.C. 470)

(a) This Act may be cited as the "National Historic Preservation Act."

(b) The Congress finds and declares that-

(1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage;

(2) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;

(3) historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency;

(4) the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans;

(5) in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation;

(6) the increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of federal and federally assisted projects and will assist economic growth and development; and

(7) although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

§2 (16 U.S.C. 470-1)

It shall be the policy of the Federal Government, in cooperation with other nations and in partnership with the States, governments, Indian tribes, and private organizations and individuals to-

(1) use measures, including financial and technical assistance, to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations;

(2) provide leadership in the preservation of the prehistoric and historic resources of the United States and of the international community of nations and in the

administration of the national preservation program in partnership with States, Indian tribes, Native Hawaiians, and local governments;
(3) administer federally owned, administered, or controlled prehistoric and historic resources in a spirit of stewardship for the inspiration and benefit of present and future generations;
(4) contribute to the preservation of nonfederally owned prehistoric and historic resources and give maximum encouragement to organizations and individuals undertaking preservation by private means;
(5) encourage the public and private preservation and utilization of all usable elements of the Nation's historic built environment; and
(6) assist State and local governments, Indian tribes and Native Hawaiian organizations and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

a. Regulations, 36 C.F.R. Subpart A Purposes and Participants

§800.1 Purposes.
(a) Purposes of the section 106 process. Section 106 of the National Historic Preservation Act requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment on such undertakings. The procedures in this part define how Federal agencies meet these statutory responsibilities. The section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation among the agency official and other parties with an interest in the effects of the undertaking on historic properties, commencing at the early stages of project planning. The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.
(b) Relation to other provisions of the act. Section 106 is related to other provisions of the act designed to further the national policy of historic preservation. References to those provisions are included in this part to identify circumstances where they may affect actions taken to meet section 106 requirements. Such provisions may have their own implementing regulations or guidelines and are not intended to be implemented by the procedures in this part except insofar as they relate to the section 106 process. Guidelines, policies, and procedures issued by other agencies, including the Secretary, have been cited in this part for ease of access and are not incorporated by reference.
(c) Timing. The agency official must complete the section 106 process "prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license." This does not prohibit agency official from conducting or authorizing nondestructive project planning activities before completing compliance with section 106, provided that such actions do not restrict the subsequent consideration of alternatives to avoid, minimize or mitigate the undertaking's adverse effects on historic properties. The agency official shall ensure that the

section 106 process is initiated early in the undertaking's planning, so that a broad range of alternatives may be considered during the planning process for the undertaking.

§800.2 Participants in the Section 106 process.

(a) Agency official. It is the statutory obligation of the Federal agency to fulfill the requirements of section 106 and to ensure that an agency official with jurisdiction over an undertaking takes legal and financial responsibility for section 106 compliance in accordance with subpart B of this part. The agency official has approval authority for the undertaking and can commit the Federal agency to take appropriate action for a specific undertaking as a result of section 106 compliance. For the purposes of subpart C of this part, the agency official has the authority to commit the Federal agency to any obligation it may assume in the implementation of a program alternative. The agency official may be a State, local, or tribal government official who has been delegated legal responsibility for compliance with section 106 in accordance with Federal law.

(1) Professional standards. Section 112(a)(1)(A) of the act requires each Federal agency responsible for the protection of historic resources, including archeological resources, to ensure that all actions taken by employees or contractors of the agency shall meet professional standards under regulations developed by the Secretary.

(2) Lead Federal agency. If more than one Federal agency is involved in an undertaking, some or all the agencies may designate a lead Federal agency, which shall identify the appropriate official to serve as the agency official who shall act on their behalf, fulfilling their collective responsibilities under section 106. Those Federal agencies that do not designate a lead Federal agency remain individually responsible for their compliance with this part.

(3) Use of contractors. Consistent with applicable conflict of interest laws, the agency official may use the services of applicants, consultants, or designees to prepare information, analyses and recommendations under this part. The agency official remains legally responsible for all required findings and determinations. If a document or study is prepared by a non-Federal party, the agency official is responsible for ensuring that its content meets applicable standards and guidelines.

(4) Consultation. The agency official shall involve the consulting parties described in paragraph (c) of this section in findings and determinations made during the section 106 process. The agency official should plan consultations appropriate to the scale of the undertaking and the scope of Federal involvement and coordinated with other requirements of other statutes, as applicable, such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act, and agency-specific legislation. The Council encourages the agency official to use to the extent possible existing agency procedures and mechanisms to fulfill the consultation requirements of this part.

(b) Council. The Council issues regulations to implement section 106, provides

guidance and advice on the application of the procedures in this part, and generally oversees the operation of the section 106 process. The Council also consults with and comments to agency officials on individual undertakings and programs that affect historic properties.

(1) Council entry into the section 106 process. When the Council determines that its involvement is necessary to ensure that the purposes of section 106 and the act are met, the Council may enter the section 106 process. Criteria guiding Council decisions to enter the section 106 process are found in appendix A to this part. The Council will document that the criteria have been met and notify the parties to the section 106 process as required by this part.

(2) Council assistance. Participants in the section 106 process may seek advice, guidance and assistance from the Council on the application of this part to specific undertakings, including the resolution of disagreements, whether or not the Council is formally involved in the review of the undertaking. If questions arise regarding the conduct of the section 106 process, participants are encouraged to obtain the Council's advice on completing the process.

(c) Consulting parties. The following parties have consultative roles in the section 106 process.

(1) State historic preservation officer. (i) The State historic preservation officer (SHPO) reflects the interests of the State and its citizens in the preservation of their cultural heritage. In accordance with section 101(b)(3) of the act, the SHPO advises and assists Federal agencies in carrying out their section 106 responsibilities and cooperates with such agencies, local governments and organizations and individuals to ensure that historic properties are taking into consideration at all levels of planning and development.

(ii) If an Indian tribe has assumed the functions of the SHPO in the section 106 process for undertakings on tribal lands, the SHPO shall participate as a consulting party if the undertaking takes place on tribal lands but affects historic properties off tribal lands, if requested in accordance with §800.3(c)(1), or if the Indian tribe agrees to include the SHPO pursuant to §800.3(f)(3).

(3) Representatives of local governments. A representative of a local government with jurisdiction over the area in which the effects of an undertaking may occur is entitled to participate as a consulting party. Under other provisions of Federal law, the local government may be authorized to act as the agency official for purposes of section 106.

4. ARCHEOLOGICAL RESOURCES PROTECTION ACT, 16 U.S.C. §470aa-470mm (Selected Sections)

§470aa. Congressional findings and declaration of purpose

(a) The Congress finds that--

(1) archaeological resources on public lands and Indian lands are an accessible and irreplaceable part of the Nation's heritage;

(2) these resources are increasingly endangered because of their commercial

attractiveness;
(3) existing Federal laws do not provide adequate protection to prevent the loss and destruction of these archaeological resources and sites resulting from uncontrolled excavations and pillage; and
(4) there is a wealth of archaeological information which has been legally obtained by private individuals for noncommercial purposes and which could voluntarily be made available to professional archaeologists and institutions.
(b) The purpose of this chapter is to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data which were obtained before October 31, 1979.

§470ee. Prohibited acts and criminal penalties
(a) Unauthorized excavation, removal, damage, alteration, or defacement of archaeological resources
No person may excavate, remove, damage, or otherwise alter or deface, or attempt to excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under section 470cc of this title, a permit referred to in section 470cc(h)(2) of this title, or the exemption contained in section 470cc(g)(1) of this title.
(b) Trafficking in archaeological resources the excavation or removal of which was wrongful under Federal law
No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange any archaeological resource if such resource was excavated or removed from public lands or Indian lands in violation of--
(1) the prohibition contained in subsection (a) of this section, or
(2) any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.
(c) Trafficking in interstate or foreign commerce in archaeological resources the excavation, removal, sale, purchase, exchange, transportation or receipt of which was wrongful under State or local law
No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange, in interstate or foreign commerce, any archaeological resource excavated, removed, sold, purchased, exchanged, transported, or received in violation of any provision, rule, regulation, ordinance, or permit in effect under State or local law.
(d) Penalties
Any person who knowingly violates, or counsels, procures, solicits, or employs any other person to violate, any prohibition contained in subsection (a), (b), or (c) of this section shall, upon conviction, be fined not more than $10,000 or imprisoned not more than one year, or both: Provided, however, That if the commercial or

archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources exceeds the sum of $500, such person shall be fined not more than $20,000 or imprisoned not more than two years, or both. In the case of a second or subsequent such violation upon conviction such person shall be fined not more than $100,000, or imprisoned not more than five years, or both.
(e) Effective date
The prohibitions contained in this section shall take effect on October 31, 1979.
(f) Prospective application
Nothing in subsection (b)(1) of this section shall be deemed applicable to any person with respect to an archaeological resource which was in the lawful possession of such person prior to October 31, 1979.
(g) Removal of arrowheads located on ground surface
Nothing in subsection (d) of this section shall be deemed applicable to any person with respect to the removal of arrowheads located on the surface of the ground.

5. ASHLEY NATIONAL FOREST, 16 U.S.C. §460V-1

The Ashley National Forest was established through a land exchange pursuant to 16 U.S.C. §486a (now repealed), in 1931 46 Stat. 1040. Congress established the Flaming Gorge National Recreation Area in 1968 to be administered by the Forest Service.

16 U.S.C. §460v-1
The administration, protection, and development of the recreation area shall be by the Secretary of Agriculture (hereinafter called the ``Secretary'') in accordance with the laws, rules, and regulations applicable to national forests, in a manner coordinated with the other purposes of the Colorado River storage project, and in such manner as in his judgment will best provide for (1) public outdoor recreation benefits; (2) conservation of scenic, scientific, historic, and other values contributing to public enjoyment; and (3) such management, utilization, and disposal of natural resources as in his judgment will promote or are compatible with, and do not significantly impair the purposes for which the recreation area is established: Provided, That lands or waters needed or used for the operation of the Colorado River storage project shall continue to be administered by the Secretary of the Interior to the extent he determines to be required for such operation.

6. SECURE RURAL SCHOOLS AND COMMUNITY SELF-DETERMINATION ACT OF 2000, 16 U.S.C.§500 note

Payment and evaluation of receipts to State or Territory for schools and roads; moneys received; projections of revenues and estimated payments
On and after May 23, 1908, twenty-five per centum of all moneys received during any fiscal year from each national forest shall be paid, at the end of such year, by the Secretary of the Treasury to the State or Territory in which such national forest

is situated, to be expended as the State or Territorial legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which such national forest is situated: *Provided*, That when any national forest is in more than one State or Territory or county the distributive share to each from the proceeds of such forest shall be proportional to its area therein. In sales of logs, ties, poles, posts, cordwood, pulpwood, and other forest products the amounts made available for schools and roads by this section shall be based upon the stumpage value of the timber. Beginning October 1, 1976, the term "moneys received" shall include all collections under the Act of June 9, 1930, and all amounts earned or allowed any purchaser of national forest timber and other forest products within such State as purchaser credits, for the construction of roads on the National Forest Transportation System within such national forests or parts thereof in connection with any Forest Service timber sales contract. The Secretary of Agriculture shall, from time to time as he goes through his process of developing the budget revenue estimates, make available to the States his current projections of revenues and payments estimated to be made under the Act of May 23, 1908, as amended, or any other special Acts making payments in lieu of taxes, for their use for local budget planning purposes.

16 U.S.C. §500 note (b) Revision of Table

(b) Revision of Table.--For the purpose of making payments under section 102 of such Act [set out in a note below] to eligible States and eligible counties for fiscal years 2002 through 2006, as required by section 101(a)(1) of such Act, the Secretary of Agriculture shall revise the table referred to in subsection (a) to accurately reflect, to the maximum extent practicable, each eligible State's and eligible county's historic share of the 25-percent payments and safety net payments made for the fiscal years of the eligibility period.

7. FLAMING GORGE NATIONAL RECREATION AREA, 16 U.S.C. §640v

§460v-1. Administration, protection, and development by Secretary of Agriculture; administration of land or waters for Colorado River storage project by Secretary of the Interior

The administration, protection, and development of the recreation area shall be by the Secretary of Agriculture (hereinafter called the ``Secretary'') in accordance with the laws, rules, and regulations applicable to national forests, in a manner coordinated with the other purposes of the Colorado River storage project, and in such manner as in his judgment will best provide for (1) public outdoor recreation benefits; (2) conservation of scenic, scientific, historic, and other values contributing to public enjoyment; and (3) such management, utilization, and disposal of natural resources as in his judgment will promote or are compatible with, and do not significantly impair the purposes for which the recreation area is established: Provided, That lands or waters needed or used for the operation of the Colorado River storage project shall continue to be administered by the Secretary of the

Interior to the extent he determines to be required for such operation.

§460v-2. Boundaries; adjustments; publication in Federal Register
Within six months after October 1, 1968, the Secretary shall publish in the Federal Register a detailed description of the boundaries of the recreation area. Following such publication, the Secretary may make minor adjustments in the boundary of the recreation area by publication of the amended description thereof in the Federal Register: Provided, That the total acreage of the recreation area within the adjusted boundary does not exceed the acreage of the recreation area as shown on the map referred to in section 460v of this title.

§460v-3. Hunting, fishing, and trapping
The Secretary shall permit hunting, fishing, and trapping on the lands and waters under his jurisdiction within the recreation area in accordance with the applicable Federal and State laws: Provided, That the Secretary, after consultation with the respective State fish and game commissions, may issue regulations designating zones where and establishing periods when no hunting, fishing, or trapping shall be permitted for reasons of public safety, administration, or public use and enjoyment. Nothing in this subchapter shall affect the jurisdiction or responsibilities of the States of Utah and Wyoming under other provisions of State laws with respect to hunting and fishing.

§460v-4. Lands withdrawn from location, entry, and patent under United States mining laws; removal of minerals; receipts, disposition.
The lands within the recreation area, subject to valid existing rights, are hereby withdrawn from location, entry, and patent under the United States mining laws. The Secretary of the Interior, under such regulations as he deems appropriate, may permit the removal of the nonleasable minerals from lands or interests in lands within the recreation area in the manner prescribed by section 387 of title 43, and he may permit the removal of leasable minerals from lands or interests in lands within the recreation area in accordance with the Mineral Leasing Act of February 24, 1920, as amended [30 U.S.C. 181 et seq.], or the Acquired Lands Mineral Leasing Act of August 7, 1947 [30 U.S.C. 351 et seq.], if he finds that such disposition would not have significant adverse effects on the purposes of the Colorado River storage project and the Secretary of Agriculture finds that such disposition would not have significant adverse effects on the purposes of the recreation area: Provided, That any lease or permit respecting such minerals in the recreation area shall be issued only with the consent of the Secretary of Agriculture and subject to such conditions as he may prescribe.
All receipts derived from permits and leases issued under the authority of this section for removal of nonleasable minerals shall be paid into the same funds or accounts in the Treasury of the United States and shall be distributed in the same manner as provided for receipts from national forests. Any receipts derived from permits or leases issued on lands in the recreation area under the Mineral Leasing

Act of February 25, 1920, as amended, or the Act of August 7, 1947, shall be disposed of as provided in the applicable Act.

§460v-5. Ashley National Forest; addition of lands of Flaming Gorge National Recreation Area

The boundaries of the Ashley National Forest are hereby extended to include all of the lands not presently within such boundaries lying within the recreation area as described in accordance with sections 460v and 460v-2 of this title.

§460v-6. Addition of lands to Forest; administration of land for Colorado River storage project by Secretary of the Interior

Subject to any valid claim or entry now existing and hereafter legally maintained, all public lands of the United States and all lands of the United States heretofore or hereafter acquired or reserved for use in connection with the Colorado River storage project within the exterior boundaries of the recreation area which have not heretofore been added to and made a part of the Ashley National Forest, and all lands of the United States acquired for the purpose of the recreation area, are hereby added to and made a part of the Ashley National Forest: Provided, That lands within the flow lines of any reservoir operated and maintained by the Department of the Interior or otherwise needed or used for the operation of the Colorado River storage project shall continue to be administered by the Secretary of the Interior to the extent he determines to be required for such operation.

§460v-7. Availability of land and water conservation fund moneys

Funds hereafter appropriated and available for the acquisition of lands and waters and interests therein in the national forest system pursuant to section 460l-9 of this title, shall be available for the acquisition of any lands, waters, and interests therein within the boundaries of the recreation area.

§460v-8. State and local jurisdiction

Nothing in this subchapter shall deprive any State or political subdivision thereof of its right to exercise civil and criminal jurisdiction within the recreation area consistent with the provisions of this subchapter or of its right to tax persons, corporations, franchises, or other non-Federal property, including mineral or other interests, in or on lands or waters within the recreation area.

8. NATIONAL WILDLIFE REFUGE ADMINISTRATION ACT, 16 U.S.C. §668dd

§668dd. National Wildlife Refuge System

(a) Designation; administration; continuance of resources-management-programs for refuge lands in Alaska; disposal of acquired lands; proceeds

(1) For the purpose of consolidating the authorities relating to the various categories of areas that are administered by the Secretary for the conservation of fish and

wildlife, including species that are threatened with extinction, all lands, waters, and interests therein administered by the Secretary as wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas are hereby designated as the "National Wildlife Refuge System" (referred to herein as the "System"), which shall be subject to the provisions of this section, and shall be administered by the Secretary through the United States Fish and Wildlife Service. With respect to refuge lands in the State of Alaska, those programs relating to the management of resources for which any other agency of the Federal Government exercises administrative responsibility through cooperative agreement shall remain in effect, subject to the direct supervision of the United States Fish and Wildlife Service, as long as such agency agrees to exercise such responsibility.

(2) The mission of the System is to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.

(3) With respect to the System, it is the policy of the United States that -

(A) each refuge shall be managed to fulfill the mission of the System, as well as the specific purposes for which that refuge was established;

B) compatible wildlife-dependent recreation is a legitimate and appropriate general public use of the System, directly related to the mission of the System and the purposes of many refuges, and which generally fosters refuge management and through which the American public can develop an appreciation for fish and wildlife;

(C) compatible wildlife-dependent recreational uses are the priority general public uses of the System and shall receive priority consideration in refuge planning and management; and

(D) when the Secretary determines that a proposed wildlife-dependent recreational use is a compatible use within a refuge, that activity should be facilitated, subject to such restrictions or regulations as may be necessary, reasonable, and appropriate.

(4) In administering the System, the Secretary shall -

(A) provide for the conservation of fish, wildlife, and plants, and their habitats within the System;

(B) ensure that the biological integrity, diversity, and environmental health of the System are maintained for the benefit of present and future generations of Americans;

(C) plan and direct the continued growth of the System in a manner that is best designed to accomplish the mission of the System, to contribute to the conservation of the ecosystems of the United States, to complement efforts of States and other Federal agencies to conserve fish and wildlife and their habitats, and to increase support for the System and participation from conservation partners and the public;

(D) ensure that the mission of the System described in paragraph (2) and the

purposes of each refuge are carried out, except that if a conflict exists between the purposes of a refuge and the mission of the System, the conflict shall be resolved in a manner that first protects the purposes of the refuge, and, to the extent practicable, that also achieves the mission of the System;
(E) ensure effective coordination, interaction, and cooperation with owners of land adjoining refuges and the fish and wildlife agency of the States in which the units of the System are located;
(F) assist in the maintenance of adequate water quantity and water quality to fulfill the mission of the System and the purposes of each refuge;
(G) acquire, under State law, water rights that are needed for refuge purposes;
(H) recognize compatible wildlife-dependent recreational uses as the priority general public uses of the System through which the American public can develop an appreciation for fish and wildlife;
(I) ensure that opportunities are provided within the System for compatible wildlife-dependent recreational uses;
(J) ensure that priority general public uses of the System receive enhanced consideration over other general public uses in planning and management within the System;
(K) provide increased opportunities for families to experience compatible wildlife-dependent recreation, particularly opportunities for parents and their children to safely engage in traditional outdoor activities, such as fishing and hunting;
(L) continue, consistent with existing laws and interagency agreements, authorized or permitted uses of units of the System by other Federal agencies, including those necessary to facilitate military preparedness;
(M) ensure timely and effective cooperation and collaboration with Federal agencies and State fish and wildlife agencies during the course of acquiring and managing refuges; and
(N) monitor the status and trends of fish, wildlife, and plants in each refuge.
(5) No acquired lands which are or become a part of the System may be transferred or otherwise disposed of under any provision of law (except by exchange pursuant to subsection (b)(3) of this section) unless -
(A) the Secretary determines with the approval of the Migratory Bird Conservation Commission that such lands are no longer needed for the purposes for which the System was established; and
(B) such lands are transferred or otherwise disposed of for an amount not less than -
(I) the acquisition costs of such lands, in the case of lands of the System which were purchased by the United States with funds from the migratory bird conservation fund, or fair market value, whichever is greater; or
(ii) the fair market value of such lands (as determined by the Secretary as of the date of the transfer or disposal), in the case of lands of the System which were donated to the System. The Secretary shall pay into the migratory bird conservation fund the aggregate amount of the proceeds of any transfer or disposal referred to in the preceding sentence.

(6) Each area which is included within the System on January 1, 1975, or thereafter, and which was or is -
(A) designated as an area within such System by law, Executive order, or secretarial order; or
(B) so included by public land withdrawal, donation, purchase, exchange, or pursuant to a cooperative agreement with any State or local government, any Federal department or agency, or any other governmental entity, shall continue to be a part of the System until otherwise specified by Act of Congress, except that nothing in this paragraph shall be construed as precluding -
(I) the transfer or disposal of acquired lands within any such area pursuant to paragraph (5) of this subsection;
(ii) the exchange of lands within any such area pursuant to subsection (b)(3) of this section; or
(iii) the disposal of any lands within any such area pursuant to the terms of any cooperative agreement referred to in subparagraph (B) of this paragraph.
(b) Administration; public accommodations contracts; acceptance and use of funds; exchange of properties; cash equalization payments In administering the System, the Secretary is authorized to take the following actions:
(1) Enter into contracts with any person or public or private agency through negotiation for the provision of public accommodations when, and in such locations, and to the extent that the Secretary determines will not be inconsistent with the primary purpose for which the affected area was established.
(2) Accept donations of funds and to use such funds to acquire or manage lands or interests therein.
(3) Acquire lands or interests therein by exchange (A) for acquired lands or public lands, or for interests in acquired or public lands, under his jurisdiction which he finds to be suitable for disposition, or (B) for the right to remove, in accordance with such terms and conditions as he may prescribe, products from the acquired or public lands within the System. The values of the properties so exchanged either shall be approximately equal, or if they are not approximately equal the values shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require.
(4) Subject to standards established by and the overall management oversight of the Director, and consistent with standards established by this Act, to enter into cooperative agreements with State fish and wildlife agencies for the management of programs on a refuge.
(5) Issue regulations to carry out this Act.
(c) Prohibited and permitted activities; application of mining and mineral leasing laws, hunting or fishing regulations, and State laws or regulations No person shall disturb, injure, cut, burn, remove, destroy, or possess any real or personal property of the United States, including natural growth, in any area of the System; or take or possess any fish, bird, mammal, or other wild vertebrate or invertebrate animals or part or nest or egg thereof within any such area; or enter, use, or otherwise occupy any such area for any purpose; unless such activities are performed by persons

authorized to manage such area, or unless such activities are permitted either under subsection (d) of this section or by express provision of the law, proclamation, Executive order, or public land order establishing the area, or amendment thereof: Provided, That the United States mining and mineral leasing laws shall continue to apply to any lands within the System to the same extent they apply prior to October 15, 1966, unless subsequently withdrawn under other authority of law. With the exception of endangered species and threatened species listed by the Secretary pursuant to section 1533 of this title in States wherein a cooperative agreement does not exist pursuant to section 1535(c) of this title, nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife on lands not within the system. The regulations permitting hunting and fishing of resident fish and wildlife within the System shall be, to the extent practicable, consistent with State fish and wildlife laws and regulations.

(d) Use of areas; administration of migratory bird sanctuaries as game taking areas; rights of way, easements, and reservations; payment of fair market value

(1) The Secretary is authorized, under such regulations as he may prescribe, to -

(A) permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access whenever he determines that such uses are compatible with the major purposes for which such areas were established: Provided, That not to exceed 40 per centum at any one time of any area that has been, or hereafter may be acquired, reserved, or set apart as an inviolate sanctuary for migratory birds, under any law, proclamation, Executive order, or public land order may be administered by the Secretary as an area within which the taking of migratory game birds may be permitted under such regulations as he may prescribe unless the Secretary finds that the taking of any species of migratory game birds in more than 40 percent of such area would be beneficial to the species; and

(B) permit the use of, or grant easements in, over, across, upon, through, or under any areas within the System for purposes such as but not necessarily limited to, power lines, telephone lines, canals, ditches, pipelines, and roads, including the construction, operation, and maintenance thereof, whenever he determines that such uses are compatible with the purposes for which these areas are established.

(2) Notwithstanding any other provision of law, the Secretary may not grant to any Federal, State, or local agency or to any private individual or organization any right-of-way, easement, or reservation in, over, across, through, or under any area within the system in connection with any use permitted by him under paragraph(1)(B) of this subsection unless the grantee pays to the Secretary, at the option of the Secretary, either (A) in lump sum the fair market value (determined by the Secretary as of the date of conveyance to the grantee) of the right-of-way, easement, or reservation; or (B) annually in advance the fair market rental value (determined by the Secretary) of the right-of-way, easement, or reservation. If any Federal, State, or local agency is exempted from such payment by any other provision of Federal law, such agency shall otherwise compensate the Secretary by any other means agreeable to the Secretary, including, but not limited to, making other land available

or the loan of equipment or personnel; except that (A) any such compensation shall relate to, and be consistent with, the objectives of the National Wildlife Refuge System, and(B) the Secretary may waive such requirement for compensation if he finds such requirement impracticable or unnecessary. All sums received by the Secretary pursuant to this paragraph shall, after payment of any necessary expenses incurred by him in administering this paragraph, be deposited into the Migratory Bird Conservation Fund and shall be available to carry out the provisions for land acquisition of the Migratory Bird Conservation Act (16 U.S.C. 715 *et seq*.) and the Migratory Bird Hunting Stamp Act (16 U.S.C. 718 *et seq*.).

(3)(A)(I) Except as provided in clause (iv), the Secretary shall not initiate or permit a new use of a refuge or expand, renew, or extend an existing use of a refuge, unless the Secretary has determined that the use is a compatible use and that the use is not inconsistent with public safety. The Secretary may make the determinations referred to in this paragraph for a refuge concurrently with development of a conservation plan under subsection (e) of this section.

(ii) On lands added to the System after March 25, 1996, the secretary shall identify, prior to acquisition, withdrawal, transfer, reclassification, or donation of any such lands, existing compatible wildlife-dependent recreational uses that the Secretary determines shall be permitted to continue on an interim basis pending completion of the comprehensive conservation plan for the refuge.

(iii) Wildlife-dependent recreational uses may be authorized on refuge when they are compatible and not inconsistent with public safety. Except for consideration of consistency with State laws and regulations as provided for in subsection (m) of this section, no other determinations or findings are required to be made by the refuge official under this Act or the Refuge Recreation Act for wildlife-dependent recreation to occur.

(iv) Compatibility determinations in existence on October 9,1997, shall remain in effect until and unless modified.

(B) Not later than 24 months after October 9, 1997, the Secretary shall issue final regulations establishing the process for determining under subparagraph (A) whether a use of a refuge is a compatible use. These regulations shall -

(I) designate the refuge official responsible for making initial compatibility determinations;

(ii) require an estimate of the time frame, location, manner, and purpose of each use;

(iii) identify the effects of each use on refuge resources and purposes of each refuge;

(iv) require that compatibility determinations be made in writing;

(v) provide for the expedited consideration of uses that will likely have no detrimental effect on the fulfillment of the purposes of a refuge or the mission of the System;

(vi) provide for the elimination or modification of any use as expeditiously as practicable after a determination is made that the use is not a compatible use;

(vii) require, after an opportunity for public comment, reevaluation of each existing

use, other than those uses specified in clause (viii), if conditions under which the use is permitted change significantly or if there is significant new information regarding the effects of the use, but not less frequently than once every 10 years, to ensure that the use remains a compatible use, except that, in the case of any use authorized for a period longer than 10 years (such as an electric utility right-of-way), the reevaluation required by this clause shall examine compliance with the terms and conditions of the authorization, not examine the authorization itself;
(viii) require, after an opportunity for public comment, reevaluation of each compatible wildlife-dependent recreational use when conditions under which the use is permitted change significantly or if there is significant new information regarding the effects of the use, but not less frequently than in conjunction with each preparation or revision of a conservation plan under subsection (e) of this section or at least every 15 years, whichever is earlier; and
(ix) provide an opportunity for public review and comment on each evaluation of a use, unless an opportunity for public review and comment on the evaluation of the use has already been provided during the development or revision of a conservation plan for the refuge under subsection (e) of this section or has otherwise been provided during routine, periodic determinations of compatibility for wildlife-dependent recreational uses.
(4) The provisions of this Act relating to determinations of the compatibility of a use shall not apply to -
(A) overflights above a refuge; and
(B) activities authorized, funded, or conducted by a Federal agency (other than the United States Fish and Wildlife Service) which has primary jurisdiction over a refuge or a portion of a refuge, if the management of those activities is in accordance with a memorandum of understanding between the Secretary or the Director and the head of the Federal agency with primary jurisdiction over the refuge governing the use of the refuge.
(e) Refuge conservation planning program for non-Alaskan refuge lands
(1)(A) Except with respect to refuge lands in Alaska (which shall be governed by the refuge planning provisions of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.)),the Secretary shall -
(I) propose a comprehensive conservation plan for each refuge or related complex of refuges (referred to in this subsection as a "planning unit") in the System;
(ii) publish a notice of opportunity for public comment in the Federal Register on each proposed conservation plan;
(iii) issue a final conservation plan for each planning unit consistent with the provisions of this Act and, to the extent practicable, consistent with fish and wildlife conservation plans of the State in which the refuge is located; and
(iv) not less frequently than 15 years after the date of issuance of a conservation plan under clause (iii) and every 15 years thereafter, revise the conservation plan as may be necessary.
(B) The Secretary shall prepare a comprehensive conservation plan under this subsection for each refuge within 15 years after October 9, 1997.

(C) The Secretary shall manage each refuge or planning unit under plans in effect on October 9, 1997, to the extent such plans are consistent with this Act, until such plans are revised or superseded by new comprehensive conservation plans issued under this subsection.
(D) Uses or activities consistent with this Act may occur on any refuge or planning unit before existing plans are revised or new comprehensive conservation plans are issued under this subsection.
(E) Upon completion of a comprehensive conservation plan under this subsection for a refuge or planning unit, the Secretary shall manage the refuge or planning unit in a manner consistent with the plan and shall revise the plan at any time if the Secretary determines that conditions that affect the refuge or planning unit have changed significantly.
(2) In developing each comprehensive conservation plan under this subsection for a planning unit, the Secretary, acting through the director, shall identify and describe -
(A) the purposes of each refuge comprising the planning unit;
(B) the distribution, migration patterns, and abundance of fish, wildlife, and plant populations and related habitats within the planning unit;
(C) the archaeological and cultural values of the planning unit;
(D) such areas within the planning unit that are suitable for use as administrative sites or visitor facilities;
(E) significant problems that may adversely affect the populations and habitats of fish, wildlife, and plants within the planning unit and the actions necessary to correct or mitigate such problems; and
(F) opportunities for compatible wildlife-dependent recreational uses.
(3) In preparing each comprehensive conservation plan under this subsection, and any revision to such a plan, the Secretary, acting through the Director, shall, to the maximum extent practicable and consistent with this Act -
(A) consult with adjoining Federal, State, local, and private landowners and affected State conservation agencies; and
(B) coordinate the development of the conservation plan or revision with relevant State conservation plans for fish and wildlife and their habitats.
(4)(A) In accordance with subparagraph (B), the Secretary shall develop and implement a process to ensure an opportunity for active public involvement in the preparation and revision of comprehensive conservation plans under this subsection. At a minimum, the secretary shall require that publication of any final plan shall include a summary of the comments made by States, owners of adjacent or potentially affected land, local governments, and another affected persons, and a statement of the disposition of concerns expressed in those comments.
(B) Prior to the adoption of each comprehensive conservation plan under this subsection, the Secretary shall issue public notice of the draft proposed plan, make copies of the plan available at the affected field and regional offices of the United States Fish and wildlife Service, and provide opportunity for public comment.
(f) Penalties

(1) Knowing violations
Any person who knowingly violates or fails to comply with any of the provisions of this Act or any regulations issued thereunder shall be fined under title 18 or imprisoned for not more than 1 year, or both.
(2) Other violations
Any person who otherwise violates or fails to comply with any of the provisions of this Act (including a regulation issued under this Act) shall be fined under title 18 or imprisoned not more than 180 days, or both.
(g) Enforcement provision; arrests, searches, and seizures; custody of property; forfeitures; disposition Any person authorized by the Secretary to enforce the provisions of this Act or any regulations issued thereunder, may, without a warrant, arrest any person violating this Act or regulations in his presence or view, and may execute any warrant or other process issued by an officer or court of competence jurisdiction to enforce the provisions of this Act or regulations, and may with a search warrant search for and seize any property, fish, bird, mammal, or other wild vertebrate or invertebrate animals or part or nest or egg thereof, taken or possessed in violation of this Act or the regulations issued thereunder. Any property, fish, bird, mammal, or other wild vertebrate or invertebrate animals or part or egg thereof seized with or without a search warrant shall be held by such person or by a United States marshal, and upon conviction, shall be forfeited to the United States and disposed of by the secretary, in accordance with law. The Director of the United States Fish and Wildlife Service is authorized to utilize by agreement, with or without reimbursement, the personnel and services of any other Federal or State agency for purposes of enhancing the enforcement of this Act.
(h) Regulations; continuation, modification, or rescission
Regulations applicable to areas of the System that are in effect on October 15, 1966, shall continue in effect until modified or rescinded.
(I) National conservation recreational area provisions; amendment, repeal, or modification Nothing in this section shall be construed to amend, repeal, or otherwise modify the provision of the Act of September 28, 1962 (76 Stat. 653; 16 U.S.C. 460k - 460k-4) which authorizes the Secretary to administer the areas within the System for public recreation. The provisions of this section relating to recreation shall be administered in accordance with the provisions of said sections.
(j) Exemption from State water laws Nothing in this Act shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from State water laws.
(k) Emergency power Notwithstanding any other provision of this Act, the Secretary may temporarily suspend, allow, or initiate any activity in refuge in the System if the Secretary determines it is necessary to protect the health and safety of the public or any fish or wildlife population.
(l) Hunting and fishing on lands and waters not within System Nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of fish and resident wildlife on lands or waters that are not within the System.
(m) State authority Nothing in this Act shall be construed as affecting the authority,

jurisdiction, or responsibility of the several States to manage, control, or regulate fish and resident wildlife under State law or regulations in any area within the System. Regulations permitting hunting or fishing of fish and resident wildlife within the System shall be, to the extent practicable, consistent with state fish and wildlife laws, regulations, and management plans.
(n) Water rights
(1) Nothing in this Act shall -
(A) create a reserved water right, express or implied, in the United States for any purpose;
(B) affect any water right in existence on October 9, 1997; or
(C) affect any Federal or State law in existence on October 9, 1997, regarding water quality or water quantity.
(2) Nothing in this Act shall diminish or affect the ability to join the United States in the adjudication of rights to the use of water pursuant to section 666 of title 43.
(o) Coordination with State agencies Coordination with State fish and wildlife agency personnel or with personnel of other affected State agencies pursuant to this Act shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

9. THE WILDERNESS ACT, 16 U.S.C. §§1131-1134 (Selected Sections)

a. §1131. National Wilderness Preservation System

(a) Establishment; Congressional declaration of policy; wilderness areas; administration for public use and enjoyment, protection, preservation, and gathering and dissemination of information; provisions for designation as wilderness areas
In order to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition, it is hereby declared to be the policy of the Congress to secure for the American people of present and future generations the benefits of an enduring resource of wilderness. For this purpose there is hereby established a National Wilderness Preservation System to be composed of federally owned areas designated by Congress as "wilderness areas", and these shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character, and for the gathering and dissemination of information regarding their use and enjoyment as wilderness; and no Federal lands shall be designated as "wilderness areas" except as provided for in this chapter or by a subsequent Act.
(b) Management of area included in System; appropriations
The inclusion of an area in the National Wilderness Preservation System notwithstanding, the area shall continue to be managed by the Department and agency having jurisdiction thereover immediately before its inclusion in the National Wilderness Preservation System unless otherwise provided by Act of Congress. No appropriation shall be available for the payment of expenses or salaries for the

administration of the National Wilderness Preservation System as a separate unit nor shall any appropriations be available for additional personnel stated as being required solely for the purpose of managing or administering areas solely because they are included within the National Wilderness Preservation System.
(c) "Wilderness" defined
A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

b. §1132. Extent of System

(a) Designation of wilderness areas; filing of maps and descriptions with Congressional committees; correction of errors; public records; availability of records in regional offices
All areas within the national forests classified at least 30 days before September 3, 1964 by the Secretary of Agriculture or the Chief of the Forest Service as "wilderness", "wild", or "canoe" are hereby designated as wilderness areas. The Secretary of Agriculture shall--
(1) Within one year after September 3, 1964, file a map and legal description of each wilderness area with the Interior and Insular Affairs Committees of the United States Senate and the House of Representatives, and such descriptions shall have the same force and effect as if included in this chapter: Provided, however, That correction of clerical and typographical errors in such legal descriptions and maps may be made.
(2) Maintain, available to the public, records pertaining to said wilderness areas, including maps and legal descriptions, copies of regulations governing them, copies of public notices of, and reports submitted to Congress regarding pending additions, eliminations, or modifications. Maps, legal descriptions, and regulations pertaining to wilderness areas within their respective jurisdictions also shall be available to the public in the offices of regional foresters, national forest supervisors, and forest rangers.
(b) Review by Secretary of Agriculture of classifications as primitive areas; Presidential recommendations to Congress; approval of Congress; size of primitive areas; Gore Range-Eagles Nest Primitive Area, Colorado
The Secretary of Agriculture shall, within ten years after September 3, 1964, review,

as to its suitability or nonsuitability for preservation as wilderness, each area in the national forests classified on September 3, 1964 by the Secretary of Agriculture or the Chief of the Forest Service as "primitive" and report his findings to the President. The President shall advise the United States Senate and House of Representatives of his recommendations with respect to the designation as "wilderness" or other reclassification of each area on which review has been completed, together with maps and a definition of boundaries. Such advice shall be given with respect to not less than one-third of all the areas now classified as "primitive" within three years after September 3, 1964, not less than two-thirds within seven years after September 3, 1964, and the remaining areas within ten years after September 3, 1964. Each recommendation of the President for designation as "wilderness" shall become effective only if so provided by an Act of Congress. Areas classified as "primitive" on September 3, 1964 shall continue to be administered under the rules and regulations affecting such areas on September 3, 1964 until Congress has determined otherwise. Any such area may be increased in size by the President at the time he submits his recommendations to the Congress by not more than five thousand acres with no more than one thousand two hundred and eighty acres of such increase in any one compact unit; if it is proposed to increase the size of any such area by more than five thousand acres or by more than one thousand two hundred and eighty acres in any one compact unit the increase in size shall not become effective until acted upon by Congress. Nothing herein contained shall limit the President in proposing, as part of his recommendations to Congress, the alteration of existing boundaries of primitive areas or recommending the addition of any contiguous area of national forest lands predominantly of wilderness value. Notwithstanding any other provisions of this chapter, the Secretary of Agriculture may complete his review and delete such area as may be necessary, but not to exceed seven thousand acres, from the southern tip of the Gore Range-Eagles Nest Primitive Area, Colorado, if the Secretary determines that such action is in the public interest.

(c) Review by Secretary of the Interior of roadless areas of national park system and national wildlife refuges and game ranges and suitability of areas for preservation as wilderness; authority of Secretary of the Interior to maintain roadless areas in national park system unaffected

Within ten years after September 3, 1964 the Secretary of the Interior shall review every roadless area of five thousand contiguous acres or more in the national parks, monuments and other units of the national park system and every such area of, and every roadless island within, the national wildlife refuges and game ranges, under his jurisdiction on September 3, 1964 and shall report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness. The President shall advise the President of the Senate and the Speaker of the House of Representatives of his recommendation with respect to the designation as wilderness of each such area or island on which review has been completed, together with a map thereof and a definition of its boundaries. Such advice shall be given with respect to not less than one-third of

the areas and islands to be reviewed under this subsection within three years after September 3, 1964, not less than two-thirds within seven years of September 3, 1964, and the remainder within ten years of September 3, 1964. A recommendation of the President for designation as wilderness shall become effective only if so provided by an Act of Congress. Nothing contained herein shall, by implication or otherwise, be construed to lessen the present statutory authority of the Secretary of the Interior with respect to the maintenance of roadless areas within units of the national park system.

(d) Conditions precedent to administrative recommendations of suitability of areas for preservation as wilderness; publication in Federal Register; public hearings; views of State, county, and Federal officials; submission of views to Congress

(1) The Secretary of Agriculture and the Secretary of the Interior shall, prior to submitting any recommendations to the President with respect to the suitability of any area for preservation as wilderness--

(A) give such public notice of the proposed action as they deem appropriate, including publication in the Federal Register and in a newspaper having general circulation in the area or areas in the vicinity of the affected land;

(B) hold a public hearing or hearings at a location or locations convenient to the area affected. The hearings shall be announced through such means as the respective Secretaries involved deem appropriate, including notices in the Federal Register and in newspapers of general circulation in the area: Provided, That if the lands involved are located in more than one State, at least one hearing shall be held in each State in which a portion of the land lies;

(C) at least thirty days before the date of a hearing advise the Governor of each State and the governing board of each county, or in Alaska the borough, in which the lands are located, and Federal departments and agencies concerned, and invite such officials and Federal agencies to submit their views on the proposed action at the hearing or by no later than thirty days following the date of the hearing.

(2) Any views submitted to the appropriate Secretary under the provisions of (1) of this subsection with respect to any area shall be included with any recommendations to the President and to Congress with respect to such area.

(e) Modification or adjustment of boundaries; public notice and hearings; administrative and executive recommendations to Congress; approval of Congress

Any modification or adjustment of boundaries of any wilderness area shall be recommended by the appropriate Secretary after public notice of such proposal and public hearing or hearings as provided in subsection (d) of this section. The proposed modification or adjustment shall then be recommended with map and description thereof to the President. The President shall advise the United States Senate and the House of Representatives of his recommendations with respect to such modification or adjustment and such recommendations shall become effective only in the same manner as provided for in subsections (b) and (c) of this section.

c. §1133. Use of wilderness areas

(a) Purposes of national forests, national park system, and national wildlife refuge

system; other provisions applicable to national forests, Superior National Forest, and national park system

The purposes of this chapter are hereby declared to be within and supplemental to the purposes for which national forests and units of the national park and national wildlife refuge systems are established and administered and--

(1) Nothing in this chapter shall be deemed to be in interference with the purpose for which national forests are established as set forth in the Act of June 4, 1897 (30 Stat. 11), and the Multiple-Use Sustained-Yield Act of June 12, 1960 (74 Stat. 215) [16 U.S.C.A. §§ 528-531].

(2) Nothing in this chapter shall modify the restrictions and provisions of the Shipstead-Nolan Act (Public Law 539, Seventy-first Congress, July 10, 1930; 46 Stat. 1020), the Thye-Blatnik Act (Public Law 733, Eightieth Congress, June 22, 1948; 62 Stat. 568), and the Humphrey-Thye-Blatnik- Andresen Act (Public Law 607, Eighty-fourth Congress, June 22, 1956; 70 Stat. 326), as applying to the Superior National Forest or the regulations of the Secretary of Agriculture.

(3) Nothing in this chapter shall modify the statutory authority under which units of the national park system are created. Further, the designation of any area of any park, monument, or other unit of the national park system as a wilderness area pursuant to this chapter shall in no manner lower the standards evolved for the use and preservation of such park, monument, or other unit of the national park system in accordance with sections 1 and 2 to 4 of this title, the statutory authority under which the area was created, or any other Act of Congress which might pertain to or affect such area, including, but not limited to, the Act of June 8, 1906 (34 Stat. 225; 16 U.S.C. 432 et seq.); section 3(2) of the Federal Power Act (16 U.S.C. 796(2)); and the Act of August 21, 1935 (49 Stat. 666; 16 U.S.C. 461 et seq.).

(b) Agency responsibility for preservation and administration to preserve wilderness character; public purposes of wilderness areas

Except as otherwise provided in this chapter, each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character. Except as otherwise provided in this chapter, wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.

(c) Prohibition provisions: commercial enterprise, permanent or temporary roads, mechanical transports, and structures or installations; exceptions: area administration and personal health and safety emergencies

Except as specifically provided for in this chapter, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area designated by this chapter and, except as necessary to meet minimum requirements for the administration of the area for the purpose of this chapter (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form

of mechanical transport, and no structure or installation within any such area.
(d) Special provisions
The following special provisions are hereby made:
(1) Aircraft or motorboats; fire, insects, and diseases
Within wilderness areas designated by this chapter the use of aircraft or motorboats, where these uses have already become established, may be permitted to continue subject to such restrictions as the Secretary of Agriculture deems desirable. In addition, such measures may be taken as may be necessary in the control of fire, insects, and diseases, subject to such conditions as the Secretary deems desirable.
(2) Mineral activities, surveys for mineral value
Nothing in this chapter shall prevent within national forest wilderness areas any activity, including prospecting, for the purpose of gathering information about mineral or other resources, if such activity is carried on in a manner compatible with the preservation of the wilderness environment. Furthermore, in accordance with such program as the Secretary of the Interior shall develop and conduct in consultation with the Secretary of Agriculture, such areas shall be surveyed on a planned, recurring basis consistent with the concept of wilderness preservation by the United States Geological Survey and the United States Bureau of Mines to determine the mineral values, if any, that may be present; and the results of such surveys shall be made available to the public and submitted to the President and Congress.
(3) Mining and mineral leasing laws; leases, permits, and licenses; withdrawal of minerals from appropriation and disposition
Notwithstanding any other provisions of this chapter, until midnight December 31, 1983, the United States mining laws and all laws pertaining to mineral leasing shall, to the same extent as applicable prior to September 3, 1964, extend to those national forest lands designated by this chapter as "wilderness areas"; subject, however, to such reasonable regulations governing ingress and egress as may be prescribed by the Secretary of Agriculture consistent with the use of the land for mineral location and development and exploration, drilling, and production, and use of land for transmission lines, waterlines, telephone lines, or facilities necessary in exploring, drilling, producing, mining, and processing operations, including where essential the use of mechanized ground or air equipment and restoration as near as practicable of the surface of the land disturbed in performing prospecting, location, and, in oil and gas leasing, discovery work, exploration, drilling, and production, as soon as they have served their purpose. Mining locations lying within the boundaries of said wilderness areas shall be held and used solely for mining or processing operations and uses reasonably incident thereto; and hereafter, subject to valid existing rights, all patents issued under the mining laws of the United States affecting national forest lands designated by this chapter as wilderness areas shall convey title to the mineral deposits within the claim, together with the right to cut and use so much of the mature timber therefrom as may be needed in the extraction, removal, and beneficiation of the mineral deposits, if needed timber is not otherwise reasonably available, and if the timber is cut under sound principles

of forest management as defined by the national forest rules and regulations, but each such patent shall reserve to the United States all title in or to the surface of the lands and products thereof, and no use of the surface of the claim or the resources therefrom not reasonably required for carrying on mining or prospecting shall be allowed except as otherwise expressly provided in this chapter: Provided, That, unless hereafter specifically authorized, no patent within wilderness areas designated by this chapter shall issue after December 31, 1983, except for the valid claims existing on or before December 31, 1983. Mining claims located after September 3, 1964 within the boundaries of wilderness areas designated by this chapter shall create no rights in excess of those rights which may be patented under the provisions of this subsection. Mineral leases, permits, and licenses covering lands within national forest wilderness areas designated by this chapter shall contain such reasonable stipulations as may be prescribed by the Secretary of Agriculture for the protection of the wilderness character of the land consistent with the use of the land for the purposes for which they are leased, permitted, or licensed. Subject to valid rights then existing, effective January 1, 1984, the minerals in lands designated by this chapter as wilderness areas are withdrawn from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral leasing and all amendments thereto.

(4) Water resources, reservoirs, and other facilities; grazing

Within wilderness areas in the national forests designated by this chapter, (1) the President may, within a specific area and in accordance with such regulations as he may deem desirable, authorize prospecting for water resources, the establishment and maintenance of reservoirs, water-conservation works, power projects, transmission lines, and other facilities needed in the public interest, including the road construction and maintenance essential to development and use thereof, upon his determination that such use or uses in the specific area will better serve the interests of the United States and the people thereof than will its denial; and (2) the grazing of livestock, where established prior to September 3, 1964, shall be permitted to continue subject to such reasonable regulations as are deemed necessary by the Secretary of Agriculture.

(5) Commercial services

Commercial services may be performed within the wilderness areas designated by this chapter to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas.

(6) State water laws exemption

Nothing in this chapter shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from State water laws.

(7) State jurisdiction of wildlife and fish in national forests

Nothing in this chapter shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish in the national forests.

d. §1134. State and private lands within wilderness areas

(a) Access; exchange of lands; mineral interests restriction
In any case where State-owned or privately owned land is completely surrounded by national forest lands within areas designated by this chapter as wilderness, such State or private owner shall be given such rights as may be necessary to assure adequate access to such State-owned or privately owned land by such State or private owner and their successors in interest, or the State-owned land or privately owned land shall be exchanged for federally owned land in the same State of approximately equal value under authorities available to the Secretary of Agriculture: Provided, however, That the United States shall not transfer to a State or private owner any mineral interests unless the State or private owner relinquishes or causes to be relinquished to the United States the mineral interest in the surrounded land.
(b) Customary means for ingress and egress to wilderness areas subject to mining claims or other occupancies
In any case where valid mining claims or other valid occupancies are wholly within a designated national forest wilderness area, the Secretary of Agriculture shall, by reasonable regulations consistent with the preservation of the area as wilderness, permit ingress and egress to such surrounded areas by means which have been or are being customarily enjoyed with respect to other such areas similarly situated.
(c) Acquisition of lands
Subject to the appropriation of funds by Congress, the Secretary of Agriculture is authorized to acquire privately owned land within the perimeter of any area designated by this chapter as wilderness if (1) the owner concurs in such acquisition or (2) the acquisition is specifically authorized by Congress.

10. WILD AND SCENIC RIVERS ACT, 16 U.S.C. §§1271-1283 (Selected Sections)

a. §1271. Congressional declaration of policy

It is hereby declared to be the policy of the United States that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations. The Congress declares that the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes.

b. §1273. National wild and scenic rivers system

(a) Composition; application; publication in Federal Register; expense; administration of federally owned lands
The national wild and scenic rivers system shall comprise rivers (i) that are authorized for inclusion therein by Act of Congress, or (ii) that are designated as

wild, scenic or recreational rivers by or pursuant to an act of the legislature of the State or States through which they flow, that are to be permanently administered as wild, scenic or recreational rivers by an agency or political subdivision of the State or States concerned, that are found by the Secretary of the Interior, upon application of the Governor of the State or the Governors of the States concerned, or a person or persons thereunto duly appointed by him or them, to meet the criteria established in this chapter and such criteria supplementary thereto as he may prescribe, and that are approved by him for inclusion in the system, including, upon application of the Governor of the State concerned, the Allagash Wilderness Waterway, Maine; that segment of the Wolf River, Wisconsin, which flows through Langlade County; and that segment of the New River in North Carolina extending from its confluence with Dog Creek downstream approximately 26.5 miles to the Virginia State line. Upon receipt of an application under clause (ii) of this subsection, the Secretary shall notify the Federal Energy Regulatory Commission and publish such application in the Federal Register. Each river designated under clause (ii) shall be administered by the State or political subdivision thereof without expense to the United States other than for administration and management of federally owned lands. For purposes of the preceding sentence, amounts made available to any State or political subdivision under the Land and Water Conservation Act of 1965 [16 U.S.C.A. § 460l-4 et seq.] or any other provision of law shall not be treated as an expense to the United States. Nothing in this subsection shall be construed to provide for the transfer to, or administration by, a State or local authority of any federally owned lands which are within the boundaries of any river included within the system under clause (ii).

(b) Classification, designation, and administration of rivers

A wild, scenic or recreational river area eligible to be included in the system is a free-flowing stream and the related adjacent land area that possesses one or more of the values referred to in section 1271 of this title. Every wild, scenic or recreational river in its free-flowing condition, or upon restoration to this condition, shall be considered eligible for inclusion in the national wild and scenic rivers system and, if included, shall be classified, designated, and administered as one of the following:

(1) Wild river areas--Those rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America.

(2) Scenic river areas--Those rivers or sections of rivers that are free of impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads.

(3) Recreational river areas--Those rivers or sections of rivers that are readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the

c. §1276. Rivers constituting potential additions to national wild and scenic rivers system

(a) Enumeration of designated rivers
The following rivers are hereby designated for potential addition to the national wild and scenic rivers system:
* * *
(33) Clarks Fork, Wyoming: The segment from the Clark's Fork Canyon to the Crandall Creek Bridge.
(37) Encampment, Colorado: The Main Fork and West Fork to their confluence, thence the Encampment to the Colorado-Wyoming border, including the tributaries and headwaters.
(50) Snake, Wyoming: The segment from the southern boundaries of Teton National Park to the entrance to Palisades Reservoir.
(51) Sweetwater, Wyoming: The segment from Wilson Bar downstream to Spring Creek

d. §1283. Management policies
(a) Action of Secretaries and heads of agencies; cooperative agreements
The Secretary of the Interior, the Secretary of Agriculture, and the head of any other Federal department or agency having jurisdiction over any lands which include, border upon, or are adjacent to, any river included within the National Wild and Scenic Rivers System or under consideration for such inclusion, in accordance with section 1273(a) (ii), 1274(a), or 1276(a) of this title, shall take such action respecting management policies, regulations, contracts, plans, affecting such lands, following November 10, 1978, as may be necessary to protect such rivers in accordance with the purposes of this chapter. Such Secretary or other department or agency head shall, where appropriate, enter into written cooperative agreements with the appropriate State or local official for the planning, administration, and management of Federal lands which are within the boundaries of any rivers for which approval has been granted under section 1273(a) (ii) of this title. Particular attention shall be given to scheduled timber harvesting, road construction, and similar activities which might be contrary to the purposes of this chapter.
(b) Existing rights, privileges, and contracts affecting Federal lands
Nothing in this section shall be construed to abrogate any existing rights, privileges, or contracts affecting Federal lands held by any private party without the consent of said party.
(c) Water pollution
The head of any agency administering a component of the national wild and scenic rivers system shall cooperate with the Administrator, Environmental Protection Agency and with the appropriate State water pollution control agencies for the purpose of eliminating or diminishing the pollution of waters of the river.

11. WILD FREE-ROAMING HORSES AND BURROS ACT, 16 U.S.C. §§1331-1340

§1331. Congressional findings and declaration of policy
Congress finds and declares that wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West; that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people; and that these horses and burros are fast disappearing from the American scene. It is the policy of Congress that wild free-roaming horses and burros shall be protected from capture, branding, harassment, or death; and to accomplish this they are to be considered in the area where presently found, as an integral part of the natural system of the public lands.

§1333. Powers and duties of Secretary
(a) Jurisdiction; management; ranges; ecological balance objectives; scientific recommendations; forage allocation adjustments All wild free-roaming horses and burros are hereby declared to be under the jurisdiction of the Secretary for the purpose of management and protection in accordance with the provisions of this chapter. The Secretary is authorized and directed to protect and manage wild free-roaming horses and burros as components of the public lands, and he may designate and maintain specific ranges on public lands as sanctuaries for their protection and preservation, where the Secretary after consultation with the wildlife agency of the State wherein any such range is proposed and with the Advisory Board established in section 1337 of this title deems such action desirable. The Secretary shall manage wild free-roaming horses and burros in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands. He shall consider the recommendations of qualified scientists in the field of biology and ecology, some of whom shall be independent of both Federal and State agencies and may include members of the Advisory Board established in section 1337 of this title. All management activities shall be at the minimal feasible level and shall be carried out in consultation with the wildlife agency of the State wherein such lands are located in order to protect the natural ecological balance of all wildlife species which inhabit such lands, particularly endangered wildlife species. Any adjustments in forage allocations on any such lands shall take into consideration the needs of other wildlife species which inhabit such lands.

(b) Inventory and determinations; consultation; overpopulation; research study: submittal to Congress
(1) The Secretary shall maintain a current inventory of wild free-roaming horses and burros on given areas of the public lands. The purpose of such inventory shall be to: make determinations as to whether and where an overpopulation exists and whether action should be taken to remove excess animals; determine appropriate management levels of wild free-roaming horses and burros on these areas of the

public lands; and determine whether appropriate management levels should be achieved by the removal or destruction of excess animals, or other options (such as sterilization, or natural controls on population levels). In making such determinations the Secretary shall consult with the United States Fish and Wildlife Service, wildlife agencies of the State or States wherein wild free-roaming horses and burros are located, such individuals independent of Federal and State government as have been recommended by the National Academy of Sciences, and such other individuals whom he determines have scientific expertise and special knowledge of wild horse and burro protection, wildlife management and animal husbandry as related to rangeland management.

(2) Where the Secretary determines on the basis of (i) the current inventory of lands within his jurisdiction; (ii) information contained in any land use planning completed pursuant to section 1712 of Title 43; (iii) information contained in court ordered environmental impact statements as defined in section 1902 of Title 43; and (iv) such additional information as becomes available to him from time to time, including that information developed in the research study mandated by this section, or in the absence of the information contained in (i-iv) above on the basis of all information currently available to him, that an overpopulation exists on a given area of the public lands and that action is necessary to remove excess animals, he shall immediately remove excess animals from the range so as to achieve appropriate management levels. Such action shall be taken, in the following order and priority, until all excess animals have been removed so as to restore a thriving natural ecological balance to the range, and protect the range from the deterioration associated with overpopulation:

The Secretary shall order old, sick, or lame animals to be destroyed in the most humane manner possible;

(B) The Secretary shall cause such number of additional excess wild free- roaming horses and burros to be humanely captured and removed for private maintenance and care for which he determines an adoption demand exists by qualified individuals, and for which he determines he can assure humane treatment and care (including proper transportation, feeding, and handling): Provided, That, not more than four animals may be adopted per year by any individual unless the Secretary determines in writing that such individual is capable of humanely caring for more than four animals, including the transportation of such animals by the adopting party; and

(C) The Secretary shall cause additional excess wild free-roaming horses and burros for which an adoption demand by qualified individuals does not exist to be destroyed in the most humane and cost efficient manner possible.

(3) For the purpose of furthering knowledge of wild horse and burro population dynamics and their interrelationship with wildlife, forage and water resources, and assisting him in making his determination as to what constitutes excess animals, the Secretary shall contract for a research study of such animals with such individuals independent of Federal and State government as may be recommended by the National Academy of Sciences for having scientific expertise and special knowledge

of wild horse and burro protection, wildlife management and animal husbandry as related to rangeland management. The terms and outline of such research study shall be determined by a research design panel to be appointed by the President of the National Academy of Sciences. Such study shall be completed and submitted by the Secretary to the Senate and House of Representatives on or before January 1, 1983.

(c) Title of transferee to limited number of excess animals adopted for requisite period

Where excess animals have been transferred to a qualified individual for adoption and private maintenance pursuant to this chapter and the Secretary determines that such individual has provided humane conditions, treatment and care for such animal or animals for a period of one year, the Secretary is authorized upon application by the transferee to grant title to not more than four animals to the transferee at the end of the one-year period.

(d) Loss of status as wild free-roaming horses and burros; exclusion from coverage

Wild free-roaming horses and burros or their remains shall lose their status as wild free-roaming horses or burros and shall no longer be considered as falling within the purview of this chapter--

(1) upon passage of title pursuant to subsection (c) of this section except for the limitation of subsection (c)(1) [FN1] of this section; or

(2) if they have been transferred for private maintenance or adoption pursuant to this chapter and die of natural causes before passage of title; or

(3) upon destruction by the Secretary or his designee pursuant to subsection (b) of this section; or

(4) if they die of natural causes on the public lands or on private lands where maintained thereon pursuant to section 1334 of this title and disposal is authorized by the Secretary or his designee; or

(5) upon destruction or death for purposes of or incident to the program authorized in this section; Provided, That no wild free-roaming horse or burro or its remains may be sold or transferred for consideration for processing into commercial products.

12. ENDANGERED SPECIES ACT, 16 U.S.C. §§1531-1540 (Selected Sections)

a. §1533. Determination of endangered species and threatened species

(a) Generally

(1) The Secretary shall by regulation promulgated in accordance with subsection (b) of this section determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) the present or threatened destruction, modification, or curtailment of its habitat or range;

(B) overutilization for commercial, recreational, scientific, or educational purposes;

(C) disease or predation;

(D) the inadequacy of existing regulatory mechanisms; or

(E) other natural or manmade factors affecting its continued existence.
(2) With respect to any species over which program responsibilities have been vested in the Secretary of Commerce pursuant to Reorganization Plan Numbered 4 of 1970--
(A) in any case in which the Secretary of Commerce determines that such species should--
(i) be listed as an endangered species or a threatened species, or
(ii) be changed in status from a threatened species to an endangered species,
he shall so inform the Secretary of the Interior; who shall list such species in accordance with this section;
(B) in any case in which the Secretary of Commerce determines that such species should--
(i) be removed from any list published pursuant to subsection (c) of this section, or
(ii) be changed in status from an endangered species to a threatened species,
he shall recommend such action to the Secretary of the Interior, and the Secretary of the Interior, if he concurs in the recommendation, shall implement such action; and
(C) the Secretary of the Interior may not list or remove from any list any such species, and may not change the status of any such species which are listed, without a prior favorable determination made pursuant to this section by the Secretary of Commerce.
(3) The Secretary, by regulation promulgated in accordance with subsection (b) of this section and to the maximum extent prudent and determinable--
(A) shall, concurrently with making a determination under paragraph (1) that a species is an endangered species or a threatened species, designate any habitat of such species which is then considered to be critical habitat; and
(B) may, from time-to-time thereafter as appropriate, revise such designation.
(b) Basis for determinations
(1)(A) The Secretary shall make determinations required by subsection (a)(1) of this section solely on the basis of the best scientific and commercial data available to him after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction; or on the high seas.
(B) In carrying out this section, the Secretary shall give consideration to species which have been--
(i) designated as requiring protection from unrestricted commerce by any foreign nation, or pursuant to any international agreement; or
(ii) identified as in danger of extinction, or likely to become so within the foreseeable future, by any State agency or by any agency of a foreign nation that is responsible for the conservation of fish or wildlife or plants.
(2) The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) of this section on the basis of the best scientific data available and

after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.

(3)(A) To the maximum extent practicable, within 90 days after receiving the petition of an interested person under section 553(e) of title 5, to add a species to, or to remove a species from, either of the lists published under subsection (c) of this section, the Secretary shall make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. If such a petition is found to present such information, the Secretary shall promptly commence a review of the status of the species concerned. The Secretary shall promptly publish each finding made under this subparagraph in the Federal Register.

(B) Within 12 months after receiving a petition that is found under subparagraph (A) to present substantial information indicating that the petitioned action may be warranted, the Secretary shall make one of the following findings:

(i) The petitioned action is not warranted, in which case the Secretary shall promptly publish such finding in the Federal Register.

(ii) The petitioned action is warranted, in which case the Secretary shall promptly publish in the Federal Register a general notice and the complete text of a proposed regulation to implement such action in accordance with paragraph (5).

(iii) The petitioned action is warranted, but that--

(I) the immediate proposal and timely promulgation of a final regulation implementing the petitioned action in accordance with paragraphs (5) and (6) is precluded by pending proposals to determine whether any species is an endangered species or a threatened species, and

(II) expeditious progress is being made to add qualified species to either of the lists published under subsection (c) of this section and to remove from such lists species for which the protections of this chapter are no longer necessary, in which case the Secretary shall promptly publish such finding in the Federal Register, together with a description and evaluation of the reasons and data on which the finding is based.

(C)(i) A petition with respect to which a finding is made under subparagraph (B)(iii) shall be treated as a petition that is resubmitted to the Secretary under subparagraph (A) on the date of such finding and that presents substantial scientific or commercial information that the petitioned action may be warranted.

(ii) Any negative finding described in subparagraph (A) and any finding described in subparagraph (B)(i) or (iii) shall be subject to judicial review.

(iii) The Secretary shall implement a system to monitor effectively the status of all species with respect to which a finding is made under subparagraph (B)(iii) and shall make prompt use of the authority under paragraph 7 to prevent a significant risk to the well being of any such species.

(D)(i) To the maximum extent practicable, within 90 days after receiving the petition of an interested person under section 553(e) of title 5, to revise a critical habitat designation, the Secretary shall make a finding as to whether the petition presents substantial scientific information indicating that the revision may be warranted. The Secretary shall promptly publish such finding in the Federal Register.
(ii) Within 12 months after receiving a petition that is found under clause (i) to present substantial information indicating that the requested revision may be warranted, the Secretary shall determine how he intends to proceed with the requested revision, and shall promptly publish notice of such intention in the Federal Register.
(4) Except as provided in paragraphs (5) and (6) of this subsection, the provisions of section 553 of title 5 (relating to rulemaking procedures), shall apply to any regulation promulgated to carry out the purposes of this chapter.
(5) With respect to any regulation proposed by the Secretary to implement a determination, designation, or revision referred to in subsection (a)(1) or (3) of this section, the Secretary shall--
(A) not less than 90 days before the effective date of the regulation--
(i) publish a general notice and the complete text of the proposed regulation in the Federal Register, and
(ii) give actual notice of the proposed regulation (including the complete text of the regulation) to the State agency in each State in which the species is believed to occur, and to each county, or equivalent jurisdiction in which the species is believed to occur, and invite the comment of such agency, and each such jurisdiction, thereon;
(B) insofar as practical, and in cooperation with the Secretary of State, give notice of the proposed regulation to each foreign nation in which the species is believed to occur or whose citizens harvest the species on the high seas, and invite the comment of such nation thereon;
(C) give notice of the proposed regulation to such professional scientific organizations as he deems appropriate;
(D) publish a summary of the proposed regulation in a newspaper of general circulation in each area of the United States in which the species is believed to occur; and
(E) promptly hold one public hearing on the proposed regulation if any person files a request for such a hearing within 45 days after the date of publication of general notice.
(6)(A) Within the one-year period beginning on the date on which general notice is published in accordance with paragraph (5)(A)(i) regarding a proposed regulation, the Secretary shall publish in the Federal Register--
(i) if a determination as to whether a species is an endangered species or a threatened species, or a revision of critical habitat, is involved, either--
(I) a final regulation to implement such determination,
(II) a final regulation to implement such revision or a finding that such revision should not be made,

(III) notice that such one-year period is being extended under subparagraph (B)(i), or
(IV) notice that the proposed regulation is being withdrawn under subparagraph (B)(ii), together with the finding on which such withdrawal is based; or
(ii) subject to subparagraph (C), if a designation of critical habitat is involved, either--
(I) a final regulation to implement such designation, or
(II) notice that such one-year period is being extended under such subparagraph.
(B)(i) If the Secretary finds with respect to a proposed regulation referred to in subparagraph (A)(i) that there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination or revision concerned, the Secretary may extend the one-year period specified in subparagraph (A) for not more than six months for purposes of soliciting additional data.
(ii) If a proposed regulation referred to in subparagraph (A)(i) is not promulgated as a final regulation within such one-year period (or longer period if extension under clause (i) applies) because the Secretary finds that there is not sufficient evidence to justify the action proposed by the regulation, the Secretary shall immediately withdraw the regulation. The finding on which a withdrawal is based shall be subject to judicial review. The Secretary may not propose a regulation that has previously been withdrawn under this clause unless he determines that sufficient new information is available to warrant such proposal.
(iii) If the one-year period specified in subparagraph (A) is extended under clause (i) with respect to a proposed regulation, then before the close of such extended period the Secretary shall publish in the Federal Register either a final regulation to implement the determination or revision concerned, a finding that the revision should not be made, or a notice of withdrawal of the regulation under clause (ii), together with the finding on which the withdrawal is based.
(C) A final regulation designating critical habitat of an endangered species or a threatened species shall be published concurrently with the final regulation implementing the determination that such species is endangered or threatened, unless the Secretary deems that--
(i) it is essential to the conservation of such species that the regulation implementing such determination be promptly published; or
(ii) critical habitat of such species is not then determinable, in which case the Secretary, with respect to the proposed regulation to designate such habitat, may extend the one-year period specified in subparagraph (A) by not more than one additional year, but not later than the close of such additional year the Secretary must publish a final regulation, based on such data as may be available at that time, designating, to the maximum extent prudent, such habitat.
(7) Neither paragraph (4), (5), or (6) of this subsection nor section 553 of title 5 shall apply to any regulation issued by the Secretary in regard to any emergency posing a significant risk to the well-being of any species of fish or wildlife or plants, but only if--
(A) at the time of publication of the regulation in the Federal Register the Secretary

publishes therein detailed reasons why such regulation is necessary; and
(B) in the case such regulation applies to resident species of fish or wildlife, or plants, the Secretary gives actual notice of such regulation to the State agency in each State in which such species is believed to occur.Such regulation shall, at the discretion of the Secretary, take effect immediately upon the publication of the regulation in the Federal Register. Any regulation promulgated under the authority of this paragraph shall cease to have force and effect at the close of the 240-day period following the date of publication unless, during such 240-day period, the rulemaking procedures which would apply to such regulation without regard to this paragraph are complied with. If at any time after issuing an emergency regulation the Secretary determines, on the basis of the best appropriate data available to him, that substantial evidence does not exist to warrant such regulation, he shall withdraw it.
(8) The publication in the Federal Register of any proposed or final regulation which is necessary or appropriate to carry out the purposes of this chapter shall include a summary by the Secretary of the data on which such regulation is based and shall show the relationship of such data to such regulation; and if such regulation designates or revises critical habitat, such summary shall, to the maximum extent practicable, also include a brief description and evaluation of those activities (whether public or private) which, in the opinion of the Secretary, if undertaken may adversely modify such habitat, or may be affected by such designation.
(c) Lists
(1) The Secretary of the Interior shall publish in the Federal Register a list of all species determined by him or the Secretary of Commerce to be endangered species and a list of all species determined by him or the Secretary of Commerce to be threatened species. Each list shall refer to the species contained therein by scientific and common name or names, if any, specify with respect to each such species over what portion of its range it is endangered or threatened, and specify any critical habitat within such range. The Secretary shall from time to time revise each list published under the authority of this subsection to reflect recent determinations, designations, and revisions made in accordance with subsections (a) and (b) of this section.
(2) The Secretary shall--
(A) conduct, at least once every five years, a review of all species included in a list which is published pursuant to paragraph
(1) and which is in effect at the time of such review; and
(B) determine on the basis of such review whether any such species
(i) be removed from such list;
(ii) be changed in status from an endangered species to a threatened species; or
(iii) be changed in status from a threatened species to an endangered species.
Each determination under subparagraph (B) shall be made in accordance with the provisions of subsections (a) and (b) of this section.
(d) Protective regulations
Whenever any species is listed as a threatened species pursuant to subsection (c)

of this section, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 1538(a)(1) of this title, in the case of fish or wildlife, or section 1538(a)(2) of this title, in the case of plants, with respect to endangered species; except that with respect to the taking of resident species of fish or wildlife, such regulations shall apply in any State which has entered into a cooperative agreement pursuant to section 1535(c) of this title only to the extent that such regulations have also been adopted by such State.

(e) Similarity of appearance cases

The Secretary may, by regulation of commerce or taking, and to the extent he deems advisable, treat any species as an endangered species or threatened species even though it is not listed pursuant to this section if he finds that--

(A) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species;

(B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and

(C) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this chapter.

(f) Recovery plans

(1) The Secretary shall develop and implement plans (hereinafter in this subsection referred to as ``recovery plans'') for the conservation and survival of endangered species and threatened species listed pursuant to this section, unless he finds that such a plan will not promote the conservation of the species. The Secretary, in developing and implementing recovery plans, shall, to the maximum extent practicable--

(A) give priority to those endangered species or threatened species, without regard to taxonomic classification, that are most likely to benefit from such plans, particularly those species that are, or may be, in conflict with construction or other development projects or other forms of economic activity;

(B) incorporate in each plan--

(i) a description of such site-specific management actions as may be necessary to achieve the plan's goal for the conservation and survival of the species;

(ii) objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of this section, that the species be removed from the list; and

(iii) estimates of the time required and the cost to carry out those measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal.

(2) The Secretary, in developing and implementing recovery plans, may procure the services of appropriate public and private agencies and institutions, and other qualified persons. Recovery teams appointed pursuant to this subsection shall not be subject to the Federal Advisory Committee Act.

(3) The Secretary shall report every two years to the Committee on Environment and Public Works of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives on the status of efforts to develop and implement recovery plans for all species listed pursuant to this section and on the status of all species for which such plans have been developed.
(4) The Secretary shall, prior to final approval of a new or revised recovery plan, provide public notice and an opportunity for public review and comment on such plan. The Secretary shall consider all information presented during the public comment period prior to approval of the plan.
(5) Each Federal agency shall, prior to implementation of a new or revised recovery plan, consider all information presented during the public comment period under paragraph (4).
(g) Monitoring
(1) The Secretary shall implement a system in cooperation with the States to monitor effectively for not less than five years the status of all species which have recovered to the point at which the measures provided pursuant to this chapter are no longer necessary and which, in accordance with the provisions of this section, have been removed from either of the lists published under subsection (c) of this section.
(2) The Secretary shall make prompt use of the authority under paragraph 7 of subsection (b) of this section to prevent a significant risk to the well being of any such recovered species.
(h) Agency guidelines; publication in Federal Register; scope; proposals and amendments: notice and opportunity for comments
The Secretary shall establish, and publish in the Federal Register, agency guidelines to insure that the purposes of this section are achieved efficiently and effectively. Such guidelines shall include, but are not limited to--
(1) procedures for recording the receipt and the disposition of petitions submitted under subsection (b)(3) of this section;
(2) criteria for making the findings required under such subsection with respect to petitions;
(3) a ranking system to assist in the identification of species that should receive priority review under subsection (a)(1) of this section; and
(4) a system for developing and implementing, on a priority basis, recovery plans under subsection (f) of this section.
The Secretary shall provide to the public notice of, and opportunity to submit written comments on, any guideline (including any amendment thereto) proposed to be established under this subsection.
(i)Submission to State agency of justification for regulations inconsistent with State agency's comments or petition If, in the case of any regulation proposed by the Secretary under the authority of this section, a State agency to which notice thereof was given in accordance with subsection (b)(5)(A)(ii) of this section files comments disagreeing with all or part of the proposed regulation, and the Secretary issues a final regulation which is in conflict with such comments, or if the Secretary fails to

adopt a regulation pursuant to an action petitioned by a State agency under subsection (b)(3) of this section, the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.

i. *Idaho Farm Bureau v. Babbitt*, 839 F. Supp. 739, 745-748 (D. Idaho 1993), *rev'd* 58 F.3d 1393 (9th Cir. 1994).

The Idaho District Court set aside a decision to list a species of fresh water mollusks because the Fish and Wildlife Service failed to notify the county before it listed a mollusk. The Ninth Circuit reversed the District Court and held that the failure to follow the ESA procedures with respect to direct notice to local governments was harmless error. The county commissioners had been aware of the hearings even without individual notice to the counties, and thus, the failure to provide notice and comment had no bearing on the procedure used or the substance of the decision. *Idaho Farm Bureau*, 58 F.3d at 1405.

ii. Role of NEPA *Catron County Board of Commissioners v. U.S. Fish and Wildlife Service*, 75 F.3d 1429, 1436 (10th Cir. 1996)

The Tenth Circuit Court of Appeals requires the Fish and Wildlife Service to comply with the National Environmental Policy Act ("NEPA") when designating critical habitat under the Endangered Species Act. In the Ninth Circuit, the Fish and Wildlife Service does not follow NEPA, based on the legal theory that the rulemaking process to establish critical habitat is the substantial equivalent of an environmental impact statement. *Douglas County v. Babbitt*, 48 F. 3d 1495, 1502 (9th Cir. 1995). The "substantial equivalent doctrine" also applies to listing decisions. *Pacific Legal Foundation v. Andrus*, 657 F.2d 829, 836-838 (6th Cir. 1981) (holding that listing a species under the ESA did not require an environmental impact statement).

b. Consultation

i. §1536. Interagency cooperation

(a) Federal agency actions and consultations

(1) The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this chapter by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 1533 of this title.

(2) Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an ``agency action'') is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical, unless such agency has been granted an exemption

for such action by the Committee pursuant to subsection (h) of this section. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.
(3) Subject to such guidelines as the Secretary may establish, a Federal agency shall consult with the Secretary on any prospective agency action at the request of, and in cooperation with, the prospective permit or license applicant if the applicant has reason to believe that an endangered species or a threatened species may be present in the area affected by his project and that implementation of such action will likely affect such species.
(4) Each Federal agency shall confer with the Secretary on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under section 1533 of this title or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. This paragraph does not require a limitation on the commitment of resources as described in subsection (d) of this section.
(b) Opinion of Secretary
(1)(A) Consultation under subsection (a)(2) of this section with respect to any agency action shall be concluded within the 90-day period beginning on the date on which initiated or, subject to subparagraph (B), within such other period of time as is mutually agreeable to the Secretary and the Federal agency.
(B) In the case of an agency action involving a permit or license applicant, the Secretary and the Federal agency may not mutually agree to conclude consultation within a period exceeding 90 days unless the Secretary, before the close of the 90th day referred to in subparagraph (A)--
(i) if the consultation period proposed to be agreed to will end before the 150th day after the date on which consultation was initiated, submits to the applicant a written statement setting forth--
(I) the reasons why a longer period is required,
(II) the information that is required to complete the consultation, and
(III) the estimated date on which consultation will be completed; or
(ii) if the consultation period proposed to be agreed to will end 150 or more days after the date on which consultation was initiated, obtains the consent of the applicant to such period.
The Secretary and the Federal agency may mutually agree to extend a consultation period established under the preceding sentence if the Secretary, before the close of such period, obtains the consent of the applicant to the extension.
(2) Consultation under subsection (a)(3) of this section shall be concluded within such period as is agreeable to the Secretary, the Federal agency, and the applicant concerned.
(3)(A) Promptly after conclusion of consultation under paragraph (2) or (3) of subsection (a) of this section, the Secretary shall provide to the Federal agency and the applicant, if any, a written statement setting forth the Secretary's opinion, and a summary of the information on which the opinion is based, detailing how the agency action affects the species or its critical habitat. If jeopardy or adverse

modification is found, the Secretary shall suggest those reasonable and prudent alternatives which he believes would not violate subsection (a)(2) of this section and can be taken by the Federal agency or applicant in implementing the agency action.
(B) Consultation under subsection (a)(3) of this section, and an opinion issued by the Secretary incident to such consultation, regarding an agency action shall be treated respectively as a consultation under subsection (a)(2) of this section, and as an opinion issued after consultation under such subsection, regarding that action if the Secretary reviews the action before it is commenced by the Federal agency and finds, and notifies such agency, that no significant changes have been made with respect to the action and that no significant change has occurred regarding the information used during the initial consultation.
(4) If after consultation under subsection (a)(2) of this section, the Secretary concludes that--
(A) the agency action will not violate such subsection, or offers reasonable and prudent alternatives which the Secretary believes would not violate such subsection;
(B) the taking of an endangered species or a threatened species incidental to the agency action will not violate such subsection; and
(C) if an endangered species or threatened species of a marine mammal is involved, the taking is authorized pursuant to section 1371(a)(5) of this title; the Secretary shall provide the Federal agency and the applicant concerned, if any, with a written statement that--
(i) specifies the impact of such incidental taking on the species
(ii) specifies those reasonable and prudent measures that the Secretary considers necessary or appropriate to minimize such impact,
(iii) in the case of marine mammals, specifies those measures that are necessary to comply with section 1371(a)(5) of this title with regard to such taking, and
(iv) sets forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency or applicant (if any), or both, to implement the measures specified under clauses (ii) and (iii).
(c) Biological assessment
(1) To facilitate compliance with the requirements of subsection (a)(2) of this section, each Federal agency shall, with respect to any agency action of such agency for which no contract for construction has been entered into and for which no construction has begun on November 10, 1978, request of the Secretary information whether any species which is listed or proposed to be listed may be present in the area of such proposed action. If the Secretary advises, based on the best scientific and commercial data available, that such species may be present, such age shall conduct a biological assessment for the purpose of identifying any endangered species or threatened species which is likely to be affected by such action. Such assessment shall be completed within 180 days after the date on which initiated (or within such other period as is mutually agreed to by the Secretary and such agency, except that if a permit or license applicant is involved, the 180-day period may not be extended unless such agency provides the applicant, before the close of such period, with a written statement setting forth the estimated length

of the proposed extension and the reasons therefore) and, before any contract for construction is entered into and before construction is begun with respect to such action. Such assessment may be undertaken as part of a Federal agency's compliance with the requirements of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).
(2) Any person who may wish to apply for an exemption under subsection (g) of this section for that action may conduct a biological assessment to identify any endangered species or threatened species which is likely to be affected by such action. Any such biological assessment must, however, be conducted in cooperation with the Secretary and under the supervision of the appropriate Federal agency.
(d) Limitation on commitment of resources
After initiation of consultation required under subsection (a)(2) of this section, the Federal agency and the permit or license applicant shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate subsection (a)(2) of this section.

ii. 50 C.F.R. Part 402 (Selected Sections)

50 C.F.R. §402.01 Scope

(a) This part interprets and implements sections 7(a)–(d) [16 U.S.C. 1536(a)–(d)] of the Endangered Species Act of 1973, as amended ("Act"). Section 7(a) grants authority to and imposes requirements upon Federal agencies regarding endangered or threatened species of fish, wildlife, or plants ("listed species") and habitat of such species that has been designated as critical ("critical habitat"). Section 7(a)(1) of the Act directs Federal agencies, in consultation with and with the assistance of the Secretary of the Interior or of Commerce, as appropriate, to utilize their authorities to further the purposes of the Act by carrying out conservation programs for listed species. Such affirmative conservation programs must comply with applicable permit requirements (50 CFR parts 17, 220, 222, and 227) for listed species and should be coordinated with the appropriate Secretary. Section 7(a)(2) of the Act requires every Federal agency, in consultation with and with the assistance of the Secretary, to insure that any action it authorizes, funds, or carries out, in the United States or upon the high seas, is not likely to jeopardize the continued existence of any listed species or results in the destruction or adverse modification of critical habitat. Section 7(a)(3) of the Act authorizes a prospective permit or license applicant to request the issuing Federal agency to enter into early consultation with the Service on a proposed action to determine whether such action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. Section 7(a)(4) of the Act requires Federal agencies to confer with the Secretary on any action that is likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat. Section 7(b) of the

Act requires the Secretary, after the conclusion of early or formal consultation, to issue a written statement setting forth the Secretary's opinion detailing how the agency action affects listed species or critical habitat Biological assessments are required under section 7(c) of the Act if listed species or critical habitat may be present in the area affected by any major construction activity as defined in §404.02. Section 7(d) of the Act prohibits Federal agencies and applicants from making any irreversible or irretrievable commitment of resources which has the effect of foreclosing the formulation or implementation of reasonable and prudent alternatives which would avoid jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat. Section 7(e)–(o)(1) of the Act provide procedures for granting exemptions from the requirements of section 7(a)(2). Regulations governing the submission of exemption applications are found at 50 CFR part 451, and regulations governing the exemption process are found at 50 CFR parts 450, 452, and 453.
(b) The U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) share responsibilities for administering the Act. The Lists of Endangered and Threatened Wildlife and Plants are found in 50 CFR 17.11 and 17.12 and the designated critical habitats are found in 50 CFR 17.95 and 17.96 and 50 CFR part 226. Endangered or threatened species under the jurisdiction of the NMFS are located in 50 CFR 222.23(a) and 227.4. If the subject species is cited in 50 CFR 222.23(a) or 227.4, the Federal agency shall contact the NMFS. For all other listed species the Federal Agency shall contact the FWS.

50 C.F.R. §402.10 Conference on proposed species or proposed critical habitat.
(a) Each Federal agency shall confer with the Service on any action which is likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat. The conference is designed to assist the Federal agency and any applicant in identifying and resolving potential conflicts at an early stage in the planning process.
(b) The Federal agency shall initiate the conference with the Director. The Service may request a conference if, after a review of available information, it determines that a conference is required for a particular action.
(c) A conference between a Federal agency and the Service shall consist of informal discussions concerning an action that is likely to jeopardize the continued existence of the proposed species or result in the destruction or adverse modification of the proposed critical habitat at issue. Applicants may be involved in these informal discussions to the greatest extent practicable. During the conference, the Service will make advisory recommendations, if any, on ways to minimize or avoid adverse effects. If the proposed species is subsequently listed or the proposed critical habitat is designated prior to completion of the action, the Federal agency must review the action to determine whether formal consultation is required.
(d) If requested by the Federal agency and deemed appropriate by the Service, the

conference may be conducted in accordance with the procedures for formal consultation in §402.14. An opinion issued at the conclusion of the conference may be adopted as the biological opinion when the species is listed or critical habitat is designated, but only if no significant new information is developed (including that developed during the rulemaking process on the proposed listing or critical habitat designation) and no significant changes to the Federal action are made that would alter the content of the opinion. An incidental take statement provided with a conference opinion does not become effective unless the Service adopts the opinion once the listing is final.
(e) The conclusions reached during a conference and any recommendations shall be documented by the Service and provided to the Federal agency and to any applicant. The style and magnitude of this document will vary with the complexity of the conference. If formal consultation also is required for a particular action, then the Service will provide the results of the conference with the biological opinion.

50 C.F.R. §402.11 Early consultation.
(a) Purpose. Early consultation is designed to reduce the likelihood of conflicts between listed species or critical habitat and proposed actions and occurs prior to the filing of an application for a Federal permit or license. Although early consultation is conducted between the Service and the Federal agency, the prospective applicant should be involved throughout the consultation process.
(b) Request by prospective applicant. If a prospective applicant has reason to believe that the prospective action may affect listed species or critical habitat, it may request the Federal agency to enter into early consultation with the Service. The prospective applicant must certify in writing to the Federal agency that (1) it has a definitive proposal outlining the action and its effects and (2) it intends to implement its proposal, if authorized.
(c) Initiation of early consultation. If the Federal agency receives the prospective applicant's certification in paragraph (b) of this section, then the Federal agency shall initiate early consultation with the Service. This request shall be in writing and contain the information outlined in §402.14(c) and, if the action is a major construction activity, the biological assessment as outlined in §402.12.
(d) Procedures and responsibilities. The procedures and responsibilities for early consultation are the same as outlined in §402.14(c)–(j) for formal consultation, except that all references to the "applicant" shall be treated as the "prospective applicant" and all references to the "biological opinion" or the "opinion" shall be treated as the "preliminary biological opinion" for the purpose of this section.
(e) Preliminary biological opinion. The contents and conclusions of a preliminary biological opinion are the same as for a biological opinion issued after formal consultation except that the incidental take statement provided with a preliminary biological opinion does not constitute authority to take listed species.
(f) Confirmation of preliminary biological opinion as final biological opinion. A preliminary biological opinion may be confirmed as a biological opinion issued after

formal consultation if the Service reviews the proposed action and finds that there have been no significant changes in the action as planned or in the information used during the early consultation. A written request for confirmation of the preliminary biological opinion should be submitted after the prospective applicant applies to the Federal agency for a permit or license but prior to the issuance of such permit or license. Within 45 days of receipt of the Federal agency's request, the Service shall either:
(1) Confirm that the preliminary biological opinion stands as a final biological opinion; or
(2) If the findings noted above cannot be made, request that the Federal agency initiate formal consultation.

50 C.F.R. §402.12 Biological assessments.
(a) Purpose. A biological assessment shall evaluate the potential effects of the action on listed and proposed species and designated and proposed critical habitat and determine whether any such species or habitat are likely to be adversely affected by the action and is used in determining whether formal consultation or a conference is necessary.
(b) Preparation requirement. (1) The procedures of this section are required for Federal actions that are "major construction activities"; provided that a contract for construction was not entered into or actual construction was not begun on or before November 10, 1978. Any person, including those who may wish to apply for an exemption from section 7(a)(2) of the Act, may prepare a biological assessment under the supervision of the Federal agency and in cooperation with the Service consistent with the procedures and requirements of this section. An exemption from the requirements of section 7(a)(2) is not permanent unless a biological assessment has been prepared. (2) The biological assessment shall be completed before any contract for construction is entered into and before construction is begun.
(c) Request for information. The Federal agency or the designated non-Federal representative shall convey to the Director either (1) a written request for a list of any listed or proposed species or designated or proposed critical habitat that may be present in the action area; or (2) a written notification of the species and critical habitat that are being included in the biological assessment.
(d) Director's response. Within 30 days of receipt of the notification of, or the request for, a species list, the Director shall either concur with or revise the list or, in those cases where no list has been provided, advise the Federal agency or the designated non-Federal representative in writing whether, based on the best scientific and commercial data available, any listed or proposed species or designated or proposed critical habitat may be present in the action area. In addition to listed and proposed species, the Director will provide a list of candidate species that may be present in the action area. Candidate species refers to any species being considered by the Service for listing as endangered or threatened species but not yet the subject of a proposed rule. Although candidate species

have no legal status and are accorded no protection under the Act, their inclusion will alert the Federal agency of potential proposals or listings.
(1) If the Director advises that no listed species or critical habitat may be present, the Federal agency need not prepare a biological assessment and further consultation is not required. If only proposed species or proposed critical habitat may be present in the action area, then the Federal agency must confer with the Service if required under §402.10, but preparation of a biological assessment is not required unless the proposed listing and/or designation becomes final.
(2) If a listed species or critical habitat may be present in the action area, the Director will provide a species list or concur with the species list provided. The Director also will provide available information (or references thereto) regarding these species and critical habitat, and may recommend discretionary studies or surveys that may provide a better information base for the preparation of an assessment. Any recommendation for studies or surveys is not to be construed as the Service's opinion that the Federal agency has failed to satisfy the information standard of section 7(a)(2) of the Act.
(e) Verification of current accuracy of species list. If the Federal agency or the designated non-Federal representative does not begin preparation of the biological assessment within 90 days of receipt of (or concurrence with) the species list, the Federal agency or the designated non-Federal representative must verify (formally or informally) with the Service the current accuracy of the species list at the time the preparation of the assessment is begun.
(f) Contents. The contents of a biological assessment are at the discretion of the Federal agency and will depend on the nature of the Federal action. The following may be considered for inclusion:
(1) The results of an on-site inspection of the area affected by the action to determine if listed or proposed species are present or occur seasonally.
(2) The views of recognized experts on the species at issue.
(3) A review of the literature and other information.
(4) An analysis of the effects of the action on the species and habitat, including consideration of cumulative effects, and the results of any related studies.
(5) An analysis of alternate actions considered by the Federal agency for the proposed action.
(g) Incorporation by reference. If a proposed action requiring the preparation of a biological assessment is identical, or very similar, to a previous action for which a biological assessment was prepared, the Federal agency may fulfill the biological assessment requirement for the proposed action by incorporating by reference the earlier biological assessment, plus any supporting data from other documents that are pertinent to the consultation, into a written certification that:
(1) The proposed action involves similar impacts to the same species in the same geographic area;
(2) No new species have been listed or proposed or no new critical habitat designated or proposed for the action area; and
(3) The biological assessment has been supplemented with any relevant changes

in information.
(h) Permit requirements. If conducting a biological assessment will involve the taking of a listed species, a permit under section 10 of the Act (16 U.S.C. 1539) and part 17 of this title (with respect to species under the jurisdiction of the FWS) or parts 220, 222, and 227 of this title (with respect to species under the jurisdiction of the NMFS) is required.
(i) Completion time. The Federal agency or the designated non- Federal representative shall complete the biological assessment within 180 days after its initiation (receipt of or concurrence with the species list) unless a different period of time is agreed to by the Director and the Federal agency. If a permit or license applicant is involved, the 180-day period may not be extended unless the agency provides the applicant, before the close of the 180-day period, with a written statement setting forth the estimated length of the proposed extension and the reasons why such an extension is necessary.
(j) Submission of biological assessment. The Federal agency shall submit the completed biological assessment to the Director for review. The Director will respond in writing within 30 days as to whether or not he concurs with the findings of the biological assessment. At the option of the Federal agency, formal consultation may be initiated under §402.14(c) concurrently with the submission of the assessment.
(k) Use of the biological assessment.
(1) The Federal agency shall use the biological assessment in determining whether formal consultation or a conference is required under §402.14 or §402.10, respectively. If the biological assessment indicates that there are no listed species or critical habitat present that are likely to be adversely affected by the action and the Director concurs as specified in paragraph (j) of this section, then formal consultation is not required. If the biological assessment indicates that the action is not likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat, and the Director concurs, then a conference is not required.
(2) The Director may use the results of the biological assessment in (i) determining whether to request the Federal agency to initiate formal consultation or a conference, (ii) formulating a biological opinion, or (iii) formulating a preliminary biological opinion.

50 C.F.R. §402.13 Informal consultation.
(a) Informal consultation is an optional process that includes all discussions, correspondence, etc., between the Service and the Federal agency or the designated non-Federal representative, designed to assist the Federal agency in determining whether formal consultation or a conference is required. If during informal consultation it is determined by the Federal agency, with the written concurrence of the Service, that the action is not likely to adversely affect listed species or critical habitat, the consultation process is terminated, and no further action is necessary.

(b) During informal consultation, the Service may suggest modifications to the action that the Federal agency and any applicant could implement to avoid the likelihood of adverse effects to listed species or critical habitat.

50 C.F.R. §402.14 Formal consultation.

(a) Requirement for formal consultation. Each Federal agency shall review its actions at the earliest possible time to determine whether any action may affect listed species or critical habitat. If such a determination is made, formal consultation is required, except as noted in paragraph (b) of this section. The Director may request a Federal agency to enter into consultation if he identifies any action of that agency that may affect listed species or critical habitat and for which there has been no consultation. When such a request is made, the Director shall forward to the Federal agency a written explanation of the basis for the request.

(b) Exceptions. (1) A Federal agency need not initiate formal consultation if, as a result of the preparation of a biological assessment under §402.12 or as a result of informal consultation with the Service under §402.13, the Federal agency determines, with the written concurrence of the Director, that the proposed action is not likely to adversely affect any listed species or critical habitat. (2) A Federal agency need not initiate formal consultation if a preliminary biological opinion, issued after early consultation under §402.11, is confirmed as the final biological opinion.

(c) Initiation of formal consultation. A written request to initiate formal consultation shall be submitted to the Director and shall include: (1) A description of the action to be considered; (2) A description of the specific area that may be affected by the action; (3) A description of any listed species or critical habitat that may be affected by the action; (4) A description of the manner in which the action may affect any listed species or critical habitat and an analysis of any cumulative effects;

(5) Relevant reports, including any environmental impact statement, environmental assessment, or biological assessment prepared; and

(6) Any other relevant available information on the action, the affected listed species, or critical habitat. Formal consultation shall not be initiated by the Federal agency until any required biological assessment has been completed and submitted to the Director in accordance with §402.12. Any request for formal consultation may encompass, subject to the approval of the Director, a number of similar individual actions within a given geographical area or a segment of a comprehensive plan. This does not relieve the Federal agency of the requirements for considering the effects of the action as a whole.

(d) Responsibility to provide best scientific and commercial data available. The Federal agency requesting formal consultation shall provide the Service with the best scientific and commercial data available or which can be obtained during the consultation for an adequate review of the effects that an action may have upon listed species or critical habitat. This information may include the results of studies or surveys conducted by the Federal agency or the designated non-Federal representative. The Federal agency shall provide any applicant with the opportunity

to submit information for consideration during the consultation.
(e) Duration and extension of formal consultation. Formal consultation concludes within 90 days after its initiation unless extended as provided below. If an applicant is not involved, the Service and the Federal agency may mutually agree to extend the consultation for a specific time period. If an applicant is involved, the Service and the Federal agency may mutually agree to extend the consultation provided that the Service submits to the applicant, before the close of the 90 days, a written statement setting forth:
(1) The reasons why a longer period is required,
(2) The information that is required to complete the consultation, and
(3) The estimated date on which the consultation will be completed. A consultation involving an applicant cannot be extended for more than 60 days without the consent of the applicant. Within 45 days after concluding formal consultation, the Service shall deliver a biological opinion to the Federal agency and any applicant.
(f) Additional data. When the Service determines that additional data would provide a better information base from which to formulate a biological opinion, the Director may request an extension of formal consultation and request that the Federal agency obtain additional data to determine how or to what extent the action may affect listed species or critical habitat. If formal consultation is extended by mutual agreement according to §402.14(e), the Federal agency shall obtain, to the extent practicable, that data which can be developed within the scope of the extension. The responsibility for conducting and funding any studies belongs to the Federal agency and the applicant, not the Service. The Service's request for additional data is not to be construed as the Service's opinion that the Federal agency has failed to satisfy the information standard of section 7(a)(2) of the Act. If no extension of formal consultation is agreed to, the Director will issue a biological opinion using the best scientific and commercial data available.
(g) Service responsibilities. Service responsibilities during formal consultation are as follows:
(1) Review all relevant information provided by the Federal agency or otherwise available. Such review may include an on-site inspection of the action area with representatives of the Federal agency and the applicant.
(2) Evaluate the current status of the listed species or critical habitat.
(3) Evaluate the effects of the action and cumulative effects on the listed species or critical habitat.
(4) Formulate its biological opinion as to whether the action, taken together with cumulative effects, is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat.
(5) Discuss with the Federal agency and any applicant the Service's review and evaluation conducted under paragraphs (g)(1) through (3) of this section, the basis for any finding in the biological opinion, and the availability of reasonable and prudent alternatives (if a jeopardy opinion is to be issued) that the agency and the applicant can take to avoid violation of section 7(a)(2). The Service will utilize the expertise of the Federal agency and any applicant in identifying these alternatives.

If requested, the Service shall make available to the Federal agency the draft biological opinion for the purpose of analyzing the reasonable and prudent alternatives. The 45-day period in which the biological opinion must be delivered will not be suspended unless the Federal agency secures the written consent of the applicant to an extension to a specific date. The applicant may request a copy of the draft opinion from the Federal agency. All comments on the draft biological opinion must be submitted to the Service through the Federal agency, although the applicant may send a copy of its comments directly to the Service. The Service will not issue its biological opinion prior to the 45-day or extended deadline while the draft is under review by the Federal agency. However, if the Federal agency submits comments to the Service regarding the draft biological opinion within 10 days of the deadline for issuing the opinion, the Service is entitled to an automatic 10-day extension on the deadline.

(6) Formulate discretionary conservation recommendations, if any, which will assist the Federal agency in reducing or eliminating the impacts that its proposed action may have on listed species or critical habitat.

(7) Formulate a statement concerning incidental take, if such take may occur.

(8) In formulating its biological opinion, any reasonable and prudent alternatives, and any reasonable and prudent measures, the Service will use the best scientific and commercial data available and will give appropriate consideration to any beneficial actions taken by the Federal agency or applicant, including any actions taken prior to the initiation of consultation.

(h) Biological opinions. The biological opinion shall include:

(1) A summary of the information on which the opinion is based;

(2) A detailed discussion of the effects of the action on listed species or critical habitat; and

(3) The Service's opinion on whether the action is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat (a “jeopardy biological opinion”); or, the action is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat (a “no jeopardy” biological opinion). A “jeopardy” biological opinion shall include reasonable and prudent alternatives, if any. If the Service is unable to develop such alternatives, it will indicate that to the best of its knowledge there are no reasonable and prudent alternatives.

(i) Incidental take. (1) In those cases where the Service concludes that an action (or the implementation of any reasonable and prudent alternatives) and the resultant incidental take of listed species will not violate section 7(a)(2), and, in the case of marine mammals, where the taking is authorized pursuant to section 101(a)(5) of the Marine Mammal Protection Act of 1972, the Service will provide with the biological opinion a statement concerning incidental take that:

(i) Specifies the impact, i.e., the amount or extent, of such incidental taking on the species;

(ii) Specifies those reasonable and prudent measures that the Director considers necessary or appropriate to minimize such impact;

(iii) In the case of marine mammals, specifies those measures that are necessary to comply with section 101(a)(5) of the Marine Mammal Protection Act of 1972 and applicable regulations with regard to such taking;
(iv) Sets forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency or any applicant to implement the measures specified under paragraphs (i)(1)(ii) and (i)(1)(iii) of this section; and
(v) Specifies the procedures to be used to handle or dispose of any individuals of a species actually taken.
(2) Reasonable and prudent measures, along with the terms and conditions that implement them, cannot alter the basic design, location, scope, duration, or timing of the action and may involve only minor changes.
(3) In order to monitor the impacts of incidental take, the Federal agency or any applicant must report the progress of the action and its impact on the species to the Service as specified in the incidental take statement. The reporting requirements will be established in accordance with 50 CFR 13.45 and 18.27 for FWS and 50 CFR 220.45 and 228.5 for NMFS.
(4) If during the course of the action the amount or extent of incidental taking, as specified under paragraph (i)(1)(i) of this Section, is exceeded, the Federal agency must reinitiate consultation immediately.
(5) Any taking which is subject to a statement as specified in paragraph (i)(1) of this section and which is in compliance with the terms and conditions of that statement is not a prohibited taking under the Act, and no other authorization or permit under the Act is required.
(j) Conservation recommendations. The Service may provide with the biological opinion a statement containing discretionary conservation recommendations. Conservation recommendations are advisory and are not intended to carry any binding legal force.
(k) Incremental steps. When the action is authorized by a statute that allows the agency to take incremental steps toward the completion of the action, the Service shall, if requested by the Federal agency, issue a biological opinion on the incremental step being considered, including its views on the entire action. Upon the issuance of such a biological opinion, the Federal agency may proceed with or authorize the incremental steps of the action if:
(1) The biological opinion does not conclude that the incremental step would violate section 7(a)(2);
(2) The Federal agency continues consultation with respect to the entire action and obtains biological opinions, as required, for each incremental step;
(3) The Federal agency fulfills its continuing obligation to obtain sufficient data upon which to base the final biological opinion on the entire action;
(4) The incremental step does not violate section 7(d) of the Act concerning irreversible or irretrievable commitment of resources; and
(5) There is a reasonable likelihood that the entire action will not violate section 7(a)(2) of the Act.

(l) Termination of consultation. (1) Formal consultation is terminated with the issuance of the biological opinion.
(2) If during any stage of consultation a Federal agency determines that its proposed action is not likely to occur, the consultation may be terminated by written notice to the Service.
(3) If during any stage of consultation a Federal agency determines, with the concurrence of the Director, that its proposed action is not likely to adversely affect any listed species or critical habitat, the consultation is terminated. [51 FR 19957, June 3, 1986, as amended at 54 FR 40350, Sept. 29, 1989]

iii. *National Wildlife Federation v. Coleman*, 529 F2d 359, 371 (5th Cir. 1976), *cert. denied* 429 U.S. 979 (1977).

Pursuant to the Endangered Species Act, the Fish and Wildlife Service is responsible for species listing, the designation of critical habitat and the development of protective regulations and recovery plans. Once a species is listed, federal agencies have the responsibility to consult with the Fish and Wildlife Service under Section 7 of the ESA. However, once consultation has occurred, the agency is then free to make the final determination. The Fish and Wildlife Service does not have veto power over federal agency actions.

iv. *Bennett v. Spear*, 520 U.S. 154, 158 (1997)

The U.S. Supreme Court held that water users could challenge the Fish and Wildife Service jeopardy opinion, which would have prevented or greatly reduced water releases from a storage reservoir. The Court recognized that in most cases a federal agency accepts the Fish and Wildlife Service opinion.

c. Defining a take

i. 16 U.S.C. §1539(a)

(a) Permits
(1) The Secretary may permit, under such terms and conditions as he shall prescribe–
(A) any act otherwise prohibited by section 1538 of this title for scientific purposes or to enhance the propagation or survival of the affected species, including, but not limited to, acts necessary for the establishment and maintenance of experimental populations pursuant to subsection (j) of this section; or
(B) any taking otherwise prohibited by section 1538(a)(1)(B) of this title if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.
(2)(A) No permit may be issued by the Secretary authorizing any taking referred to in paragraph (1)(B) unless the applicant therefor submits to the Secretary a conservation plan that specifies--
(i) the impact which will likely result from such taking;
(ii) what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps;

(iii) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and
(iv) such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan.
(B) If the Secretary finds, after opportunity for public comment, with respect to a permit application and the related conservation plan that--
(i) the taking will be incidental;
(ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;
(iii) the applicant will ensure that adequate funding for the plan will be provided;
(iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
(v) the measures, if any, required under subparagraph (A)(iv) will be met; and he has received such other assurances as he may require that the plan will be implemented, the Secretary shall issue the permit. The permit shall contain such terms and conditions as the Secretary deems necessary or appropriate to carry out the purposes of this paragraph, including, but not limited to, such reporting requirements as the Secretary deems necessary for determining whether such terms and conditions are being complied with.
(C) The Secretary shall revoke a permit issued under this paragraph if he finds that the permittee is not complying with the terms and conditions of the permit.

ii. *Babbitt v. Sweet Home Chapter of Communities for a Greater Oregon*, 515 U.S. 687 (1995)

The U.S. Supreme Court upheld an USFWS regulation that defined a take of a species listed under the ESA to include any substantial modification or degradation of habitat. Other laws, including the Migratory Bird Treaty Act, limit a take to the actual physical harm or death of the protected species. The Court instead affirmed that USFWS has the authority to adopt an expansive definition.

iii. 50 C.F.R. §17.3

Harm in the definition of "take" in the Act means an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

13. NATIONAL FOREST MANAGEMENT ACT ("NFMA"), 16 U.S.C. §§1601-1619 (Selected Sections).

a. §1604(c). Incorporation of standards and guidelines by Secretary; time of completion; progress reports; existing management plans

The Secretary shall begin to incorporate the standards and guidelines required by this section in plans for units of the National Forest System as soon as practicable after October 22, 1976, and shall attempt to complete such incorporation for all such units by no later than September 30, 1985. The Secretary shall report to the Congress on the progress of such incorporation in the annual report required by section 1606(c) of this title. Until such time as a unit of the National Forest System is managed under plans developed in accordance with this subchapter, the management of such unit may continue under existing land and resource management plans.

b. §1604(d) Public participation in management plans; availability of plans; public meetings

The Secretary shall provide for public participation in the development, review, and revision of land management plans including, but not limited to, making the plans or revisions available to the public at convenient locations in the vicinity of the affected unit for a period of at least three months before final adoption, during which period the Secretary shall publicize and hold public meetings or comparable processes at locations that foster public participation in the review of such plans or revisions.

c. §1604(e) Required assurances

In developing, maintaining, and revising plans for units of the National Forest System pursuant to this section, the Secretary shall assure that such plans--
(1) provide for multiple use and sustained yield of the products and services obtained therefrom in accordance with the Multiple-Use Sustained-Yield Act of 1960 [16 U.S.C.A. §§ 528-531], and, in particular, include coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness; and
determine forest management systems, harvesting levels, and procedures in the light of all of the uses set forth in subsection (c)(1) of this section, the definition of the terms "multiple use" and "sustained yield" as provided in the Multiple-Use Sustained-Yield Act of 1960, and the availability of lands and their suitability for resource management.

d. §1612. Public participation

(a) Adequate notice and opportunity to comment
In exercising his authorities under this subchapter and other laws applicable to the Forest Service, the Secretary, by regulation, shall establish procedures, including

public hearings where appropriate, to give the Federal, State, and local governments and the public adequate notice and an opportunity to comment upon the formulation of standards, criteria, and guidelines applicable to Forest Service programs.

14. SOIL AND WATER RESOURCES CONSERVATION ACT, 16 U.S.C. §§2001-2009 (Selected Sections)

§2003. Congressional policy and declaration of purpose

(a) Responsiveness to long-term needs

In order to further the conservation of soil, water, and related resources, it is declared to be the policy of the United States and purpose of this chapter that the conduct of programs administered by the Secretary of Agriculture for the conservation of such resources shall be responsive to the long-term needs of the Nation, as determined under the provisions of this chapter.

(b) Full utilization of cooperative arrangements with State agencies

Recognizing that the arrangements under which the Federal Government cooperates with State soil and water conservation agencies and other appropriate State natural resource agencies such as those concerned with forestry and fish and wildlife and, through conservation districts, with other local units of government and land users, have effectively aided in the protection and improvement of the Nation's basic resources, including the restoration and maintenance of resources damaged by improper use, it is declared to be the policy of the United States that these arrangements and similar cooperative arrangements should be utilized to the fullest extent practicable to achieve the purpose of this chapter consistent with the roles and responsibilities of the non-Federal agencies, landowners and land users.

(c) Attainment of policies and purposes

The Secretary shall promote the attainment of the policies and purposes expressed in this chapter by--

(1) appraising on a continuing basis the soil, water, and related resources of the Nation;

(2) developing and updating periodically a program for furthering the conservation, protection, and enhancement of the soil, water, and related resources of the Nation consistent with the roles and program responsibilities of other Federal agencies and State and local governments; and

(3) providing to Congress and the public, through reports, the information developed pursuant to paragraphs (1) and (2) of this subsection, and by providing Congress with an annual evaluation report as provided in section 2006 of this title.

15. ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT, 16 U.S.C. §3210 Access by owner to nonfederally owned land

(a) Reasonable use and enjoyment of land within boundaries of National Forest System

Notwithstanding any other provision of law, and subject to such terms and conditions as the Secretary of Agriculture may prescribe, the Secretary shall provide such access to nonfederally owned land within the boundaries of the National Forest System as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof: Provided, That such owner comply with rules and regulations applicable to ingress and egress to or from the National Forest System.

(b) Reasonable use and enjoyment of land surrounded by public lands managed by Secretary

Notwithstanding any other provision of law, and subject to such terms and conditions as the Secretary of the Interior may prescribe, the Secretary shall provide such access to nonfederally owned land surrounded by public lands managed by the Secretary under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701-82) as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof: Provided, That such owner comply with rules and regulations applicable to access across public lands.

16. RESOURCE CONSERVATION AND DEVELOPMENT PROGRAM, 16 U.S.C. §3451-3473 (Selected Sections)

§3452. Resource conservation and development program

The Secretary shall establish a resource conservation and development program under which the Secretary shall provide technical assistance and financial assistance to councils to develop and carry out area plans and projects in designated areas--

(1) to conserve and improve the use of land, develop natural resources, and improve and enhance the social, economic, and environmental conditions in primarily rural areas of the United States; and

(2) to encourage and improve the capability of State, units of government, Indian tribes, nonprofit organizations, and councils to carry out the purposes described in paragraph (1).

17. MINING LAW OF 1872, 30 U.S.C. §§21, *et seq.* (Selected Sections)

§22. Lands open to purchase by citizens

Except as otherwise provided, all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States.

18. MINING AND MINERAL MATERIALS ACT, 30 U.S.C. §286: Disposition of

royalties and rents from potassium leases

All money received from royalties and rentals from any lease issued or renewed under the provisions of subchapter VII of chapter 3 of this title, shall be paid into, reserved, and appropriated as follows: 52½ per centum to the Reclamation Fund, 10 per centum to the Treasury of the United States as miscellaneous receipts, and 37½ per centum shall be paid by the Secretary of the Treasury, after the expiration of each fiscal year, to the State within the boundaries of which the leased lands or deposits are or were located, such money to be used by such State or subdivision thereof for the construction and maintenance of public roads or for the support of schools or other public educational institutions, as the legislature of the State may direct.

19. MINERAL LEASING ACT, 30 U.S.C. §§181, *et seq.* (Selected Sections)

a. 30 U.S.C. §191 Disposition of moneys received

(a) All money received from sales, bonuses, royalties including interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982 [30 U.S.C. 1701 et seq.], and rentals of the public lands under the provisions of this chapter and the Geothermal Steam Act of 1970 [30 U.S.C. 1001 et seq.], shall be paid into the Treasury of the United States; and, subject to the provisions of subsection (b) of this section, 50 per centum thereof shall be paid by the Secretary of the Treasury to the State other than Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys paid to any of such States on or after January 1, 1976, to be used by such State and its subdivisions, as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this chapter, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service; and excepting those from Alaska, 40 per centum thereof shall be paid into, reserved, appropriated, as part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska, 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: Provided, That all moneys which may accrue to the United States under the provisions of this chapter and the Geothermal Steam Act of 1970 from lands within the naval petroleum reserves shall be deposited in the Treasury as ``miscellaneous receipts'', as provided by section 7433(b) of title 10. All moneys received under the provisions of this chapter and the Geothermal Steam Act of 1970 not otherwise disposed of by this section shall be credited to miscellaneous receipts. Payments to States under this section with respect to any moneys received by the United States, shall be made not later than the last business day of the month in which such moneys are warranted by the United States Treasury to the Secretary as having been received, except for any portion of such moneys which is under challenge and placed in a suspense account pending resolution of a dispute. Such warrants shall be issued by the United States

Treasury not later than 10 days after receipt of such moneys by the Treasury. Moneys placed in a suspense account which are determined to be payable to a State shall be made not later than the last business day of the month in which such dispute is resolved. Any such amount placed in a suspense account pending resolution shall bear interest until the dispute is resolved.
(b) In determining the amount of payments to the States under this section, the amount of such payments shall not be reduced by any administrative or other costs incurred by the United States.

b. 30 U.S.C. §223. Leases; amount and survey of land; term of lease; royalties and annual rental

Upon establishing to the satisfaction of the Secretary of the Interior that valuable deposits of oil or gas have been discovered within the limits of the land embraced in any permit, the permittee shall be entitled to a lease for one-fourth of the land embraced in the prospecting permit: Provided, That the permittee shall be granted a lease for as much as one hundred and sixty acres of said lands, if there be that number of acres within the permit. The area to be selected by the permittee, shall be in reasonably compact form and, if surveyed, to be described by the legal subdivisions of the public-land surveys; if unsurveyed, to be surveyed by the Government at the expense of the applicant for lease in accordance with rules and regulations to be prescribed by the Secretary of the Interior, and the lands leased shall be conformed to and taken in accordance with the legal subdivisions of such surveys; deposits made to cover expense of surveys shall be deemed appropriated for that purpose, and any excess deposits may be repaid to the person or persons making such deposit or their legal representatives. Such leases shall be for a term of twenty years upon a royalty of 5 per centum in amount or value of the production and the annual payment in advance of a rental of $1 per acre, the rental paid for any one year to be credited against the royalties as they accrue for that year, and shall continue in force otherwise as prescribed in section 226 of this title for leases issued prior to August 21, 1935. The permittee shall also be entitled to a preference right to a lease for the remainder of the land in his prospecting permit at a royalty of not less than 12½ per centum in amount or value of the production nor more than the royalty rate prescribed by regulation in force on January 1, 1935, for secondary leases issued under this section, and under such other conditions as are fixed for oil or gas leases issued under section 226 of this title the royalty to be determined by competitive bidding or fixed by such other method as the Secretary may by regulations prescribe: Provided further, That the Secretary shall have the right to reject any or all bids.

c. 30 U.S.C. §224. Payments for oil or gas taken prior to application for lease

Until the permittee shall apply for lease to the one quarter of the permit area heretofore provided for he shall pay to the United States 20 per centum of the gross value of all oil or gas secured by him from the lands embraced within his permit and sold or otherwise disposed of or held by him for sale or other disposition.

d. 30 U.S.C. §225. Condition of lease, forfeiture for violation

All leases of lands containing oil or gas, made or issued under the provisions of this chapter, shall be subject to the condition that the lessee will, in conducting his explorations and mining operations, use all reasonable precautions to prevent waste of oil or gas developed in the land, or the entrance of water through wells drilled by him to the oil sands or oil-bearing strata, to the destruction or injury of the oil deposits. Violations of the provisions of this section shall constitute grounds for the forfeiture of the lease, to be enforced as provided in this chapter.

e. 30 U.S.C. §226. Lease of oil and gas lands

(a) Authority of Secretary

All lands subject to disposition under this chapter which are known or believed to contain oil or gas deposits may be leased by the Secretary.

(b) Lands within known geologic structure of a producing oil or gas field; lands within special tar sand areas; competitive bidding; royalties

(1)(A) All lands to be leased which are not subject to leasing under paragraphs (2) and (3) of this subsection shall be leased as provided in this paragraph to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than 2,560 acres, except in Alaska, where units shall be not more than 5,760 acres. Such units shall be as nearly compact as possible. Lease sales shall be conducted by oral bidding. Lease sales shall be held for each State where eligible lands are available at least quarterly and more frequently if the Secretary of the Interior determines such sales are necessary. A lease shall be conditioned upon the payment of a royalty at a rate of not less than 12.5 percent in amount or value of the production removed or sold from the lease. The Secretary shall accept the highest bid from a responsible qualified bidder which is equal to or greater than the national minimum acceptable bid, without evaluation of the value of the lands proposed for lease. Leases shall be issued within 60 days following payment by the successful bidder of the remainder of the bonus bid, if any, and the annual rental for the first lease year. All bids for less than the national minimum acceptable bid shall be rejected. Lands for which no bids are received or for which the highest bid is less than the national minimum acceptable bid shall be offered promptly within 30 days for leasing under subsection (c) of this section and shall remain available for leasing for a period of 2 years after the competitive lease sale.

(B) The national minimum acceptable bid shall be $2 per acre for a period of 2 years

from December 22, 1987. Thereafter, the Secretary may establish by regulation a higher national minimum acceptable bid for all leases based upon a finding that such action is necessary: (i) to enhance financial returns to the United States; and (ii) to promote more efficient management of oil and gas resources on Federal lands. Ninety days before the Secretary makes any change in the national minimum acceptable bid, the Secretary shall notify the Committee on Natural Resources of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. The proposal or promulgation of any regulation to establish a national minimum acceptable bid shall not be considered a major Federal action subject to the requirements of section 4332(2)(C) of Title 42.

(2) If the lands to be leased are within a special tar sand area, they shall be leased to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than five thousand one hundred and twenty acres, which shall be as nearly compact as possible, upon the payment by the lessee of such bonus as may be accepted by the Secretary. Royalty shall be 12 1/2 per centum in amount or value of production removed or sold from the lease, subject to subsection (k)(1)(c) [FN1] of this section. The Secretary may lease such additional lands in special tar sand areas as may be required in support of any operations necessary for the recovery of tar sands.

(3)(A) If the United States held a vested future interest in a mineral estate that, immediately prior to becoming a vested present interest, was subject to a lease under which oil or gas was being produced, or had a well capable of producing, in paying quantities at an annual average production volume per well per day of either not more than 15 barrels per day of oil or condensate, or not more than 60,000 cubic feet of gas, the holder of the lease may elect to continue the lease as a noncompetitive lease under subsection (c)(1) of this section.

(B) An election under this paragraph is effective--

(i) in the case of an interest which vested after January 1, 1990, and on or before October 24, 1992, if the election is made before the date that is 1 year after October 24, 1992;

(ii) in the case of an interest which vests within 1 year after October 24, 1992, if the election is made before the date that is 2 years after October 24, 1992; and

(iii) in any case other than those described in clause (i) or (ii), if the election is made prior to the interest becoming a vested present interest.

(C) Notwithstanding the consent requirement referenced in section 352 of this title, the Secretary shall issue a noncompetitive lease under subsection (c)(1) of this section to a holder who makes an election under subparagraph (A) and who is qualified to hold a lease under this chapter. Such lease shall be subject to all terms and conditions under this chapter that are applicable to leases issued under subsection (c)(1) of this section.

(D) A lease issued pursuant to this paragraph shall continue so long as oil or gas continues to be produced in paying quantities.

(E) This paragraph shall apply only to those lands under the administration of the

Secretary of Agriculture where the United States acquired an interest in such lands pursuant to the Act of March 1, 1911 (36 Stat. 961 and following).
(c) Lands subject to leasing under subsection (b); first qualified applicant
(1) If the lands to be leased are not leased under subsection (b)(1) of this section or are not subject to competitive leasing under subsection (b)(2) of this section, the person first making application for the lease who is qualified to hold a lease under this chapter shall be entitled to a lease of such lands without competitive bidding, upon payment of a non-refundable application fee of at least $75. A lease under this subsection shall be conditioned upon the payment of a royalty at a rate of 12.5 percent in amount or value of the production removed or sold from the lease. Leases shall be issued within 60 days of the date on which the Secretary identifies the first responsible qualified applicant.
(2)(A) Lands (i) which were posted for sale under subsection (b)(1) of this section but for which no bids were received or for which the highest bid was less than the national minimum acceptable bid and (ii) for which, at the end of the period referred to in subsection (b)(1) of this section no lease has been issued and no lease application is pending under paragraph (1) of this subsection, shall again be available for leasing only in accordance with subsection (b)(1) of this section.
(B) The land in any lease which is issued under paragraph (1) of this subsection or under subsection (b)(1) of this section which lease terminates, expires, is cancelled or is relinquished shall again be available for leasing only in accordance with subsection (b)(1) of this section.
(d) Annual rentals
All leases issued under this section, as amended by the Federal Onshore Oil and Gas Leasing Reform Act of 1987, shall be conditioned upon payment by the lessee of a rental of not less than $1.50 per acre per year for the first through fifth years of the lease and not less than $2 per acre per year for each year thereafter. A minimum royalty in lieu of rental of not less than the rental which otherwise would be required for that lease year shall be payable at the expiration of each lease year beginning on or after a discovery of oil or gas in paying quantities on the lands leased.
(e) Primary terms
Competitive and noncompetitive leases issued under this section shall be for a primary term of 10 years: Provided, however, That competitive leases issued in special tar sand areas shall also be for a primary term of ten years. Each such lease shall continue so long after its primary term as oil or gas is produced in paying quantities. Any lease issued under this section for land on which, or for which under an approved cooperative or unit plan of development or operation, actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time shall be extended for two years and so long thereafter as oil or gas is produced in paying quantities.
(f) Notice of proposed action; posting of notice; terms and maps
At least 45 days before offering lands for lease under this section, and at least 30 days before approving applications for permits to drill under the provisions of a

lease or substantially modifying the terms of any lease issued under this section, the Secretary shall provide notice of the proposed action. Such notice shall be posted in the appropriate local office of the leasing and land management agencies. Such notice shall include the terms or modified lease terms and maps or a narrative description of the affected lands. Where the inclusion of maps in such notice is not practicable, maps of the affected lands shall be made available to the public for review. Such maps shall show the location of all tracts to be leased, and of all leases already issued in the general area. The requirements of this subsection are in addition to any public notice required by other law.

(g) Regulation of surface-disturbing activities; approval of plan of operations; bond or surety; failure to comply with reclamation requirements as barring lease; opportunity to comply with requirements

The Secretary of the Interior, or for National Forest lands, the Secretary of Agriculture, shall regulate all surface-disturbing activities conducted pursuant to any lease issued under this chapter, and shall determine reclamation and other actions as required in the interest of conservation of surface resources. No permit to drill on an oil and gas lease issued under this chapter may be granted without the analysis and approval by the Secretary concerned of a plan of operations covering proposed surface-disturbing activities within the lease area. The Secretary concerned shall, by rule or regulation, establish such standards as may be necessary to ensure that an adequate bond, surety, or other financial arrangement will be established prior to the commencement of surface disturbing activities on any lease, to ensure the complete and timely reclamation of the lease tract, and the restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations on the lease. The Secretary shall not issue a lease or leases or approve the assignment of any lease or leases under the terms of this section to any person, association, corporation, or any subsidiary, affiliate, or person controlled by or under common control with such person, association, or corporation, during any period in which, as determined by the Secretary of the Interior or Secretary of Agriculture, such entity has failed or refused to comply in any material respect with the reclamation requirements and other standards established under this section for any prior lease to which such requirements and standards applied. Prior to making such determination with respect to any such entity the concerned Secretary shall provide such entity with adequate notification and an opportunity to comply with such reclamation requirements and other standards and shall consider whether any administrative or judicial appeal is pending. Once the entity has complied with the reclamation requirement or other standard concerned an oil or gas lease may be issued to such entity under this chapter.

(h) National Forest Systems Lands

The Secretary of the Interior may not issue any lease on National Forest System Lands reserved from the public domain over the objection of the Secretary of Agriculture.

(i) Termination

No lease issued under this section which is subject to termination because of cessation of production shall be terminated for this cause so long as reworking or drilling operations which were commenced on the land prior to or within sixty days after cessation of production are conducted thereon with reasonable diligence, or so long as oil or gas is produced in paying quantities as a result of such operations. No lease issued under this section shall expire because operations or production is suspended under any order, or with the consent, of the Secretary. No lease issued under this section covering lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same unless the lessee is allowed a reasonable time, which shall be not less then sixty days after notice by registered or certified mail, within which to place such well in producing status or unless, after such status is established, production is discontinued on the leased premises without permission granted by the Secretary under the provisions of this chapter.

(j) Drainage agreements; primary term of lease, extension

Whenever it appears to the Secretary that lands owned by the United States are being drained of oil or gas by wells drilled on adjacent lands, he may negotiate agreements whereby the United States, or the United States and its lessees, shall be compensated for such drainage. Such agreements shall be made with the consent of the lessees, if any, affected thereby. If such agreement is entered into, the primary term of any lease for which compensatory royalty is being paid, or any extension of such primary term, shall be extended for the period during which such compensatory royalty is paid and for a period of one year from discontinuance of such payment and so long thereafter as oil or gas is produced in paying quantities.

(k) Mining claims; suspension of running time of lease

If, during the primary term or any extended term of any lease issued under this section, a verified statement is filed by any mining claimant pursuant to subsection (c) of section 527 of this title, whether such filing occur prior to September 2, 1960 or thereafter, asserting the existence of a conflicting unpatented mining claim or claims upon which diligent work is being prosecuted as to any lands covered by the lease, the running of time under such lease shall be suspended as to the lands involved from the first day of the month following the filing of such verified statement until a final decision is rendered in the matter.

(l) Exchange of leases; conditions

The Secretary of the Interior shall, upon timely application therefore, issue a new lease in exchange for any lease issued for a term of twenty years, or any renewal thereof, or any lease issued prior to August 8, 1946, in exchange for a twenty-year lease, such new lease to be for a primary term of five years and so long thereafter as oil or gas is produced in paying quantities and at a royalty rate of not less than 12 1/2 per centum in amount or value of the production removed or sold from such leases, except that the royalty rate shall be 12 1/2 per centum in amount or value of the production removed or sold from said leases as to (1) such leases, or such parts of the lands subject thereto and the deposits underlying the same, as are not believed to be within the productive limits of any producing oil or gas deposit, as

such productive limits are found by the Secretary to have existed on August 8, 1946; and (2) any production on a lease from an oil or gas deposit which was discovered after May 27, 1941, by a well or wells drilled within the boundaries of the lease, and which is determined by the Secretary to be a new deposit; and (3) any production on or allocated to a lease pursuant to an approved cooperative or unit plan of development or operation from an oil or gas deposit which was discovered after May 27, 1941, on land committed to such plan, and which is determined by the Secretary to be a new deposit, where such lease, or a lease for which it is exchanged, was included in such plan at the time of discovery or was included in a duly executed and filed application for the approval of such plan at the time of discovery.

(m) Cooperative or unit plan; authority of Secretary of the Interior to alter or modify; communitization or drilling agreements; term of lease, conditions; Secretary to approve operating, drilling, or development contracts, and subsurface storage

For the purpose of more properly conserving the natural resources of any oil or gas pool, field, or like area, or any part thereof (whether or not any part of said oil or gas pool, field, or like area, is then subject to any cooperative or unit plan of development or operation), lessees thereof and their representatives may unite with each other, or jointly or separately with others, in collectively adopting and operating under a cooperative or unit plan of development or operation of such pool, field, or like area, or any part thereof, whenever determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest. The Secretary is thereunto authorized, in his discretion, with the consent of the holders of leases involved, to establish, alter, change, or revoke drilling, producing, rental, minimum royalty, and royalty requirements of such leases and to make such regulations with reference to such leases, with like consent on the part of the lessees, in connection with the institution and operation of any such cooperative or unit plan as he may deem necessary or proper to secure the proper protection of the public interest. The Secretary may provide that oil and gas leases hereafter issued under this chapter shall contain a provision requiring the lessee to operate under such a reasonable cooperative or unit plan, and he may prescribe such a plan under which such lessee shall operate, which shall adequately protect the rights of all parties in interest, including the United States.

Any plan authorized by the preceding paragraph which includes lands owned by the United States may, in the discretion of the Secretary, contain a provision whereby authority is vested in the Secretary of the Interior, or any such person, committee, or State or Federal officer or agency as may be designated in the plan, to alter or modify from time to time the rate of prospecting and development and the quantity and rate of production under such plan. All leases operated under any such plan approved or prescribed by the Secretary shall be excepted in determining holdings or control under the provisions of any section of this chapter.

When separate tracts cannot be independently developed and operated in conformity with an established well-spacing or development program, any lease, or a portion thereof, may be pooled with other lands, whether or not owned by the

United States, under a communitization or drilling agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit when determined by the Secretary of the Interior to be in the public interest, and operations or production pursuant to such an agreement shall be deemed to be operations or production as to each such lease committed thereto.

Any lease issued for a term of twenty years, or any renewal thereof, or any portion of such lease that has become the subject of a cooperative or unit plan of development or operation of a pool, field, or like area, which plan has the approval of the Secretary of the Interior, shall continue in force until the termination of such plan. Any other lease issued under any section of this chapter which has heretofore or may hereafter be committed to any such plan that contains a general provision for allocation of oil or gas shall continue in force and effect as to the land committed so long as the lease remains subject to the plan: Provided, That production is had in paying quantities under the plan prior to the expiration date of the term of such lease. Any lease heretofore or hereafter committed to any such plan embracing lands that are in part within and in part outside of the area covered by any such plan shall be segregated into separate leases as to the lands committed and the lands not committed as of the effective date of unitization: Provided, however, That any such lease as to the nonunitized portion shall continue in force and effect for the term thereof but for not less than two years from the date of such segregation and so long thereafter as oil and gas is produced in paying quantities. The minimum royalty or discovery rental under any lease that has become subject to any cooperative or unit plan of development or operation, or other plan that contains a general provision for allocation of oil or gas, shall be payable only with respect to the lands subject to such lease to which oil or gas shall be allocated under such plan. Any lease which shall be eliminated from any such approved or prescribed plan, of from any communitization or drilling agreement authorized by this section, and any lease which shall be in effect at the termination of any such approved or prescribed plan, or at the termination of any such communitization or drilling agreement, unless relinquished, shall continue in effect forthe original term thereof, but for not less than two years, and so long thereafter as oil or gas is produced in paying quantities.

The Secretary of the Interior is hereby authorized, on such conditions as he may prescribe, to approve operating, drilling, or development contracts made by one or more lessees of oil or gas leases, with one or more persons, associations, or corporations whenever, in his discretion, the conservation of natural products or the public convenience or necessity may require it or the interests of the United States may be best subserved thereby. All leases operated under such approved operating, drilling, or development contracts, and interests thereunder, shall be excepted in determining holdings or control under the provisions of this chapter.

The Secretary of the Interior, to avoid waste or to promote conservation of natural resources, may authorize the subsurface storage of oil or gas, whether or not produced from federally owned lands, in lands leased or subject to lease under this

chapter. Such authorization may provide for the payment of a storage fee or rental on such stored oil or gas or, in lieu of such fee or rental, for a royalty other than that prescribed in the lease when such stored oil or gas is produced in conjunction with oil or gas not previously produced. Any lease on which storage is so authorized shall be extended at least for the period of storage and so long thereafter as oil or gas not previously produced is produced in paying quantities.

(n) Conversion of oil and gas leases and claims on hydrocarbon resources to combined hydrocarbon leases for primary term of 10 years; application

(1)(A) The owner of (1) an oil and gas lease issued prior to November 16, 1981, or (2) a valid claim to any hydrocarbon resources leasable under this section based on a mineral location made prior to January 21, 1926, and located within a special tar sand area shall be entitled to convert such lease or claim to a combined hydrocarbon lease for a primary term of ten years upon the filing of an application within two years from November 16, 1981, containing an acceptable plan of operations which assures reasonable protection of the environment and diligent development of those resources requiring enhanced recovery methods of development or mining. For purposes of conversion, no claim shall be deemed invalid solely because it was located as a placer location rather than a lode location or vice versa, notwithstanding any previous adjudication on that issue.

(B) The Secretary shall issue final regulations to implement this section within six months of November 16, 1981. If any oil and gas lease eligible for conversion under this section would otherwise expire after November 16, 1981, and before six months following the issuance of implementing regulations, the lessee may preserve his conversion right under such lease for a period ending six months after the issuance of implementing regulations by filing with the Secretary, before the expiration of the lease, a notice of intent to file an application for conversion. Upon submission of a complete plan of operations in substantial compliance with the regulations promulgated by the Secretary for the filing of such plans, the Secretary shall suspend the running of the term of any oil and gas lease proposed for conversion until the plan is finally approved or disapproved. The Secretary shall act upon a proposed plan of operations within fifteen months of its submittal.

(C) When an existing oil and gas lease is converted to a combined hydrocarbon lease, the royalty shall be that provided for in the original oil and gas lease and for a converted mining claim, 12 1/2 per centum in amount or value of production removed or sold from the lease.

(2) Except as provided in this section, nothing in the Combined Hydrocarbon Leasing Act of 1981 shall be construed to diminish or increase the rights of any lessee under any oil and gas lease issued prior to November 16, 1981.

(o) Certain outstanding oil and gas

(1) Prior to the commencement of surface-disturbing activities relating to the development of oil and gas deposits on lands described under paragraph (5), the Secretary of Agriculture shall require, pursuant to regulations promulgated by the Secretary, that such activities be subject to terms and conditions as provided under paragraph (2).

(2) The terms and conditions referred to in paragraph (1) shall require that reasonable advance notice be furnished to the Secretary of Agriculture at least 60 days prior to the commencement of surface disturbing activities.
(3) Advance notice under paragraph (2) shall include each of the following items of information:
(A) A designated field representative.
(B) A map showing the location and dimensions of all improvements, including but not limited to, well sites and road and pipeline accesses.
(C) A plan of operations, of an interim character if necessary, setting forth a schedule for construction and drilling.
(D) A plan of erosion and sedimentation control.
(E) Proof of ownership of mineral title.
Nothing in this subsection shall be construed to affect any authority of the State in which the lands concerned are located to impose any requirements with respect to such oil and gas operations.
(4) The person proposing to develop oil and gas deposits on lands described under paragraph (5) shall either--
(A) permit the Secretary to market merchantable timber owned by the United States on lands subject to such activities; or
(B) arrange to purchase merchantable timber on lands subject to such surface disturbing activities from the Secretary of Agriculture, or otherwise arrange for the disposition of such merchantable timber, upon such terms and upon such advance notice of the items referred to in subparagraphs (A) through (E) of paragraph (3) as the Secretary may accept.
(5)(A) The lands referred to in this subsection are those lands referenced in subparagraph (B) which are under the administration of the Secretary of Agriculture where the United States acquired an interest in such lands pursuant to the Act of March 1, 1911 (36 Stat. 961 and following), but does not have an interest in oil and gas deposits that may be present under such lands. This subsection does not apply to any such lands where, under the provisions of its acquisition of an interest in the lands, the United States is to acquire any oil and gas deposits that may be present under such lands in the future but such interest has not yet vested with the United States.
(B) This subsection shall only apply in the Allegheny National Forest.

f. 30 U.S.C. §226-1. Extension of oil and gas leases issued before September 2, 1960

(a) Lands not withdrawn from leasing
Upon the expiration of the initial five-year term of any noncompetitive oil or gas lease which was issued prior to September 2, 1960 and which has been maintained in accordance with applicable statutory requirements and regulations, the record titleholder thereof shall be entitled to a single extension of the lease, unless then otherwise provided by law, for such lands covered by it as are not, on the expiration date of the lease, withdrawn from leasing. A withdrawal, however, shall not affect

the right to an extension if actual drilling operations on such lands were commenced prior to the effective date of the withdrawal and were being diligently prosecuted on the expiration date of the lease. No withdrawal shall be effective within the meaning of this section until ninety days after notice thereof has been sent by registered or certified mail to each lessee to be affected by such withdrawal.
(b) Known and unknown geologic structures of producing fields
As to lands not within the known geologic structure of a producing oil or gas field, a noncompetitive oil or gas lease to which this section is applicable shall be extended for a period of five years and so long thereafter as oil or gas is produced in paying quantities. As to lands within the known geologic structure of a producing oil or gas field, a noncompetitive lease to which this section is applicable shall be extended for a period of two years and so long thereafter as oil or gas is produced in paying quantities.
(c) Application requirement
Any noncompetitive oil or gas lease extended under this section shall be subject to the rules and regulations in force at the expiration of the initial five-year term of the lease. No extension shall be granted, however, unless within a period of ninety days prior to the expiration date of the lease an application therefor is filed by the record titleholder or an assignee whose assignment has been filed for approval or an operator whose operating agreement has been filed for approval.
(d) Commencement of actual drilling
Any lease issued prior to September 2, 1960 which has been maintained in accordance with applicable statutory requirements and regulations and which pertains to land on which, or for which under an approved cooperative or unit plan of development or operation, actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time shall be extended for two years and so long thereafter as oil or gas is produced in paying quantities.

g. 30 U.S.C. §226-2. Limitations for filing oil and gas contests

No action contesting a decision of the Secretary involving any oil and gas lease shall be maintained unless such action is commenced or taken within ninety days after the final decision of the Secretary relating to such matter. No such action contesting such a decision of the Secretary rendered prior to September 2, 1960 shall be maintained unless the same be commenced or taken within ninety days after September 2, 1960.

h. 30 U.S.C. §226-3. Lands not subject to oil and gas leasing

(a) Prohibition
The Secretary shall not issue any lease under this chapter or under the Geothermal Steam Act of 1970 on any of the following Federal lands:
(1) Lands recommended for wilderness allocation by the surface managing agency.
(2) Lands within Bureau of Land Management wilderness study areas.
(3) Lands designated by Congress as wilderness study areas, except where oil and

gas leasing is specifically allowed to continue by the statute designating the study area.
(4) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety-Sixth Congress (House Document numbered 96-119), unless such lands are allocated to uses other than wilderness by a land and resource management plan or have been released to uses other than wilderness by an act of Congress.
(b) Exploration
In the case of any area of National Forest or public lands subject to this section, nothing in this section shall affect any authority of the Secretary of the Interior (or for National Forest Lands reserved from the public domain, the Secretary of Agriculture) to issue permits for exploration for oil and gas, coal, oil shale, phosphate, potassium, sulphur, gilsonite or geothermal resources by means not requiring construction of roads or improvement of existing roads if such activity is conducted in a manner compatible with the preservation of the wilderness environment.

i. 30 U.S.C. §226c. Reduction of royalties under existing leases

From and after August 8, 1946, the royalty obligation to the United States under all leases requiring payment of royalty in excess of 12 1/2 per centum, except leases issued or to be issued upon competitive bidding, is reduced to 12 1/2 per centum in amount or value of production removed or sold from said leases as to (1) such leases, or such part of the lands subject thereto, and the deposits underlying the same, as are not believed to be within the productive limits of any oil or gas deposit, as such productive limits are found by the Secretary to exist on August 8, 1946, and (2) any production on a lease from an oil or gas deposit which was discovered after May 27, 1941, by a well or wells drilled within the boundaries of the lease, and which is determined by the Secretary to be a new deposit; and (3) any production on or allocated to a lease pursuant to an approved unit or cooperative agreement from an oil or gas deposit which was discovered after May 27, 1941, on land committed to such agreement, and which is determined by the Secretary to be a new deposit, where such lease was included in such agreement at the time of discovery, or was included in a duly executed and filed application for the approval of such agreement at the time of discovery.

j. 30 U.S.C. §228. Prospecting permits and leases to persons of lands not withdrawn; terms and conditions of; fraud of claimants

Any person who on October 1, 1919, was a bona fide occupant or claimant of oil or gas lands under a claim initiated while such lands were not withdrawn from oil or gas location and entry, and who had previously performed all acts under then existing laws necessary to valid locations thereof except to make discovery, and upon which discovery had not been made prior to February 25, 1920, and who has performed work or expended on or for the benefit of such locations an amount equal in the aggregate of $250 for each location if application therefor shall be made

within six months from February 25, 1920, shall be entitled to prospecting permits thereon upon the same terms and conditions, and limitations as to acreage, as other permits provided for in this chapter, or where any such person has made such discovery, prior to said February 25, 1920, he shall be entitled to a lease thereon under such terms as the Secretary of the Interior may prescribe unless otherwise provided for in section 227 of this title: Provided, That where such prospecting permit is granted upon land within any known geologic structure of a producing oil or gas field, the royalty to be fixed in any lease thereafter granted thereon or any portion thereof shall be not less than 12 1/2 per centum of all the oil or gas produced except oil or gas used for production purposes on the claim, or unavoidably lost: Provided, however, That the provisions of this section shall not apply to lands reserved for the use of the Navy. No claimant for a permit or lease who has been guilty of any fraud or who had knowledge or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith, shall be entitled to any of the benefits of this section.

All permits or leases hereunder shall inure to the benefit of the claimant and all persons claiming through or under him by lease, contract, or otherwise, as their interests may appear.

k. 43 C.F.R. §3101.1-2 Surface use rights.

A lessee shall have the right to use so much of the leased lands as is necessary to explore for, drill for, mine, extract, remove and dispose of all the leased resource in a leasehold subject to: Stipulations attached to the lease; restrictions deriving from specific, nondiscretionary statues; and such reasonable measures as may be required by the authorized officer to minimize adverde impacts to other resource values, land uses or users not addressed in the lease stipulations at the time operations are proposed. To the extent consistent with lease rights granted, such reasonable measures may include, but are not limited to, modification to siting or design of facilities, timing of operations, and specification of interim and final reclamation measures. At a minimum, measures shall be deemed consistent with lease rights granted provided that they do not: require relocation of proposed operations by more than 200 meters; require that operations be sited off the leasehold; or prohibit new surface disturbing operations for a period in excess of 60 days in any lease year.

20. FEDERAL COAL LEASING ACT AMENDMENTS, 30 U.S.C. §§181, *et seq.*

a. 30 U.S.C. §192c. Rules and regulations governing issuance of certain leases; disposition of receipts.

The Secretary of the Interior is authorized under general rules and regulations to be prescribed by him to issue leases or permits for the exploration, development and utilization of the mineral deposits, other than those subject to the provisions and utilization of the mineral deposits, other than those subject to the provisions of chapter 7 of this title, in those lands added to the Shasta National Forest by the Act

of March 19, 1948 (Public Law 449, Eightieth Congress), which were acquired with funds of the United States or lands received in exchange therefor: Provided, That any permit or lease of such deposits in lands administered by the Secretary of Agriculture shall be issued only with his consent and subject to such conditions as he may prescribe to insure the adequate utilization of the lands for the purposes set forth in the Act of March 19, 1948: And provided further, That all receipts derived from leases or permits issued under the authority of sections 192a to 192c of this title shall be paid into the same funds or accounts in the Treasury and shall be distributed in the same manner as prescribed for other receipts from the lands affected by the lease or permit, the intention of this provision being that sections 192a to 192c of this title shall not affect the distribution of receipts pursuant to legislation applicable to such lands.

b. 30 U.S.C. §201 Suitability

Division into tracts; bidding and award; negotiated sales on exercise of right-of-way permits; leases to public agencies; fair market value of leases; leases in National Forests; comprehensive land-use plans; notice of proposed lease offering

Suitability Determination

(3)(A)(i) No lease sale shall be held unless the lands containing the coal deposits have been included in a comprehensive land-use plan and such sale is compatible with such plan. The Secretary of the Interior shall prepare such land-use plans on lands under his responsibility where such plans have not been previously prepared. The Secretary of the Interior shall inform the Secretary of Agriculture of substantial development interest in coal leasing on lands within the National Forest System. Upon receipt of such notification from the Secretary of the Interior, the Secretary of Agriculture shall prepare a comprehensive land-use plan for such areas where such plans have not been previously prepared. The plan of the Secretary of Agriculture shall take into consideration the proposed coal development in these lands: *Provided*, That where the Secretary of the Interior finds that because of non-Federal interest in the surface or because the coal resources are insufficient to justify the preparation costs of a Federal comprehensive land-use plan, the lease sale can be held if the lands containing the coal deposits have been included in either a comprehensive land-use plan prepared by the State within which the lands are located or a land use analysis prepared by the Secretary of the Interior.

(ii) In preparing such land-use plans, the Secretary of the Interior or, in the case of lands within the National Forest System, the Secretary of Agriculture, or in the case of a finding by the Secretary of the Interior that because of non-Federal interests in the surface or insufficient Federal coal, no Federal comprehensive land-use plans can be appropriately prepared, the responsible State entity shall consult with appropriate State agencies and local governments and the general public and shall provide an opportunity for public hearing on proposed plans prior to their adoption, if requested by any person having an interest which is, or may be, adversely affected by the adoption of such plans.

(iii) Leases covering lands the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior may be issued only upon consent of the other Federal agency and upon such conditions as it may prescribe with respect to the use and protection of the nonmineral interests in those lands.
(B) Each land-use plan prepared by the Secretary (or in the case of lands within the National Forest System, the Secretary of Agriculture pursuant to subparagraph (A)(i)) shall include an assessment of the amount of coal deposits in such land, identifying the amount of such coal which is recoverable by deep mining operations and the amount of such coal which is recoverable by surface mining operations.
(C) Prior to issuance of any coal lease, the Secretary shall consider effects which mining of the proposed lease might have on an impacted community or area, including, but not limited to, impacts on the environment, on agricultural and other economic activities, and on public services. Prior to issuance of a lease, the Secretary shall evaluate and compare the effects of recovering coal by deep mining, by surface mining, and by any other method to determine which method or methods or sequence of methods achieves the maximum economic recovery of the coal within the proposed leasing tract. This evaluation and comparison by the Secretary shall be in writing but shall not prohibit the issuance of a lease; however, no mining operating plan shall be approved which is not found to achieve the maximum economic recovery of the coal within the tract. Public hearings in the area shall be held by the Secretary prior to the lease sale.
(D) No lease sale shall be held until after the notice of the proposed offering for lease has been given once a week for three consecutive weeks in a newspaper of general circulation in the county in which the lands are situated in accordance with regulations prescribed by the Secretary.
(E) Each coal lease shall contain provisions requiring compliance with the Federal Water Pollution Control Act (33 U.S.C. 1151-1175) [33 U.S.C.A. § 1251 et seq.] and the Clean Air Act [42 U.S.C.A. § 7401 et seq.].

21. PAYMENT IN LIEU OF TAXES ACT, 31 U.S.C. §6903

§6903. Payments
(a) In this section--
(1) ``payment law'' means--
(A) the Act of June 20, 1910 (ch. 310, 36 Stat. 557);
(B) section 33 of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1012);
(C) the Act of May 23, 1908 (16 U.S.C. 500) or the Secure Rural Schools and Community Self-Determination Act of 2000;
(D) section 5 of the Act of June 22, 1948 (16 U.S.C. 577g, 577g-1);
(E) section 401(c)(2) of the Act of June 15, 1935 (16 U.S.C. 715s(c)(2));
(F) section 17 of the Federal Power Act (16 U.S.C. 810);
(G) section 35 of the Act of February 25, 1920 (30 U.S.C. 191);
(H) section 6 of the Mineral Leasing Act for Acquired Lands (30 U.S.C. 355);
(I) section 3 of the Act of July 31, 1947 (30 U.S.C. 603); and

(J) section 10 of the Act of June 28, 1934 (known as the Taylor Grazing Act) (43 U.S.C. 315i).
(2) population shall be determined on the same basis that the Secretary of Commerce determines resident population for general statistical purposes.
(3) a unit of general local government may not be credited with a population of more than 50,000.
(b)(1) A payment under section 6902 of this title is equal to the greater of–
(A) 93 cents during fiscal year 1995, $1.11 during fiscal year 1996, $1.29 during fiscal year 1997, $1.47 during fiscal year 1998, and $1.65 during fiscal year 1999 and thereafter, for each acre of entitlement land located within a unit of general local government (but not more than the limitation determined under subsection (c) of this section) reduced (but not below 0) by amounts the unit received in the prior fiscal year under a payment law; or
(B) 12 cents during fiscal year 1995, 15 cents during fiscal year 1996, 17 cents during fiscal year 1997, 20 cents during fiscal year 1998, and 22 cents during fiscal year 1999 and thereafter, for each acre of entitlement land located in the unit (but not more than the limitation determined under subsection (c) of this section).
(2) The chief executive officer of a State shall submit to the Secretary of the Interior a statement on the amounts of payments the State transfers to each unit of general local government in the State out of amounts received under a payment law.
(c)(1) The limitation for a unit of general local government with a population of not more than 4,999 is the highest dollar amount specified in paragraph (2).
(2) The limitation for a unit of general local government with a population of at least 5,000 is the following amount (rounding the population off to the nearest thousand): the limitation is equal to the population

If population equals--	times--
5,000	$110.00
6,000	103.00
7,000	97.00
8,000	90.00
9,000	84.00
10,000	77.00
11,000	75.00
12,000	73.00
13,000	70.00
14,000	68.00
15,000	66.00
16,000	65.00
17,000	64.00
18,000	63.00
19,000	62.00
20,000	61.00
21,000	60.00
22,000	59.00

23,000.....59.00
24,000.....58.00
25,000.....57.00
26,000.....56.00
27,000.....56.00
28,000.....56.00
29,000.....55.00
30,000.....55.00
31,000.....54.00
32,000.....54.00
33,000.....53.00
34,000.....53.00
35,000.....52.00
36,000.....52.00
37,000.....51.00
38,000.....51.00
39,000.....50.00
40,000.....50.00
41,000.....49.00
42,000.....48.00
43,000.....48.00
44,000.....47.00
45,000.....47.00
46,000.....46.00
47,000.....46.00
48,000.....45.00
49,000.....45.00
50,000.....44.00.

(d) On October 1 of each year after the date of enactment of the Payment in Lieu of Taxes Act, the Secretary of the Interior shall adjust each dollar amount specified in subsections (b) and (c) to reflect changes in the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor, for the 12 months ending the preceding June 30.

22. FEDERAL WATER POLLUTION CONTROL ACT, 33 U.S.C. §§1251-1384 (Selected Sections)

a. 33 U.S.C. §1329. Nonpoint source management programs

(a) State assessment reports
(1) Contents
The Governor of each State shall, after notice and opportunity for public comment, prepare and submit to the Administrator for approval, a report which–

(A) identifies those navigable waters within the State which, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain applicable water quality standards or the goals and requirements of this chapter;
(B) identifies those categories and subcategories of nonpoint sources or, where appropriate, particular nonpoint sources which add significant pollution to each portion of the navigable waters identified under subparagraph (A) in amounts which contribute to such portion not meeting such water quality standards or such goals and requirements;
(C) describes the process, including intergovernmental coordination and public participation, for identifying best management practices and measures to control each category and subcategory of nonpoint sources and, where appropriate, particular nonpoint sources identified under subparagraph (B) and to reduce, to the maximum extent practicable, the level of pollution resulting from such category, subcategory, or source; and
(D) identifies and describes State and local programs for controlling pollution added from nonpoint sources to, and improving the quality of, each such portion of the navigable waters, including but not limited to those programs which are receiving Federal assistance under subsections (h) and (i) of this section.
(2) Information used in preparation
In developing the report required by this section, the State (A) may rely upon information developed pursuant to sections 1288, 1313(e), 1314(f), 1315(b), and 1324 of this title, and other information as appropriate, and (B) may utilize appropriate elements of the waste treatment management plans developed pursuant to sections 1288(b) and 1313 of this title, to the extent such elements are consistent with and fulfill the requirements of this section.
(b) State management programs
(1) In general
The Governor of each State, for that State or in combination with adjacent States, shall, after notice and opportunity for public comment, prepare and submit to the Administrator for approval a management program which such State proposes to implement in the first four fiscal years beginning after the date of submission of such management program for controlling pollution added from nonpoint sources to the navigable waters within the State and improving the quality of such waters.
(2) Specific contents
Each management program proposed for implementation under this subsection shall include each of the following:
(A) An identification of the best management practices and measures which will be undertaken to reduce pollutant loadings resulting from each category, subcategory, or particular nonpoint source designated under paragraph (1)(B), taking into account the impact of the practice on ground water quality.
(B) An identification of programs (including, as appropriate, nonregulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects) to achieve

implementation of the best management practices by the categories, subcategories, and particular nonpoint sources designated under subparagraph (A).
(C) A schedule containing annual milestones for (i) utilization of the program implementation methods identified in subparagraph (B), and (ii) implementation of the best management practices identified in subparagraph (A) by the categories, subcategories, or particular nonpoint sources designated under paragraph (1)(B). Such schedule shall provide for utilization of the best management practices at the earliest practicable date.
(D) A certification of the attorney general of the State or States (or the chief attorney of any State water pollution control agency which has independent legal counsel) that the laws of the State or States, as the case may be, provide adequate authority to implement such management program or, if there is not such adequate authority, a list of such additional authorities as will be necessary to implement such management program. A schedule and commitment by the State or States to seek such additional authorities as expeditiously as practicable.
(E) Sources of Federal and other assistance and funding (other than assistance provided under subsections (h) and (i) of this section) which will be available in each of such fiscal years for supporting implementation of such practices and measures and the purposes for which such assistance will be used in each of such fiscal years.
(F) An identification of Federal financial assistance programs and Federal development projects for which the State will review individual assistance applications or development projects for their effect on water quality pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983, to determine whether such assistance applications or development projects would be consistent with the program prepared under this subsection; for the purposes of this subparagraph, identification shall not be limited to the assistance programs or development projects subject to Executive Order 12372 but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of the State's nonpoint source pollution management program.
(3) Utilization of local and private experts
In developing and implementing a management program under this subsection, a State shall, to the maximum extent practicable, involve local public and private agencies and organizations which have expertise in control of nonpoint sources of pollution.
(4) Development on watershed basis
A State shall, to the maximum extent practicable, develop and implement a management program under this subsection on a watershed-by-watershed basis within such State.
(c) Administrative provisions
(1) Cooperation requirement
Any report required by subsection (a) of this section and any management program and report required by subsection (b) of this section shall be developed in

cooperation with local, substate regional, and interstate entities which are actively planning for the implementation of nonpoint source pollution controls and have either been certified by the Administrator in accordance with section 1288 of this title, have worked jointly with the State on water quality management planning under section 1285(j) of this title, or have been designated by the State legislative body or Governor as water quality management planning agencies for their geographic areas.

(2) Time period for submission of reports and management programs

Each report and management program shall be submitted to the Administrator during the 18-month period beginning on February 4, 1987.

(d) Approval or disapproval of reports and management programs

(1) Deadline

Subject to paragraph (2), not later than 180 days after the date of submission to the Administrator of any report or management program under this section (other than subsections (h), (i), and (k) of this section), the Administrator shall either approve or disapprove such report or management program, as the case may be. The Administrator may approve a portion of a management program under this subsection. If the Administrator does not disapprove a report, management program, or portion of a management program in such 180-day period, such report, management program, or portion shall be deemed approved for purposes of this section.

(2) Procedure for disapproval

If, after notice and opportunity for public comment and consultation with appropriate Federal and State agencies and other interested persons, the Administrator determines that–

(A) the proposed management program or any portion thereof does not meet the requirements of subsection (b)(2) of this section or is not likely to satisfy, in whole or in part, the goals and requirements of this chapter;

(B) adequate authority does not exist, or adequate resources are not available, to implement such program or portion;

(C) the schedule for implementing such program or portion is not sufficiently expeditious; or

(D) the practices and measures proposed in such program or portion are not adequate to reduce the level of pollution in navigable waters in the State resulting from nonpoint sources and to improve the quality of navigable waters in the State;

the Administrator shall within 6 months of the receipt of the proposed program notify the State of any revisions or modifications necessary to obtain approval. The State shall thereupon have an additional 3 months to submit its revised management program and the Administrator shall approve or disapprove such revised program within three months of receipt.

(3) Failure of State to submit report

If a Governor of a State does not submit the report required by subsection (a) of this section within the period specified by subsection (c)(2) of this section, the Administrator shall, within 30 months after February 4, 1987, prepare a report for

such State which makes the identifications required by paragraphs (1)(A) and (1)(B) of subsection (a) of this section. Upon completion of the requirement of the preceding sentence and after notice and opportunity for comment, the Administrator shall report to Congress on his actions pursuant to this section.

(e) Local management programs; technical assistance

If a State fails to submit a management program under subsection (b) of this section or the Administrator does not approve such a management program, a local public agency or organization which has expertise in, and authority to, control water pollution resulting from nonpoint sources in any area of such State which the Administrator determines is of sufficient geographic size may, with approval of such State, request the Administrator to provide, and the Administrator shall provide, technical assistance to such agency or organization in developing for such area a management program which is described in subsection (b) of this section and can be approved pursuant to subsection (d) of this section. After development of such management program, such agency or organization shall submit such management program to the Administrator for approval. If the Administrator approves such management program, such agency or organization shall be eligible to receive financial assistance under subsection (h) of this section for implementation of such management program as if such agency or organization were a State for which a report submitted under subsection (a) of this section and a management program submitted under subsection (b) of this section were approved under this section. Such financial assistance shall be subject to the same terms and conditions as assistance provided to a State under subsection (h) of this section.

(f) Technical assistance for States

Upon request of a State, the Administrator may provide technical assistance to such State in developing a management program approved under subsection (b) of this section for those portions of the navigable waters requested by such State.

(g) Interstate management conference

(1) Convening of conference; notification; purpose

If any portion of the navigable waters in any State which is implementing a management program approved under this section is not meeting applicable water quality standards or the goals and requirements of this chapter as a result, in whole or in part, of pollution from nonpoint sources in another State, such State may petition the Administrator to convene, and the Administrator shall convene, a management conference of all States which contribute significant pollution resulting from nonpoint sources to such portion. If, on the basis of information available, the Administrator determines that a State is not meeting applicable water quality standards or the goals and requirements of this chapter as a result, in whole or in part, of significant pollution from nonpoint sources in another State, the Administrator shall notify such States. The Administrator may convene a management conference under this paragraph not later than 180 days after giving such notification, whether or not the State which is not meeting such standards requests such conference. The purpose of such conference shall be to develop an agreement among such States to reduce the level of pollution in such portion

resulting from nonpoint sources and to improve the water quality of such portion. Nothing in such agreement shall supersede or abrogate rights to quantities of water which have been established by interstate water compacts, Supreme Court decrees, or State water laws. This subsection shall not apply to any pollution which is subject to the Colorado River Basin Salinity Control Act [43 U.S.C.A. § 1571 et seq.]. The requirement that the Administrator convene a management conference shall not be subject to the provisions of section 1365 of this title.

(2) State management program requirement

To the extent that the States reach agreement through such conference, the management programs of the States which are parties to such agreements and which contribute significant pollution to the navigable waters or portions thereof not meeting applicable water quality standards or goals and requirements of this chapter will be revised to reflect such agreement. Such management programs shall be consistent with Federal and State law.

(h) Grant program

(1) Grants for implementation of management programs

Upon application of a State for which a report submitted under subsection (a) of this section and a management program submitted under subsection (b) of this section is approved under this section, the Administrator shall make grants, subject to such terms and conditions as the Administrator considers appropriate, under this subsection to such State for the purpose of assisting the State in implementing such management program. Funds reserved pursuant to section 1285(j)(5) of this title may be used to develop and implement such management program.

(2) Applications

An application for a grant under this subsection in any fiscal year shall be in such form and shall contain such other information as the Administrator may require, including an identification and description of the best management practices and measures which the State proposes to assist, encourage, or require in such year with the Federal assistance to be provided under the grant.

(3) Federal share

The Federal share of the cost of each management program implemented with Federal assistance under this subsection in any fiscal year shall not exceed 60 percent of the cost incurred by the State in implementing such management program and shall be made on condition that the non-Federal share is provided from non-Federal sources.

(4) Limitation on grant amounts

Notwithstanding any other provision of this subsection, not more than 15 percent of the amount appropriated to carry out this subsection may be used to make grants to any one State, including any grants to any local public agency or organization with authority to control pollution from nonpoint sources in any area of such State.

(5) Priority for effective mechanisms

For each fiscal year beginning after September 30, 1987, the Administrator may give priority in making grants under this subsection, and shall give consideration in

determining the Federal share of any such grant, to States which have implemented or are proposing to implement management programs which will--
(A) control particularly difficult or serious nonpoint source pollution problems, including, but not limited to, problems resulting from mining activities;
(B) implement innovative methods or practices for controlling nonpoint sources of pollution, including regulatory programs where the Administrator deems appropriate;
(C) control interstate nonpoint source pollution problems; or
(D) carry out ground water quality protection activities which the Administrator determines are part of a comprehensive nonpoint source pollution control program, including research, planning, ground water assessments, demonstration programs, enforcement, technical assistance, education, and training to protect ground water quality from nonpoint sources of pollution.
(6) Availability for obligation
The funds granted to each State pursuant to this subsection in a fiscal year shall remain available for obligation by such State for the fiscal year for which appropriated. The amount of any such funds not obligated by the end of such fiscal year shall be available to the Administrator for granting to other States under this subsection in the next fiscal year.
(7) Limitation on use of funds
States may use funds from grants made pursuant to this section for financial assistance to persons only to the extent that such assistance is related to the costs of demonstration projects.
(8) Satisfactory progress
No grant may be made under this subsection in any fiscal year to a State which in the preceding fiscal year received a grant under this subsection unless the Administrator determines that such State made satisfactory progress in such preceding fiscal year in meeting the schedule specified by such State under subsection (b)(2) of this section.
(9) Maintenance of effort
No grant may be made to a State under this subsection in any fiscal year unless such State enters into such agreements with the Administrator as the Administrator may require to ensure that such State will maintain its aggregate expenditures from all other sources for programs for controlling pollution added to the navigable waters in such State from nonpoint sources and improving the quality of such waters at or above the average level of such expenditures in its two fiscal years preceding February 4, 1987.
(10) Request for information
The Administrator may request such information, data, and reports as he considers necessary to make the determination of continuing eligibility for grants under this section.
(11) Reporting and other requirements
Each State shall report to the Administrator on an annual basis concerning (A) its progress in meeting the schedule of milestones submitted pursuant to subsection (b)(2)(C) of this section, and (B) to the extent that appropriate information is

available, reductions in nonpoint source pollutant loading and improvements in water quality for those navigable waters or watersheds within the State which were identified pursuant to subsection (a)(1)(A) of this section resulting from implementation of the management program.

(12) Limitation on administrative costs

For purposes of this subsection, administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against activities and programs carried out with a grant under this subsection shall not exceed in any fiscal year 10 percent of the amount of the grant in such year, except that costs of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer programs shall not be subject to this limitation.

(i) Grants for protecting groundwater quality

(1) Eligible applicants and activities

Upon application of a State for which a report submitted under subsection (a) of this section and a plan submitted under subsection (b) of this section is approved under this section, the Administrator shall make grants under this subsection to such State for the purpose of assisting such State in carrying out groundwater quality protection activities which the Administrator determines will advance the State toward implementation of a comprehensive nonpoint source pollution control program. Such activities shall include, but not be limited to, research, planning, groundwater assessments, demonstration programs, enforcement, technical assistance, education and training to protect the quality of groundwater and to prevent contamination of groundwater from nonpoint sources of pollution.

(2) Applications

An application for a grant under this subsection shall be in such form and shall contain such information as the Administrator may require.

(3) Federal share; maximum amount

The Federal share of the cost of assisting a State in carrying out groundwater protection activities in any fiscal year under this subsection shall be 50 percent of the costs incurred by the State in carrying out such activities, except that the maximum amount of Federal assistance which any State may receive under this subsection in any fiscal year shall not exceed $150,000.

(4) Report

The Administrator shall include in each report transmitted under subsection (m) of this section a report on the activities and programs implemented under this subsection during the preceding fiscal year.

(j) Authorization of appropriations

There is authorized to be appropriated to carry out subsections (h) and (i) of this section not to exceed $70,000,000 for fiscal year 1988, $100,000,000 per fiscal year for each of fiscal years 1989 and 1990, and $130,000,000 for fiscal year 1991; except that for each of such fiscal years not to exceed $7,500,000 may be made available to carry out subsection (i) of this section. Sums appropriated pursuant to this subsection shall remain available until expended.

(k) Consistency of other programs and projects with management programs
The Administrator shall transmit to the Office of Management and Budget and the appropriate Federal departments and agencies a list of those assistance programs and development projects identified by each State under subsection (b)(2)(F) of this section for which individual assistance applications and projects will be reviewed pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983. Beginning not later than sixty days after receiving notification by the Administrator, each Federal department and agency shall modify existing regulations to allow States to review individual development projects and assistance applications under the identified Federal assistance programs and shall accommodate, according to the requirements and definitions of Executive Order 12372, as in effect on September 17, 1983, the concerns of the State regarding the consistency of such applications or projects with the State nonpoint source pollution management program.
(l) Collection of information
The Administrator shall collect and make available, through publications and other appropriate means, information pertaining to management practices and implementation methods, including, but not limited to, (1) information concerning the costs and relative efficiencies of best management practices for reducing nonpoint source pollution; and (2) available data concerning the relationship between water quality and implementation of various management practices to control nonpoint sources of pollution.
(m) Reports of Administrator
(1) Annual reports
Not later than January 1, 1988, and each January 1 thereafter, the Administrator shall transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate, a report for the preceding fiscal year on the activities and programs implemented under this section and the progress made in reducing pollution in the navigable waters resulting from nonpoint sources and improving the quality of such waters.
(2) Final report
Not later than January 1, 1990, the Administrator shall transmit to Congress a final report on the activities carried out under this section. Such report, at a minimum, shall–
(A) describe the management programs being implemented by the States by types and amount of affected navigable waters, categories and subcategories of nonpoint sources, and types of best management practices being implemented;
(B) describe the experiences of the States in adhering to schedules and implementing best management practices;
(C) describe the amount and purpose of grants awarded pursuant to subsections (h) and (i) of this section;
(D) identify, to the extent that information is available, the progress made in reducing pollutant loads and improving water quality in the navigable waters;

(E) indicate what further actions need to be taken to attain and maintain in those navigable waters (i) applicable water quality standards, and (ii) the goals and requirements of this chapter;
(F) include recommendations of the Administrator concerning future programs (including enforcement programs) for controlling pollution from nonpoint sources; and
(G) identify the activities and programs of departments, agencies, and instrumentalities of the United States which are inconsistent with the management programs submitted by the States and recommend modifications so that such activities and programs are consistent with and assist the States in implementation of such management programs.
(n) Set aside for administrative personnel
Not less than 5 percent of the funds appropriated pursuant to subsection (j) of this section for any fiscal year shall be available to the Administrator to maintain personnel levels at the Environmental Protection Agency at levels which are adequate to carry out this section in such year.

b. 33 U.S.C. §1342. National pollutant discharge elimination system

(a) Permits for discharge of pollutants
(1) Except as provided in sections 1328 and 1344 of this title, the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a) of this title, upon condition that such discharge will meet either (A) all applicable requirements under sections 1311, 1312, 1316, 1317, 1318, and 1343 of this title, or (B) prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this chapter.
(2) The Administrator shall prescribe conditions for such permits to assure compliance with the requirements of paragraph (1) of this subsection, including conditions on data and information collection, reporting, and such other requirements as he deems appropriate.
(3) The permit program of the Administrator under paragraph (1) of this subsection, and permits issued thereunder, shall be subject to the same terms, conditions, and requirements as apply to a State permit program and permits issued thereunder under subsection (b) of this section.
(4) All permits for discharges into the navigable waters issued pursuant to section 407 of this title shall be deemed to be permits issued under this subchapter, and permits issued under this subchapter shall be deemed to be permits issued under section 407 of this title, and shall continue in force and effect for their term unless revoked, modified, or suspended in accordance with the provisions of this chapter.
(5) No permit for a discharge into the navigable waters shall be issued under section 407 of this title after October 18, 1972. Each application for a permit under section 407 of this title, pending on October 18, 1972, shall be deemed to be an application for a permit under this section. The Administrator shall authorize a

State, which he determines has the capability of administering a permit program which will carry out the objective of this chapter to issue permits for discharges into the navigable waters within the jurisdiction of such State. The Administrator may exercise the authority granted him by the preceding sentence only during the period which begins on October 18, 1972, and ends either on the ninetieth day after the date of the first promulgation of guidelines required by section 1314(i)(2) of this title, or the date of approval by the Administrator of a permit program for such State under subsection (b) of this section, whichever date first occurs, and no such authorization to a State shall extend beyond the last day of such period. Each such permit shall be subject to such conditions as the Administrator determines are necessary to carry out the provisions of this chapter. No such permit shall issue if the Administrator objects to such issuance.

(b) State permit programs

At any time after the promulgation of the guidelines required by subsection (I)(2) of section 1314 of this title, the Governor of each State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State water pollution control agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program. The Administrator shall approve each such submitted program unless he determines that adequate authority does not exist:

(1) To issue permits which--

(A) apply, and insure compliance with, any applicable requirements of sections 1311, 1312, 1316, 1317, and 1343 of this title;

(B) are for fixed terms not exceeding five years; and

(C) can be terminated or modified for cause including, but not limited to, the following:

(i) violation of any condition of the permit;

(ii) obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts;

(iii) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;

(D) control the disposal of pollutants into wells;

(2)(A) To issue permits which apply, and insure compliance with, all applicable requirements of section 1318 of this title; or

(B) To inspect, monitor, enter, and require reports to at least the same extent as required in section 1318 of this title;

(3) To insure that the public, and any other State the waters of which may be affected, receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application;

(4) To insure that the Administrator receives notice of each application (including a copy thereof) for a permit;
(5) To insure that any State (other than the permitting State), whose waters may be affected by the issuance of a permit may submit written recommendations to the permitting State (and the Administrator) with respect to any permit application and, if any part of such written recommendations are not accepted by the permitting State, that the permitting State will notify such affected State (and the Administrator) in writing of its failure to so accept such recommendations together with its reasons for so doing;
(6) To insure that no permit will be issued if, in the judgment of the Secretary of the Army acting through the Chief of Engineers, after consultation with the Secretary of the department in which the Coast Guard is operating, anchorage and navigation of any of the navigable waters would be substantially impaired thereby;
(7) To abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement;
(8) To insure that any permit for a discharge from a publicly owned treatment works includes conditions to require the identification in terms of character and volume of pollutants of any significant source introducing pollutants subject to pretreatment standards under section 1317(b) of this title into such works and a program to assure compliance with such pretreatment standards by each such source, in addition to adequate notice to the permitting agency of (A) new introductions into such works of pollutants from any source which would be a new source as defined in section 1316 of this title if such source were discharging pollutants, (B) new introductions of pollutants into such works from a source which would be subject to section 1311 of this title if it were discharging such pollutants, or (C) a substantial change in volume or character of pollutants being introduced into such works by a source introducing pollutants into such works at the time of issuance of the permit. Such notice shall include information on the quality and quantity of effluent to be introduced into such treatment works and any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned treatment works; and
(9) To insure that any industrial user of any publicly owned treatment works will comply with sections 1284(b), 1317, and 1318 of this title.
(c) Suspension of Federal program upon submission of State program; withdrawal of approval of State program; return of State program to Administrator
(1) Not later than ninety days after the date on which a State has submitted a program (or revision thereof) pursuant to subsection (b) of this section, the Administrator shall suspend the issuance of permits under subsection (a) of this section as to those discharges subject to such program unless he determines that the State permit program does not meet the requirements of subsection (b) of this section or does not conform to the guidelines issued under section 1314(i)(2) of this title. If the Administrator so determines, he shall notify the State of any revisions or modifications necessary to conform to such requirements or guidelines.

(2) Any State permit program under this section shall at all times be in accordance with this section and guidelines promulgated pursuant to section 1314(i)(2) of this title.
(3) Whenever the Administrator determines after public hearing that a State is not administering a program approved under this section in accordance with requirements of this section, he shall so notify the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw approval of such program. The Administrator shall not withdraw approval of any such program unless he shall first have notified the State, and made public, in writing, the reasons for such withdrawal.
(4) Limitations on partial permit program returns and withdrawals.
A State may return to the Administrator administration, [FN1] and the Administrator may withdraw under paragraph (3) of this subsection approval, of--
(A) a State partial permit program approved under subsection (n)(3) of this section only if the entire permit program being administered by the State department or agency at the time is returned or withdrawn; and
(B) a State partial permit program approved under subsection (n)(4) of this section only if an entire phased component of the permit program being administered by the State at the time is returned or withdrawn.
(d) Notification of Administrator
(1) Each State shall transmit to the Administrator a copy of each permit application received by such State and provide notice to the Administrator of every action related to the consideration of such permit application, including each permit proposed to be issued by such State.
(2) No permit shall issue (A) if the Administrator within ninety days of the date of his notification under subsection (b)(5) of this section objects in writing to the issuance of such permit, or (B) if the Administrator within ninety days of the date of transmittal of the proposed permit by the State objects in writing to the issuance of such permit as being outside the guidelines and requirements of this chapter. Whenever the Administrator objects to the issuance of a permit under this paragraph such written objection shall contain a statement of the reasons for such objection and the effluent limitations and conditions which such permit would include if it were issued by the Administrator.
(3) The Administrator may, as to any permit application, waive paragraph (2) of this subsection.
(4) In any case where, after December 27, 1977, the Administrator, pursuant to paragraph (2) of this subsection, objects to the issuance of a permit, on request of the State, a public hearing shall be held by the Administrator on such objection. If the State does not resubmit such permit revised to meet such objection within 30 days after completion of the hearing, or, if no hearing is requested within 90 days after the date of such objection, the Administrator may issue the permit pursuant to subsection (a) of this section for such source in accordance with the guidelines and requirements of this chapter.
(e) Waiver of notification requirement

In accordance with guidelines promulgated pursuant to subsection (i)(2) of section 1314 of this title, the Administrator is authorized to waive the requirements of subsection (d) of this section at the time he approves a program pursuant to subsection (b) of this section for any category (including any class, type, or size within such category) of point sources within the State submitting such program.

(f) Point source categories

The Administrator shall promulgate regulations establishing categories of point sources which he determines shall not be subject to the requirements of subsection (d) of this section in any State with a program approved pursuant to subsection (b) of this section. The Administrator may distinguish among classes, types, and sizes within any category of point sources.

(g) Other regulations for safe transportation, handling, carriage, storage, and stowage of pollutants

Any permit issued under this section for the discharge of pollutants into the navigable waters from a vessel or other floating craft shall be subject to any applicable regulations promulgated by the Secretary of the department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants.

(h) Violation of permit conditions; restriction or prohibition upon introduction of pollutant by source not previously utilizing treatment works

In the event any condition of a permit for discharges from a treatment works (as defined in section 1292 of this title) which is publicly owned is violated, a State with a program approved under subsection (b) of this section or the Administrator, where no State program is approved or where the Administrator determines pursuant to section 1319(a) of this title that a State with an approved program has not commenced appropriate enforcement action with respect to such permit, may proceed in a court of competent jurisdiction to restrict or prohibit the introduction of any pollutant into such treatment works by a source not utilizing such treatment works prior to the finding that such condition was violated.

(i) Federal enforcement not limited

Nothing in this section shall be construed to limit the authority of the Administrator to take action pursuant to section 1319 of this title.

(j) Public information

A copy of each permit application and each permit issued under this section shall be available to the public. Such permit application or permit, or portion thereof, shall further be available on request for the purpose of reproduction.

(k) Compliance with permits

Compliance with a permit issued pursuant to this section shall be deemed compliance, for purposes of sections 1319 and 1365 of this title, with sections 1311, 1312, 1316, 1317, and 1343 of this title, except any standard imposed under section 1317 of this title for a toxic pollutant injurious to human health. Until December 31, 1974, in any case where a permit for discharge has been applied for pursuant to this section, but final administrative disposition of such application has not been made, such discharge shall not be a violation of (1) section 1311, 1316, or 1342 of this

title, or (2) section 407 of this title, unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application. For the 180-day period beginning on October 18, 1972, in the case of any point source discharging any pollutant or combination of pollutants immediately prior to such date which source is not subject to section 407 of this title, the discharge by such source shall not be a violation of this chapter if such a source applies for a permit for discharge pursuant to this section within such 180-day period.

(*l*) Limitation on permit requirement

(1) Agricultural return flows

The Administrator shall not require a permit under this section for discharges composed entirely of return flows from irrigated agriculture, nor shall the Administrator directly or indirectly, require any State to require such a permit.

(2) Stormwater runoff from oil, gas, and mining operations

The Administrator shall not require a permit under this section, nor shall the Administrator directly or indirectly require any State to require a permit, for discharges of stormwater runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with, or do not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations.

(m) Additional pretreatment of conventional pollutants not required

To the extent a treatment works (as defined in section 1292 of this title) which is publicly owned is not meeting the requirements of a permit issued under this section for such treatment works as a result of inadequate design or operation of such treatment works, the Administrator, in issuing a permit under this section, shall not require pretreatment by a person introducing conventional pollutants identified pursuant to section 1314(a)(4) of this title into such treatment works other than pretreatment required to assure compliance with pretreatment standards under subsection (b)(8) of this section and section 1317(b)(1) of this title. Nothing in this subsection shall affect the Administrator's authority under sections 1317 and 1319 of this title, affect State and local authority under sections 1317(b)(4) and 1370 of this title, relieve such treatment works of its obligations to meet requirements established under this chapter, or otherwise preclude such works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit under this section.

(n) Partial permit program

(1) State submission

The Governor of a State may submit under subsection (b) of this section a permit program for a portion of the discharges into the navigable waters in such State.

(2) Minimum coverage
A partial permit program under this subsection shall cover, at a minimum, administration of a major category of the discharges into the navigable waters of the State or a major component of the permit program required by subsection (b) of this section.
(3) Approval of major category partial permit programs
The Administrator may approve a partial permit program covering administration of a major category of discharges under this subsection if--
(A) such program represents a complete permit program and covers all of the discharges under the jurisdiction of a department or agency of the State; and
(B) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b) of this section.
(4) Approval of major component partial permit programs
The Administrator may approve under this subsection a partial and phased permit program covering administration of a major component (including discharge categories) of a State permit program required by subsection (b) of this section if--
(A) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b) of this section; and
(B) the State submits, and the Administrator approves, a plan for the State to assume administration by phases of the remainder of the State program required by subsection (b) of this section by a specified date not more than 5 years after submission of the partial program under this subsection and agrees to make all reasonable efforts to assume such administration by such date.
(o) Anti-backsliding
(1) General prohibition
In the case of effluent limitations established on the basis of subsection (a)(1)(B) of this section, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under section 1314(b) of this title subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit. In the case of effluent limitations established on the basis of section 1311(b)(1)(C) or section 1313(d) or (e) of this title, a permit may not be renewed, reissued, or modified to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit except in compliance with section 1313(d)(4) of this title.
(2) Exceptions
A permit with respect to which paragraph (1) applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant if--
(A) material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;
(B)(i) information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have

justified the application of a less stringent effluent limitation at the time of permit issuance; or
(ii) the Administrator determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under subsection (a)(1)(B) of this section;
(C) a less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;
(D) the permittee has received a permit modification under section 1311(c), 1311(g), 1311(h), 1311(i), 1311(k), 1311(n), or 1326(a) of this title; or
(E) the permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).
Subparagraph (B) shall not apply to any revised waste load allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumulative effect of such revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters, and such revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of this chapter or for reasons otherwise unrelated to water quality.
(3) Limitations
In no event may a permit with respect to which paragraph (1) applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, reissued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under section 1313 of this title applicable to such waters.
(p) Municipal and industrial stormwater discharges
(1) General rule
Prior to October 1, 1994, the Administrator or the State (in the case of a permit program approved under this section) shall not require a permit under this section for discharges composed entirely of stormwater.
(2) Exceptions
Paragraph (1) shall not apply with respect to the following stormwater discharges:
(A) A discharge with respect to which a permit has been issued under this section before February 4, 1987.
(B) A discharge associated with industrial activity.
(C) A discharge from a municipal separate storm sewer system serving a population of 250,000 or more.
(D) A discharge from a municipal separate storm sewer system serving a population of 100,000 or more but less than 250,000.

(E) A discharge for which the Administrator or the State, as the case may be, determines that the stormwater discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.
(3) Permit requirements
(A) Industrial discharges
Permits for discharges associated with industrial activity shall meet all applicable provisions of this section and section 1311 of this title.
(B) Municipal discharge
Permits for discharges from municipal storm sewers--
(i) may be issued on a system- or jurisdiction-wide basis;
(ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and
(iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.
(4) Permit application requirements
(A) Industrial and large municipal discharges
Not later than 2 years after February 4, 1987, the Administrator shall establish regulations setting forth the permit application requirements for stormwater discharges described in paragraphs (2)(B) and (2)(C). Applications for permits for such discharges shall be filed no later than 3 years after February 4, 1987. Not later than 4 years after February 4, 1987, the Administrator or the State, as the case may be, shall issue or deny each such permit. Any such permit shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the date of issuance of such permit.
(B) Other municipal discharges
Not later than 4 years after February 4, 1987, the Administrator shall establish regulations setting forth the permit application requirements for stormwater discharges described in paragraph (2)(D). Applications for permits for such discharges shall be filed no later than 5 years after February 4, 1987. Not later than 6 years after February 4, 1987, the Administrator or the State, as the case may be, shall issue or deny each such permit. Any such permit shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the date of issuance of such permit.
(5) Studies
The Administrator, in consultation with the States, shall conduct a study for the purposes of--
(A) identifying those stormwater discharges or classes of stormwater discharges for which permits are not required pursuant to paragraphs (1) and (2) of this subsection;
(B) determining, to the maximum extent practicable, the nature and extent of pollutants in such discharges; and

(C) establishing procedures and methods to control stormwater discharges to the extent necessary to mitigate impacts on water quality.
Not later than October 1, 1988, the Administrator shall submit to Congress a report on the results of the study described in subparagraphs (A) and (B). Not later than October 1, 1989, the Administrator shall submit to Congress a report on the results of the study described in subparagraph (C).
(6) Regulations
Not later than October 1, 1993, the Administrator, in consultation with State and local officials, shall issue regulations (based on the results of the studies conducted under paragraph (5)) which designate stormwater discharges, other than those discharges described in paragraph (2), to be regulated to protect water quality and shall establish a comprehensive program to regulate such designated sources. The program shall, at a minimum, (A) establish priorities, (B) establish requirements for State stormwater management programs, and (C) establish expeditious deadlines. The program may include performance standards, guidelines, guidance, and management practices and treatment requirements, as appropriate.
(q) Combined sewer overflows
(1) Requirement for permits, orders, and decrees
Each permit, order, or decree issued pursuant to this chapter after December 21, 2000 for a discharge from a municipal combined storm and sanitary sewer shall conform to the Combined Sewer Overflow Control Policy signed by the Administrator on April 11, 1994 (in this subsection referred to as the "CSO control policy").
(2) Water quality and designated use review guidance
Not later than July 31, 2001, and after providing notice and opportunity for public comment, the Administrator shall issue guidance to facilitate the conduct of water quality and designated use reviews for municipal combined sewer overflow receiving waters.
(3) Report
Not later than September 1, 2001, the Administrator shall transmit to Congress a report on the progress made by the Environmental Protection Agency, States, and municipalities in implementing and enforcing the CSO control policy.

c. 33 U.S.C. §1344. Permits for dredged or fill material

(a) Discharge into navigable waters at specified disposal sites
The Secretary may issue permits, after notice and opportunity for public hearings for the discharge of dredged or fill material into the navigable waters at specified disposal sites. Not later than the fifteenth day after the date an applicant submits all the information required to complete an application for a permit under this subsection, the Secretary shall publish the notice required by this subsection.
(b) Specification for disposal sites
Subject to subsection (c) of this section, each such disposal site shall be specified for each such permit by the Secretary (1) through the application of guidelines developed by the Administrator, in conjunction with the Secretary, which guidelines

shall be based upon criteria comparable to the criteria applicable to the territorial seas, the contiguous zone, and the ocean under section 1343(c) of this title, and (2) in any case where such guidelines under clause (1) alone would prohibit the specification of a site, through the application additionally of the economic impact of the site on navigation and anchorage.(c) Denial or restriction of use of defined areas as disposal sites

The Administrator is authorized to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, and he is authorized to deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. Before making such determination, the Administrator shall consult with the Secretary. The Administrator shall set forth in writing and make public his findings and his reasons for making any determination under this subsection.

(d) "Secretary" defined

The term "Secretary" as used in this section means the Secretary of the Army, acting through the Chief of Engineers.

(e) General permits on State, regional, or nationwide basis

(1) In carrying out his functions relating to the discharge of dredged or fill material under this section, the Secretary may, after notice and opportunity for public hearing, issue general permits on a State, regional, or nationwide basis for any category of activities involving discharges of dredged or fill material if the Secretary determines that the activities in such category are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment. Any general permit issued under this subsection shall (A) be based on the guidelines described in subsection (b)(1) of this section, and (B) set forth the requirements and standards which shall apply to any activity authorized by such general permit.

(2) No general permit issued under this subsection shall be for a period of more than five years after the date of its issuance and such general permit may be revoked or modified by the Secretary if, after opportunity for public hearing, the Secretary determines that the activities authorized by such general permit have an adverse impact on the environment or such activities are more appropriately authorized by individual permits.

(f) Non-prohibited discharge of dredged or fill material

(1) Except as provided in paragraph (2) of this subsection, the discharge of dredged or fill material--

(A) from normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;

(B) for the purpose of maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees,

groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures;
(C) for the purpose of construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches;
(D) for the purpose of construction of temporary sedimentation basins on a construction site which does not include placement of fill material into the navigable waters;
(E) for the purpose of construction or maintenance of farm roads or forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained, in accordance with best management practices, to assure that flow and circulation patterns and chemical and biological characteristics of the navigable waters are not impaired, that the reach of the navigable waters is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized;
(F) resulting from any activity with respect to which a State has an approved program under section 1288(b)(4) of this title which meets the requirements of subparagraphs (B) and (C) of such section,
is not prohibited by or otherwise subject to regulation under this section or section 1311(a) or 1342 of this title (except for effluent standards or prohibitions under section 1317 of this title).
(2) Any discharge of dredged or fill material into the navigable waters incidental to any activity having as its purpose bringing an area of the navigable waters into a use to which it was not previously subject, where the flow or circulation of navigable waters may be impaired or the reach of such waters be reduced, shall be required to have a permit under this section.
(g) State administration
(1) The Governor of any State desiring to administer its own individual and general permit program for the discharge of dredged or fill material into the navigable waters (other than those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean high water mark, or mean higher high water mark on the west coast, including wetlands adjacent thereto) within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program.
(2) Not later than the tenth day after the date of the receipt of the program and statement submitted by any State under paragraph (1) of this subsection, the Administrator shall provide copies of such program and statement to the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service.

(3) Not later than the ninetieth day after the date of the receipt by the Administrator of the program and statement submitted by any State, under paragraph (1) of this subsection, the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, shall submit any comments with respect to such program and statement to the Administrator in writing.
(h) Determination of State's authority to issue permits under State program; approval; notification; transfers to State program
(1) Not later than the one-hundred-twentieth day after the date of the receipt by the Administrator of a program and statement submitted by any State under paragraph (1) of this subsection, the Administrator shall determine, taking into account any comments submitted by the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, pursuant to subsection (g) of this section, whether such State has the following authority with respect to the issuance of permits pursuant to such program:
(A) To issue permits which--
(i) apply, and assure compliance with, any applicable requirements of this section, including, but not limited to, the guidelines established under subsection (b)(1) of this section, and sections 1317 and 1343 of this title;
(ii) are for fixed terms not exceeding five years; and
(iii) can be terminated or modified for cause including, but not limited to, the following:
(I) violation of any condition of the permit;
(II) obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts;
(III) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.
(B) To issue permits which apply, and assure compliance with, all applicable requirements of section 1318 of this title, or to inspect, monitor, enter, and require reports to at least the same extent as required in section 1318 of this title.
(C) To assure that the public, and any other State the waters of which may be affected, receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application.
(D) To assure that the Administrator receives notice of each application (including a copy thereof) for a permit.
(E) To assure that any State (other than the permitting State), whose waters may be affected by the issuance of a permit may submit written recommendations to the permitting State (and the Administrator) with respect to any permit application and, if any part of such written recommendations are not accepted by the permitting State, that the permitting State will notify such affected State (and the Administrator) in writing of its failure to so accept such recommendations together with its reasons for so doing.
(F) To assure that no permit will be issued if, in the judgment of the Secretary, after consultation with the Secretary of the department in which the Coast Guard is

operating, anchorage and navigation of any of the navigable waters would be substantially impaired thereby.
(G) To abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement.
(H) To assure continued coordination with Federal and Federal-State water- related planning and review processes.
(2) If, with respect to a State program submitted under subsection (g)(1) of this section, the Administrator determines that such State--
(A) has the authority set forth in paragraph (1) of this subsection, the Administrator shall approve the program and so notify (i) such State and (ii) the Secretary, who upon subsequent notification from such State that it is administering such program, shall suspend the issuance of permits under subsections (a) and (e) of this section for activities with respect to which a permit may be issued pursuant to such State program; or
(B) does not have the authority set forth in paragraph (1) of this subsection, the Administrator shall so notify such State, which notification shall also describe the revisions or modifications necessary so that such State may resubmit such program for a determination by the Administrator under this subsection.
(3) If the Administrator fails to make a determination with respect to any program submitted by a State under subsection (g)(1) of this section within one-hundred-twenty days after the date of the receipt of such program, such program shall be deemed approved pursuant to paragraph (2)(A) of this subsection and the Administrator shall so notify such State and the Secretary who, upon subsequent notification from such State that it is administering such program, shall suspend the issuance of permits under subsection (a) and (e) of this section for activities with respect to which a permit may be issued by such State.
(4) After the Secretary receives notification from the Administrator under paragraph (2) or (3) of this subsection that a State permit program has been approved, the Secretary shall transfer any applications for permits pending before the Secretary for activities with respect to which a permit may be issued pursuant to such State program to such State for appropriate action.
(5) Upon notification from a State with a permit program approved under this subsection that such State intends to administer and enforce the terms and conditions of a general permit issued by the Secretary under subsection (e) of this section with respect to activities in such State to which such general permit applies, the Secretary shall suspend the administration and enforcement of such general permit with respect to such activities.
(i) Withdrawal of approval
Whenever the Administrator determines after public hearing that a State is not administering a program approved under subsection (h)(2)(A) of this section, in accordance with this section, including, but not limited to, the guidelines established under subsection (b)(1) of this section, the Administrator shall so notify the State, and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days after the date of the receipt of such notification, the

Administrator shall (1) withdraw approval of such program until the Administrator determines such corrective action has been taken, and (2) notify the Secretary that the Secretary shall resume the program for the issuance of permits under subsections (a) and (e) of this section for activities with respect to which the State was issuing permits and that such authority of the Secretary shall continue in effect until such time as the Administrator makes the determination described in clause (1) of this subsection and such State again has an approved program.

(j) Copies of applications for State permits and proposed general permits to be transmitted to Administrator

Each State which is administering a permit program pursuant to this section shall transmit to the Administrator (1) a copy of each permit application received by such State and provide notice to the Administrator of every action related to the consideration of such permit application, including each permit proposed to be issued by such State, and (2) a copy of each proposed general permit which such State intends to issue. Not later than the tenth day after the date of the receipt of such permit application or such proposed general permit, the Administrator shall provide copies of such permit application or such proposed general permit to the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service. If the Administrator intends to provide written comments to such State with respect to such permit application or such proposed general permit, he shall so notify such State not later than the thirtieth day after the date of the receipt of such application or such proposed general permit and provide such written comments to such State, after consideration of any comments made in writing with respect to such application or such proposed general permit by the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, not later than the ninetieth day after the date of such receipt. If such State is so notified by the Administrator, it shall not issue the proposed permit until after the receipt of such comments from the Administrator, or after such ninetieth day, whichever first occurs. Such State shall not issue such proposed permit after such ninetieth day if it has received such written comments in which the Administrator objects (A) to the issuance of such proposed permit and such proposed permit is one that has been submitted to the Administrator pursuant to subsection (h)(1)(E) of this section, or (B) to the issuance of such proposed permit as being outside the requirements of this section, including, but not limited to, the guidelines developed under subsection (b)(1) of this section unless it modifies such proposed permit in accordance with such comments. Whenever the Administrator objects to the issuance of a permit under the preceding sentence such written objection shall contain a statement of the reasons for such objection and the conditions which such permit would include if it were issued by the Administrator. In any case where the Administrator objects to the issuance of a permit, on request of the State, a public hearing shall be held by the Administrator on such objection. If the State does not resubmit such permit revised to meet such objection within 30 days after completion of the hearing or, if no hearing is requested within 90 days after the date of such objection, the Secretary may issue the permit pursuant to

subsection (a) or (e) of this section, as the case may be, for such source in accordance with the guidelines and requirements of this chapter.

(k) Waiver

In accordance with guidelines promulgated pursuant to subsection (i)(2) of section 1314 of this title, the Administrator is authorized to waive the requirements of subsection (j) of this section at the time of the approval of a program pursuant to subsection (h)(2)(A) of this section for any category (including any class, type, or size within such category) of discharge within the State submitting such program.

(l) Categories of discharges not subject to requirements

The Administrator shall promulgate regulations establishing categories of discharges which he determines shall not be subject to the requirements of subsection (j) of this section in any State with a program approved pursuant to subsection (h)(2)(A) of this section. The Administrator may distinguish among classes, types, and sizes within any category of discharges.

(m) Comments on permit applications or proposed general permits by Secretary of the Interior acting through Director of United States Fish and Wildlife Service

Not later than the ninetieth day after the date on which the Secretary notifies the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service that (1) an application for a permit under subsection (a) of this section has been received by the Secretary, or (2) the Secretary proposes to issue a general permit under subsection (e) of this section, the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, shall submit any comments with respect to such application or such proposed general permit in writing to the Secretary.

(n) Enforcement authority not limited

Nothing in this section shall be construed to limit the authority of the Administrator to take action pursuant to section 1319 of this title.

(o) Public availability of permits and permit applications

A copy of each permit application and each permit issued under this section shall be available to the public. Such permit application or portion thereof, shall further be available on request for the purpose of reproduction.

(p) Compliance

Compliance with a permit issued pursuant to this section, including any activity carried out pursuant to a general permit issued under this section, shall be deemed compliance, for purposes of sections 1319 and 1365 of this title, with sections 1311, 1317, and 1343 of this title.

(q) Minimization of duplication, needless paperwork, and delays in issuance; agreements

Not later than the one-hundred-eightieth day after December 27, 1977, the Secretary shall enter into agreements with the Administrator, the Secretaries of the Departments of Agriculture, Commerce, Interior, and Transportation, and the heads of other appropriate Federal agencies to minimize, to the maximum extent practicable, duplication, needless paperwork, and delays in the issuance of permits under this section. Such agreements shall be developed to assure that, to the

maximum extent practicable, a decision with respect to an application for a permit under subsection (a) of this section will be made not later than the ninetieth day after the date the notice for such application is published under subsection (a) of this section.

(r) Federal projects specifically authorized by Congress

The discharge of dredged or fill material as part of the construction of a Federal project specifically authorized by Congress, whether prior to or on or after December 27, 1977, is not prohibited by or otherwise subject to regulation under this section, or a State program approved under this section, or section 1311(a) or 1342 of this title (except for effluent standards or prohibitions under section 1317 of this title), if information on the effects of such discharge, including consideration of the guidelines developed under subsection (b)(1) of this section, is included in an environmental impact statement for such project pursuant to the National Environmental Policy Act of 1969 [42 U.S.C.A. § 4321 et seq.] and such environmental impact statement has been submitted to Congress before the actual discharge of dredged or fill material in connection with the construction of such project and prior to either authorization of such project or an appropriation of funds for such construction.

(s) Violation of permits

(1) Whenever on the basis of any information available to him the Secretary finds that any person is in violation of any condition or limitation set forth in a permit issued by the Secretary under this section, the Secretary shall issue an order requiring such person to comply with such condition or limitation, or the Secretary shall bring a civil action in accordance with paragraph (3) of this subsection.

(2) A copy of any order issued under this subsection shall be sent immediately by the Secretary to the State in which the violation occurs and other affected States. Any order issued under this subsection shall be by personal service and shall state with reasonable specificity the nature of the violation, specify a time for compliance, not to exceed thirty days, which the Secretary determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection is issued to a corporation, a copy of such order shall be served on any appropriate corporate officers.

(3) The Secretary is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction for any violation for which he is authorized to issue a compliance order under paragraph (1) of this subsection. Any action under this paragraph may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance. Notice of the commencement of such acton [FN1] shall be given immediately to the appropriate State.

(4) Any person who violates any condition or limitation in a permit issued by the Secretary under this section, and any person who violates any order issued by the Secretary under paragraph (1) of this subsection, shall be subject to a civil penalty

not to exceed $25,000 per day for each violation. In determining the amount of a civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require.
(t) Navigable waters within State jurisdiction
Nothing in this section shall preclude or deny the right of any State or interstate agency to control the discharge of dredged or fill material in any portion of the navigable waters within the jurisdiction of such State, including any activity of any Federal agency, and each such agency shall comply with such State or interstate requirements both substantive and procedural to control the discharge of dredged or fill material to the same extent that any person is subject to such requirements. This section shall not be construed as affecting or impairing the authority of the Secretary to maintain navigation.

23. NATIONAL ENVIRONMENTAL POLICY ACT (Selected Sections)

a. 42 U.S.C. §4332(2)(C)

NEPA provides that each federal agency shall:

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on--
(I) the environmental impact of the proposed action,
(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
(iii) alternatives to the proposed action,
(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.
Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, and shall accompany the proposal through the existing agency review processes...

b. CEQ Regulations, 40 C.F.R §§1500-1508 (selected sections)

In 1979, the Council on Environmental Quality ("CEQ") adopted regulations that bind each federal agency.

40 C.F.R. §1500.3
Parts 1500 through 1508 of this title provide regulations applicable to and binding on all Federal agencies for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (Pub. L. 91–190, 42 U.S.C. 4321 et seq.) (NEPA or the Act) except where compliance would be inconsistent with other statutory requirements.

40 C.F.R §1500.6
Each agency must adopt its own rules, policies, and procedures to fully implement NEPA and the CEQ rules. *See e.g.* Bureau of Land Management Handbook H-1790-1, Forest Service Handbook 1909.13.

40 C.F.R. §1501.1
The CEQ regulations specifically address the obligations of federal agencies to consult with and involve local governmental agencies in the NEPA process.
(d) Provide for cases where actions are planned by private applicants or other non-Federal entities before Federal involvement so that:
(2) The Federal agency consults early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.

40 C.F.R. §1501.5
Local agencies may be a joint lead agency in preparing an environmental impact statement ("EIS").

40 C.F.R. §1501.5d
Local governments can also request CEQ to designate a lead agency to prepare the EIS.

40 C.F.R. §1501.6
The regulations provide for specific procedures, rights, and responsibilities of cooperating agencies:

40 C.F.R. §1501.6 Cooperating agencies.
The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may request the lead agency to designate it a cooperating agency.
(a) The lead agency shall:
(1) Request the participation of each cooperating agency in the NEPA process at the earliest possible time.

(2) Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.
(3) Meet with a cooperating agency at the latter's request.
(b) Each cooperating agency shall:
(1) Participate in the NEPA process at the earliest possible time.
(2) Participate in the scoping process (described below in §1501.7).
(3) Assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise.
(4) Make available staff support at the lead agency's request to enhance the latter's interdisciplinary capability.
(5) Normally use its own funds. The lead agency shall, to the extent available funds permit, fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall include such funding requirements in their budget requests.
(c) A cooperating agency may in response to a lead agency's request for assistance in preparing the environmental impact statement (described in paragraph (b)(3), (4), or (5) of this section) reply that other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement. A copy of this reply shall be submitted to the Council.

40 C.F.R. §1501.7
Local governmental entities are also entitled to an invitation to participate as part of the scoping process for any major federal action.
(a) As part of the scoping process the lead agency shall:
(1) Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds), unless there is a limited exception under §1507.3(c). An agency may give notice in accordance with §1506.6.

40 C.F.R. §1502.16
When writing an EIS, the federal agency must also address the effects and conflicts with local government plans, 40 C.F.R. §1502.16 states:

Environmental consequences.
This section forms the scientific and analytic basis for the comparisons under §1502.14. It shall consolidate the discussions of those elements required by sections 102(2)(C)(I), (ii), (iv), and (v) of NEPA which are within the scope of the statement and as much of section 102(2)(C)(iii) as is necessary to support the comparisons. The discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which

cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. This section should not duplicate discussions in §1502.14. It shall include discussions of:
(c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (*See* §1506.2(d).)

40 C.F.R. §1502.19
The environmental impact statement ("EIS") must be circulated to local government agencies:
Circulation of the environmental impact statement.
Agencies shall circulate the entire draft and final environmental impact statements except for certain appendices as provided in §1502.18(d) and unchanged statements as provided in §1503.4(c). However, if the statement is unusually long, the agency may circulate the summary instead, except that the entire statement shall be furnished to:
(a) Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State or local agency authorized to develop and enforce environmental standards.

40 C.F.R. §1503.1
The CEQ rules also provide specifically for involvement of local governments in the public comment aspect of an EIS.
Inviting comments.
(a) After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall:
(2) Request the comments of:
(I) Appropriate State and local agencies which are authorized to develop and enforce environmental standards;
(ii) Indian tribes, when the effects may be on a reservation; and

40 C.F.R. §1506.2, Federal Agencies to Avoid Duplicative Procedures and to Reduce Conflicts:
(b) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include:
(1) Joint planning processes.
(2) Joint environmental research and studies.
(3) Joint public hearings (except where otherwise provided by statute).
(4) Joint environmental assessments.

(c) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include joint environmental impact statements. In such cases one or more Federal agencies and one or more State or local agencies shall be joint lead agencies. Where State laws or local ordinances have environmental impact statement requirements in addition to but not in conflict with those in NEPA, Federal agencies shall cooperate in fulfilling these requirements as well as those of Federal laws so that one document will comply with all applicable laws.
(d) To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.

40 C.F.R. §1503.3 Specificity of Comments
(c) A cooperating agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft statement's analysis of significant site-specific effects associated with the granting or approving by that cooperating agency of necessary Federal permits, licenses, or entitlements.
(d) When a cooperating agency with jurisdiction by law objects to or expresses reservations about the proposal on grounds of environmental impacts, the agency expressing the objection or reservation shall specify the mitigation measures it considers necessary to allow the agency to grant or approve applicable permit, license, or related requirements or concurrences.

40 C.F.R. §1506.2 Lead agencies
"(b) Federal, State, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an environmental impact statement (§1506.2)."

40 C.F.R. §1506.6 Public involvement.
Agencies shall:
(a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures.
(b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.
(3) In the case of an action with effects primarily of local concern the notice may include:

(I) Notice to State and areawide clearinghouses pursuant to OMB Circular A–95 (Revised).
(ii) Notice to Indian tribes when effects may occur on reservations.
(iii) Following the affected State's public notice procedures for comparable actions.
(iv) Publication in local newspapers (in papers of general circulation rather than legal papers).
(v) Notice through other local media.
(vi) Notice to potentially interested community organizations including small business associations.
(vii) Publication in newsletters that may be expected to reach potentially interested persons.
(viii) Direct mailing to owners and occupants of nearby or affected property.
(ix) Posting of notice on and off site in the area where the action is to be located.

40 C.F.R. §1508.5
Local governmental entities are also entitled to seek and be granted cooperating agency status whenever a federal agency is preparing an EIS. A cooperating agency is defined as:

Cooperating agency means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in §1501.6. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.

c. CEQ Policy and Direction on Cooperating Agency Status. CEQ Administrator Memorandum, July 28, 1999.

The CEQ has published policy statements and directives that require the federal agencies to affirmatively solicit requests for cooperating agency status.

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON. DC. 20503

July 18, 1999

MEMORANDUM FOR HEADS OF FEDERAL AGENCIES

FROM: GEORGE T. FRAMPTON, JR.

SUBJECT: ATTACHED MEMORANDUM

Attached please find a memorandum regarding the designation of non-federal agencies to be cooperating agencies in implementing the procedural requirements of the National Environmental Policy Act. If you have any questions concerning this memorandum, please do not hesitate to contact Dinah Bear, the Council on Environmental Quality's General Counsel, at (202) 395-5750.

Attachment

Recycled Paper

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON. D.C 2050J

July 28, 1999

MEMORANDUM FOR HEADS OF FEDERAL AGENCIES

FROM: GEORGE T. FRAMPTON, JR.
Acting Chair

SUBJECT: DESIGNATION OF NON-FEDERAL AGENCIES TO BE COOPERATING AGENCIES IN IMPLEMENTING THE PROCEDURAL REQUIREMENTS OF THE NATIONAL ENVIRONMENTAL POLICY ACT

The purpose of this Memorandum is to urge agencies to more actively solicit in the future the participation of state, tribal and local governments as "cooperating agencies" in implementing the environmental impact statement process under the National Environmenta1 Policy Act (NEPA). 40 C.F .R. § 1508.5. As soon as practicable, but no later than the scoping process, federal agency officials should identify state, tribal and local government agencies which have jurisdiction by law and or special expertise.with respect to ,reasonable alternatives or significant environmental, social or economic impacts association witb a proposed action that requires the preparation of an environmental impact statement.[1] The federal agency should then determine whether such non-

[1]While CEQ has not attempted to identify every state, tribal and local government agencies with jurisdiction by law or special expertise (nor do we propose to do so), agencies may wish to refer to Appendix II to the CEQ regulations. "federal and Federal-State Agencies with Jurisdiction by Law or Special Expertise on Environmental Quality Issues", Vol. 49 *Federal Register,*. No. 247,49754-49778 (December 21, 1984), for guidance as to the types of actions and expertise that are relevant in deternining appropriate

federal agencies are interested in assuming the responsibilities of becoming a cooperating agency under 40 C.F .R. § 1501.6. Where invited tribal, state, or local agencies choose not to become cooperators in the NEP A process, they may still be identified as an internal party on the distribution list, if they so desire.

The benefits of granting cooperating agency status include disclosure of relevant information early in the analytical process, receipt of technical expertise and staff support, avoidance of duplication with state, tribal and local procedures, and establishment of a mechanism for addressing intergovernmental issues. If a non-federal agency agrees to become a cooperating agency, agencies are encouraged to document (e.g., in a memorandum of agreement) their specific expectations, roles and responsibilities, including such issues as preparation of analysis, schedules, availability of pre-decisional information and other issues. Cooperating agencies are normally expected to use their own funds for routine activities, but to the extent available funds permit, the lead agency should fund or include in its budget requests funding for major activities or analyses that it requests from cooperating agencies. 40 C.F.R. §1501.6(b)(5).

Agencies are reminded that cooperating agency status neither enlarges nor diminishes the decisionmaking authority of either federal or non-federal entities. However, cooperating agency relationships with state, tribal and local agencies help to achieve the direction set forth in NEPA to work with other levels of government "to 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." Considering NEPA's mandate and the authority granted in federal regulation to allow for cooperating agency status for state, tribal and local agencies, cooperator status for appropriate non-federal agencies should be routinely solicited.

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Recycled Paper

d. CEQ Memorandum, February 4, 2002 MEMORANDUM FOR STATE AND LOCAL GOVERNMENTAL ENTITIES FROM: JAMES CONNAUGHTON, Chair of CEQ

In 2002, CEQ Administrator James Connaughton issued direction clarifying when cooperating agency status is appropriate. The memorandum and attachment is reprinted below:

February 4, 2002
MEMORANDUM FOR STATE AND LOCAL GOVERNMENTAL ENTITIES
FROM: JAMES CONNAUGHTON, Chair

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cooperating agencies. Please contact CEQ for copies, if needed.

Recycled Paper

SUBJECT: COOPERATING AGENCIES IN IMPLEMENTING THE PROCEDURAL REQUIREMENTS OF THE NATIONAL ENVIRONMENTAL POLICY ACT

The Council on Environmental Quality (CEQ) regulations addressing cooperating agencies status implement the NEPA mandate that Federal agencies responsible for preparing NEPA analyses and documentation do so "in cooperation with State and local governments" and other agencies with jurisdiction by law or special expertise. The attached memorandum reminds Federal agencies of the importance of including State, Tribal and local governmental entities in the NEPA process and emphasizes the importance of establishing cooperating agency status when appropriate. In cases where you have either jurisdiction by law or special expertise you should consider accepting or requesting an invitation to participate in the NEPA process as a cooperating agency. In those cases where cooperating agency status is not appropriate, you should consider opportunities to provide information and comments to the agencies preparing the NEPA analysis and documentation. CEQ supports your involvement in ensuring that decisionmakers have the environmental information necessary to make informed and timely decisions efficiently. The benefits of enhanced cooperating agency participation in the preparation of Environmental Assessments (EAs) and Environmental Impact Statements (EISs), described in the enclosed memorandum include fostering intergovernmental trust (e.g., partnerships at the community level) and a common understanding and appreciation for various governmental roles in the NEPA process. It is important for you to consider your authority and capacity to assume the responsibilities of a cooperating agency and to remember that your role in the environmental analysis neither enlarges nor diminishes the final decisionmaking authority of any agency involved in the NEPA process.

If you have any questions concerning this memorandum, please contact Horst G. Greczmiel, Associate Director for NEPA Oversight at 202-395-5750, Horst_Greczmiel@ceq.eop.gov, or 202-456-0753 (fax).

To submit questions and comments about CEQ NEPAnet, please use the NEPAnet Feedback System. NEPAnet Privacy Statement

Attachment 1 - Factors for Determining Factors for Determining Whether to Invite, Decline or End Cooperating Agency Status

Jurisdiction by law (40 C.F.R. §1508.15): for example, agencies with the authority to grant permits for implementing the action [federal agencies shall be a cooperating agency (§1501.6); non-federal agencies may be invited (40 C.F.R. §1508.5)]:

Does the agency have the authority to approve a proposal or a portion of a proposal?

Does the agency have the authority to veto a proposal or a portion of a proposal?

Does the agency have the authority to finance a proposal or a portion of a proposal?

Special expertise (40 C.F.R. §1508.26): cooperating agency status for specific purposes linked to special expertise requires more than an interest in a proposed action [federal and non-federal agencies may be requested (40 C.F.R. §§1501.6 & 1508.5)]:

Does the cooperating agency have the expertise needed to help the lead agency meet a statutory responsibility?

Does the cooperating agency have the expertise developed to carry out an agency mission?

Does the cooperating agency have the related program expertise or experience?

Does the cooperating agency have the expertise regarding the proposed actions/relationship to the objectives of regional, State and local land use plans, policies and controls (1502.16(c))?

Do the agencies understand what cooperating agency status means and can they legally enter into an agreement to be a cooperating agency?

Can the cooperating agency participate during scoping and/or throughout the preparation of the analysis and documentation as necessary and meet milestones established for completing the process?

Can the cooperating agency, in a timely manner, aid in:

identifying significant environmental issues [including aspects of the human environment (40 C.F.R. §1508.14), including natural, social, economic, energy, urban quality, historic and cultural issues (40 C.F.R. §1502.16)]?

eliminating minor issues from further study?

identifying issues previously the subject of environmental review or study?

identifying the proposed actions/relationship to the objectives of regional, State and local land use plans, policies and controls (1502.16(c))?

(40 C.F.R. §§1501.1(d) and 1501.7)

Can the cooperating agency assist in preparing portions of the review and analysis and resolving significant environmental issues to support scheduling and critical milestones?

Can the cooperating agency provide resources to support scheduling and critical milestones such as: personnel? Consider all forms of assistance (e.g., data gathering; surveying; compilation; research. expertise? This includes technical or subject matter expertise. funding? Examples include funding for personnel, travel and studies. Normally, the cooperating agency will provide the funding; to the extent available funds permit, the lead agency shall fund or include in budget requests funding for

an analyses the lead agency requests from cooperating agencies. Alternatives to travel, such as telephonic or video conferencing, should be considered especially when funding constrains participation.

models and databases? Consider consistency and compatibility with lead and other cooperating agencies/ methodologies.

facilities, equipment and other services? This type of support is especially relevant for smaller governmental entities with limited budgets.

Does the agency provide adequate lead-time for review and do the other agencies provide adequate time for review of documents, issues and analyses? For example, are either the lead or cooperating agencies unable or unwilling to consistently participate in meetings in a timely fashion after adequate time for review of documents, issues and analyses?

Can the cooperating agency(s) accept the lead agency's final decisionmaking authority regarding the scope of the analysis, including authority to define the purpose and need for the proposed action? For example, is an agency unable or unwilling to develop information/analysis of alternatives they favor and disfavor?

Are the agency(s) able and willing to provide data and rationale underlying the analyses or assessment of alternatives?

Does the agency release predecisional information (including working drafts) in a manner that undermines or circumvents the agreement to work cooperatively before publishing draft or final analyses and documents?

Disagreeing with the published draft or final analysis should not be a ground for ending cooperating status. Agencies must be alert to situations where state law requires release of information.

Does the agency consistently misrepresent the process or the findings presented in the analysis and documentation?

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The factors provided for extending cooperating agency status are not intended to be all-inclusive. Moreover, satisfying all the factors is not required and satisfying one may be sufficient. Each determination should be made on a case-by-case basis considering all relevant information and factors.

e. Selected Cases

i. *Sierra Club v. U.S. Dept. Of Energy*, 287 F.3d 1256, 1265 (10th Cir. 2002)

ii. Catron County Board of Commissioners v. U.S. Fish and Wildlife Service, 75 F.3d 1429, 1433 (10th Cir. 1996)

A local government will have standing to challenge agency action under NEPA because the local government's environmental interests fall well within the zone of interests protected by NEPA. A county, therefore, has standing to sue if a federal agency has created an increased risk of environmental harm to these interests by not following NEPA's procedures.

24. SOLID WASTE DISPOSAL (RESOURCE CONSERVATION AND RECOVERY ACT), 42 U.S.C. §§6901-6949a (Selected Sections)

a. §6901. Congressional findings

(a) Solid waste
The Congress finds with respect to solid waste--
(1) that the continuing technological progress and improvement in methods of manufacture, packaging, and marketing of consumer products has resulted in an ever-mounting increase, and in a change in the characteristics, of the mass material discarded by the purchaser of such products;
(2) that the economic and population growth of our Nation, and the improvements in the standard of living enjoyed by our population, have required increased industrial production to meet our needs, and have made necessary the demolition of old buildings, the construction of new buildings, and the provision of highways and other avenues of transportation, which, together with related industrial, commercial, and agricultural operations, have resulted in a rising tide of scrap, discarded, and waste materials;
(3) that the continuing concentration of our population in expanding metropolitan and other urban areas has presented these communities with serious financial, management, intergovernmental, and technical problems in the disposal of solid wastes resulting from the industrial, commercial, domestic, and other activities carried on in such areas;
(4) that while the collection and disposal of solid wastes should continue to be primarily the function of State, regional, and local agencies, the problems of waste disposal as set forth above have become a matter national in scope and in concern and necessitate Federal action through financial and technical assistance and leadership in the development, demonstration, and application of new and improved methods and processes to reduce the amount of waste and unsalvageable materials and to provide for proper and economical solid waste disposal practices.
(b) Environment and health
The Congress finds with respect to the environment and health, that--
(1) although land is too valuable a national resource to be needlessly polluted by discarded materials, most solid waste is disposed of on land in open dumps and sanitary landfills;

(2) disposal of solid waste and hazardous waste in or on the land without careful planning and management can present a danger to human health and the environment;
(3) as a result of the Clean Air Act [42 U.S.C.A. § 7401 et seq.], the Water Pollution Control Act [33 U.S.C.A. § 1251 et seq.], and other Federal and State laws respecting public health and the environment, greater amounts of solid waste (in the form of sludge and other pollution treatment residues) have been created. Similarly, inadequate and environmentally unsound practices for the disposal or use of solid waste have created greater amounts of air and water pollution and other problems for the environment and for health;
(4) open dumping is particularly harmful to health, contaminates drinking water from underground and surface supplies, and pollutes the air and the land;
(5) the placement of inadequate controls on hazardous waste management will result in substantial risks to human health and the environment;
(6) if hazardous waste management is improperly performed in the first instance, corrective action is likely to be expensive, complex, and time consuming;
(7) certain classes of land disposal facilities are not capable of assuring long-term containment of certain hazardous wastes, and to avoid substantial risk to human health and the environment, reliance on land disposal should be minimized or eliminated, and land disposal, particularly landfill and surface impoundment, should be the least favored method for managing hazardous wastes; and
(8) alternatives to existing methods of land disposal must be developed since many of the cities in the United States will be running out of suitable solid waste disposal sites within five years unless immediate action is taken.
(c) Materials
The Congress finds with respect to materials, that--
(1) millions of tons of recoverable material which could be used are needlessly buried each year;
(2) methods are available to separate usable materials from solid waste; and
(3) the recovery and conservation of such materials can reduce the dependence of the United States on foreign resources and reduce the deficit in its balance of payments.
(d) Energy
The Congress finds with respect to energy, that--
(1) solid waste represents a potential source of solid fuel, oil, or gas that can be converted into energy;
(2) the need exists to develop alternative energy sources for public and private consumption in order to reduce our dependence on such sources as petroleum products, natural gas, nuclear and hydroelectric generation; and
(3) technology exists to produce usable energy from solid waste.

b. §6902. Objectives and national policy
(a) Objectives

The objectives of this chapter are to promote the protection of health and the environment and to conserve valuable material and energy resources by–
(1) providing technical and financial assistance to State and local governments and interstate agencies for the development of solid waste management plans (including resource recovery and resource conservation systems) which will promote improved solid waste management techniques (including more effective organizational arrangements), new and improved methods of collection, separation, and recovery of solid waste, and the environmentally safe disposal of nonrecoverable residues;
(2) providing training grants in occupations involving the design, operation, and maintenance of solid waste disposal systems;
(3) prohibiting future open dumping on the land and requiring the conversion of existing open dumps to facilities which do not pose a danger to the environment or to health;
(4) assuring that hazardous waste management practices are conducted in a manner which protects human health and the environment;
(5) requiring that hazardous waste be properly managed in the first instance thereby reducing the need for corrective action at a future date;
(6) minimizing the generation of hazardous waste and the land disposal of hazardous waste by encouraging process substitution, materials recovery, properly conducted recycling and reuse, and treatment;
(7) establishing a viable Federal-State partnership to carry out the purposes of this chapter and insuring that the Administrator will, in carrying out the provisions of subchapter III of this chapter, give a high priority to assisting and cooperating with States in obtaining full authorization of State programs under subchapter III of this chapter;
(8) providing for the promulgation of guidelines for solid waste collection, transport, separation, recovery, and disposal practices and systems;
(9) promoting a national research and development program for improved solid waste management and resource conservation techniques, more effective organizational arrangements, and new and improved methods of collection, separation, and recovery, and recycling of solid wastes and environmentally safe disposal of nonrecoverable residues;
(10) promoting the demonstration, construction, and application of solid waste management, resource recovery, and resource conservation systems which preserve and enhance the quality of air, water, and land resources; and
(11) establishing a cooperative effort among the Federal, State, and local governments and private enterprise in order to recover valuable materials and energy from solid waste.
(b) National policy
The Congress hereby declares it to be the national policy of the United States that, wherever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible. Waste that is nevertheless generated should be treated, stored, or disposed of so as to minimize the present and future threat to human health and the environment.

c. §6903. Definitions

As used in this chapter:

(1) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) The term "construction," with respect to any project of construction under this chapter, means (A) the erection or building of new structures and acquisition of lands or interests therein, or the acquisition, replacement, expansion, remodeling, alteration, modernization, or extension of existing structures, and (B) the acquisition and installation of initial equipment of, or required in connection with, new or newly acquired structures or the expanded, remodeled, altered, modernized or extended part of existing structures (including trucks and other motor vehicles, and tractors, cranes, and other machinery) necessary for the proper utilization and operation of the facility after completion of the project; and includes preliminary planning to determine the economic and engineering feasibility and the public health and safety aspects of the project, the engineering, architectural, legal, fiscal, and economic investigations and studies, and any surveys, designs, plans, working drawings, specifications, and other action necessary for the carrying out of the project, and (C) the inspection and supervision of the process of carrying out the project to completion.

(2A) The term "demonstration" means the initial exhibition of a new technology process or practice or a significantly new combination or use of technologies, processes or practices, subsequent to the development stage, for the purpose of proving technological feasibility and cost effectiveness.

(3) The term "disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

(4) The term "Federal agency" means any department, agency, or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation, and the Government Printing Office.

(5) The term "hazardous waste" means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may–

(A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

(6) The term "hazardous waste generation" means the act or process of producing hazardous waste.

(7) The term "hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.
(8) For purposes of Federal financial assistance (other than rural communities assistance), the term "implementation" does not include the acquisition, leasing, construction, or modification of facilities or equipment or the acquisition, leasing, or improvement of land.
(9) The term "intermunicipal agency" means an agency established by two or more municipalities with responsibility for planning or administration of solid waste.
(10) The term "interstate agency" means an agency of two or more municipalities in different States, or an agency established by two or more States, with authority to provide for the management of solid wastes and serving two or more municipalities located in different States.
(11) The term "long-term contract" means, when used in relation to solid waste supply, a contract of sufficient duration to assure the viability of a resource recovery facility (to the extent that such viability depends upon solid waste supply).
(12) The term "manifest" means the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.
(13) The term "municipality" (A) means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law, with responsibility for the planning or administration of solid waste management, or an Indian tribe or authorized tribal organization or Alaska Native village or organization, and (B) includes any rural community or unincorporated town or village or any other public entity for which an application for assistance is made by a State or political subdivision thereof.
(14) The term "open dump" means any facility or site where solid waste is disposed of which is not a sanitary landfill which meets the criteria promulgated under section 6944 of this title and which is not a facility for disposal of hazardous waste.
(15) The term "person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States.
(16) The term "procurement item" means any device, good, substance, material, product, or other item whether real or personal property which is the subject of any purchase, barter, or other exchange made to procure such item.
(17) The term "procuring agency" means any Federal agency, or any State agency or agency of a political subdivision of a State which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract.
(18) The term "recoverable" refers to the capability and likelihood of being recovered from solid waste for a commercial or industrial use.

(19) The term "recovered material" means waste material and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process.
(20) The term "recovered resources" means material or energy recovered from solid waste.
(21) The term "resource conservation" means reduction of the amounts of solid waste that are generated, reduction of overall resource consumption, and utilization of recovered resources.
(22) The term "resource recovery" means the recovery of material or energy from solid waste.
(23) The term "resource recovery system" means a solid waste management system which provides for collection, separation, recycling, and recovery of solid wastes, including disposal of nonrecoverable waste residues.
(24) The term "resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.
(25) The term "regional authority" means the authority established or designated under section 6946 of this title.
(26) The term "sanitary landfill" means a facility for the disposal of solid waste which meets the criteria published under section 6944 of this title.
(26A) The term "sludge" means any solid, semisolid or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other such waste having similar characteristics and effects.
(27) The term "solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 1342 of Title 33, or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923) [42 U.S.C.A. § 2011 et seq.].
(28) The term "solid waste management" means the systematic administration of activities which provide for the collection, source separation, storage, transportation, transfer, processing, treatment, and disposal of solid waste.
(29) The term "solid waste management facility" includes--
(A) any resource recovery system or component thereof,
(B) any system, program, or facility for resource conservation, and
(C) any facility for the collection, source separation, storage, transportation, transfer, processing, treatment or disposal of solid wastes, including hazardous wastes,

whether such facility is associated with facilities generating such wastes or otherwise.
(30) The terms "solid waste planning", "solid waste management", and "comprehensive planning" include planning or management respecting resource recovery and resource conservation.
(31) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.
(32) The term "State authority" means the agency established or designated under section 6947 of this title.
(33) The term "storage", when used in connection with hazardous waste, means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste.
(34) The term "treatment", when used in connection with hazardous waste, means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.
(35) The term "virgin material" means a raw material, including previously unused copper, aluminum, lead, zinc, iron, or other metal or metal ore, any undeveloped resource that is, or with new technology will become, a source of raw materials.
(36) The term "used oil" means any oil which has been--
(A) refined from crude oil,
(B) used, and
(C) as a result of such use, contaminated by physical or chemical impurities.
(37) The term "recycled oil" means any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes oil which is re-refined, reclaimed, burned, or reprocessed.
(38) The term "lubricating oil" means the fraction of crude oil which is sold for purposes of reducing friction in any industrial or mechanical device. Such term includes re-refined oil.
(39) The term "re-refined oil" means used oil from which the physical and chemical contaminants acquired through previous use have been removed through a refining process.
(40) Except as otherwise provided in this paragraph, the term "medical waste" means any solid waste which is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals. Such term does not include any hazardous waste identified or listed under subchapter III of this chapter or any household waste as defined in regulations under subchapter III of this chapter.

(41) The term "mixed waste" means waste that contains both hazardous waste and source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

d. §6904. Governmental cooperation

(a) Interstate cooperation

The provisions of this chapter to be carried out by States may be carried out by interstate agencies and provisions applicable to States may apply to interstate regions where such agencies and regions have been established by the respective States and approved by the Administrator. In any such case, action required to be taken by the Governor of a State, respecting regional designation shall be required to be taken by the Governor of each of the respective States with respect to so much of the interstate region as is within the jurisdiction of that State.

(b) Consent of Congress to compacts

The consent of the Congress is hereby given to two or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, for–

(1) cooperative effort and mutual assistance for the management of solid waste or hazardous waste (or both) and the enforcement of their respective laws relating thereto, and

(2) the establishment of such agencies, joint or otherwise, as they may deem desirable for making effective such agreements or compacts.

e. §6922. Standards applicable to generators of hazardous waste

(a) In general

Not later than eighteen months after October 21, 1976, and after notice and opportunity for public hearings and after consultation with appropriate Federal and State agencies, the Administrator shall promulgate regulations establishing such standards, applicable to generators of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment. Such standards shall establish requirements respecting--

(1) recordkeeping practices that accurately identify the quantities of such hazardous waste generated, the constituents thereof which are significant in quantity or in potential harm to human health or the environment, and the disposition of such wastes;

(2) labeling practices for any containers used for the storage, transport, or disposal of such hazardous waste such as will identify accurately such waste;

(3) use of appropriate containers for such hazardous waste;

(4) furnishing of information on the general chemical composition of such hazardous waste to persons transporting, treating, storing, or disposing of such wastes;

(5) use of a manifest system and any other reasonable means necessary to assure that all such hazardous waste generated is designated for treatment, storage, or disposal in, and arrives at, treatment, storage, or disposal facilities (other than facilities on the premises where the waste is generated) for which a permit has been

issued as provided in this subchapter, or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) [33 U.S.C.A. § 1411 et seq.]; and
(6) submission of reports to the Administrator (or the State agency in any case in which such agency carries out a permit program pursuant to this subchapter) at least once every two years, setting out--
(A) the quantities and nature of hazardous waste identified or listed under this subchapter that he has generated during the year;
(B) the disposition of all hazardous waste reported under subparagraph (A);
(C) the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and
(D) the changes in volume and toxicity of waste actually achieved during the year in question in comparison with previous years, to the extent such information is available for years prior to November 8, 1984.

f. §6923. Standards applicable to transporters of hazardous waste

(a) Standards
Not later than eighteen months after October 21, 1976, and after opportunity for public hearings, the Administrator, after consultation with the Secretary of Transportation and the States, shall promulgate regulations establishing such standards, applicable to transporters of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment. Such standards shall include but need not be limited to requirements respecting--
(1) recordkeeping concerning such hazardous waste transported, and their source and delivery points;
(2) transportation of such waste only if properly labeled;
(3) compliance with the manifest system referred to in section 6922(5) of this title; and
(4) transportation of all such hazardous waste only to the hazardous waste treatment, storage, or disposal facilities which the shipper designates on the manifest form to be a facility holding a permit issued under this subchapter, or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) [33 U.S.C.A. § 1411 et seq.].
(b) Coordination with regulations of Secretary of Transportation
In case of any hazardous waste identified or listed under this subchapter which is subject to chapter 51 of Title 49, the regulations promulgated by the Administrator under this section shall be consistent with the requirements of such Act and the regulations thereunder. The Administrator is authorized to make recommendations to the Secretary of Transportation respecting the regulations of such hazardous waste under the Hazardous Materials Transportation Act and for addition of materials to be covered by such Act.

g. §6926. Authorized State hazardous waste programs

(a) Federal guidelines

Not later than eighteen months after October 21, 1976, the Administrator, after consultation with State authorities, shall promulgate guidelines to assist States in the Development of State hazardous waste programs.

(b) Authorization of State program

Any State which seeks to administer and enforce a hazardous waste program pursuant to this subchapter may develop and, after notice and opportunity for public hearing, submit to the Administrator an application, in such form as he shall require, for authorization of such program. Within ninety days following submission of an application under this subsection, the Administrator shall issue a notice as to whether or not he expects such program to be authorized, and within ninety days following such notice (and after opportunity for public hearing) he shall publish his findings as to whether or not the conditions listed in items (1), (2), and (3) below have been met. Such State is authorized to carry out such program in lieu of the Federal program under this subchapter in such State and to issue and enforce permits for the storage, treatment, or disposal of hazardous waste (and to enforce permits deemed to have been issued under section 6935(d)(1) of this title) unless, within ninety days following submission of the application the Administrator notifies such State that such program may not be authorized and, within ninety days following such notice and after opportunity for public hearing, he finds that (1) such State program is not equivalent to the Federal program under this subchapter, (2) such program is not consistent with the Federal or State programs applicable in other States, or (3) such program does not provide adequate enforcement of compliance with the requirements of this subchapter. In authorizing a State program, the Administrator may base his findings on the Federal program in effect one year prior to submission of a State's application or in effect on January 26, 1983, whichever is later.

(c) Interim authorization

(1) Any State which has in existence a hazardous waste program pursuant to State law before the date ninety days after the date of promulgation of regulations under sections 6922, 6923, 6924, and 6925 of this title, may submit to the Administrator evidence of such existing program and may request a temporary authorization to carry out such program under this subchapter. The Administrator shall, if the evidence submitted shows the existing State program to be substantially equivalent to the Federal program under this subchapter, grant an interim authorization to the State to carry out such program in lieu of the Federal program pursuant to this subchapter for a period ending no later than January 31, 1986.

(2) The Administrator shall, by rule, establish a date for the expiration of interim authorization under this subsection.

(3) Pending interim or final authorization of a State program for any State which reflects the amendments made by the Hazardous and Solid Waste Amendments of 1984, the State may enter into an agreement with the Administrator under which the State may assist in the administration of the requirements and prohibitions which take effect pursuant to such Amendments.

(4) In the case of a State permit program for any State which is authorized under subsection (b) of this section or under this subsection, until such program is amended to reflect the amendments made by the Hazardous and Solid Waste Amendments of 1984 and such program amendments receive interim or final authorization, the Administrator shall have the authority in such State to issue or deny permits or those portions of permits affected by the requirements and prohibitions established by the Hazardous and Solid Waste Amendments of 1984. The Administrator shall coordinate with States the procedures for issuing such permits.

(d) Effect of State permit

Any action taken by a State under a hazardous waste program authorized under this section shall have the same force and effect as action taken by the Administrator under this subchapter.

(e) Withdrawal of authorization

Whenever the Administrator determines after public earing that a State is not administering and enforcing a program authorized under this section in accordance with requirements of this section, he shall so notify the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw authorization of such program and establish a Federal program pursuant to this subchapter. The Administrator shall not withdraw authorization of any such program unless he shall first have notified the State, and made public, in writing, the reasons for such withdrawal.

(f) Availability of information

No State program may be authorized by the Administrator under this section unless--

(1) such program provides for the public availability of information obtained by the State regarding facilities and sites for the treatment, storage, and disposal of hazardous waste; and

(2) such information is available to the public in substantially the same manner, and to the same degree, as would be the case if the Administrator was carrying out the provisions of this subchapter in such State.

(g) Amendments made by 1984 act

(1) Any requirement or prohibition which is applicable to the generation, transportation, treatment, storage, or disposal of hazardous waste and which is imposed under this subchapter pursuant to the amendments made by the Hazardous and Solid Waste Amendments of 1984 shall take effect in each State having an interim or finally authorized State program on the same date as such requirement takes effect in other States. The Administrator shall carry out such requirement directly in each such State unless the State program is finally authorized (or is granted interim authorization as provided in paragraph (2)) with respect to such requirement.

(2) Any State which, before November 8, 1984, has an existing hazardous waste program which has been granted interim or final authorization under this section may submit to the Administrator evidence that such existing program contains (or

has been amended to include) any requirement which is substantially equivalent to a requirement referred to in paragraph (1) and may request interim authorization to carry out that requirement under this subchapter. The Administrator shall, if the evidence submitted shows the State requirement to be substantially equivalent to the requirement referred to in paragraph (1), grant an interim authorization to the State to carry out such requirement in lieu of direct administration in the State by the Administrator of such requirement.
(h) State programs for used oil
In the case of used oil which is not listed or identified under this subchapter as a hazardous waste but which is regulated under section 6935 of this title, the provisions of this section regarding State programs shall apply in the same manner and to the same extent as such provisions apply to hazardous waste identified or listed under this subchapter.

h. §6949. Rural communities assistance
(a) In general
The Administrator shall make grants to States to provide assistance to municipalities with a population of five thousand or less, or counties with a population of ten thousand or less or less than twenty persons per square mile and not within a metropolitan area, for solid waste management facilities (including equipment) necessary to meet the requirements of section 6945 of this title or restrictions on open burning or other requirements arising under the Clean Air Act [42 U.S.C.A. § 7401 et seq.] or the Federal Water Pollution Control Act [33 U.S.C.A. § 1251 et seq.]. Such assistance shall only be available--
(1) to any municipality or county which could not feasibly be included in a solid waste management system or facility serving an urbanized, multijurisdictional area because of its distance from such systems;
(2) where existing or planned solid waste management services or facilities are unavailable or insufficient to comply with the requirements of section 6945 of this title; and
(3) for systems which are certified by the State to be consistent with any plans or programs established under any State or areawide planning process.

25. TAYLOR GRAZING ACT, 43 U.S.C. §§315-315t (Selected Sections)

The public lands located within Sweetwater County are included in grazing districts pursuant to the Taylor Grazing Act.

a. 43 U.S.C. §315. Grazing districts; establishment; restrictions; prior rights; rights-of-way; hearing and notice; hunting or fishing rights
In order to promote the highest use of the public lands pending its final disposal, the Secretary of the Interior is authorized, in his discretion, by order to establish grazing districts or additions thereto and/or to modify the boundaries thereof, of vacant, unappropriated, and unreserved lands from any part of the public domain of the United States (exclusive of Alaska), which are not in national forests, national parks

and monuments, Indian reservations, revested Oregon and California Railroad grant lands, or revested Coos Bay Wagon Road grant lands, and which in his opinion are chiefly valuable for grazing and raising forage crops: Provided, That no lands withdrawn or reserved for any other purpose shall be included in any such district except with the approval of the head of the department having jurisdiction thereof. Nothing in this subchapter shall be construed in any way to diminish, restrict, or impair any right which has been heretofore or may be hereafter initiated under existing law validly affecting the public lands, and which is maintained pursuant to such law except as otherwise expressly provided in this subchapter, nor to affect any land heretofore or hereafter surveyed which, except for the provisions of this subchapter, would be a part of any grant to any State, nor as limiting or restricting the power or authority of any State as to matters within its jurisdiction. Whenever any grazing district is established pursuant to this subchapter, the Secretary shall grant to owners of land adjacent to such district, upon application of any such owner, such rights-of-way over the lands included in such district for stock-driving purposes as may be necessary for the convenient access by any such owner to marketing facilities or to lands not within such district owned by such person or upon which such person has stock-grazing rights. Neither this subchapter nor the Act of December 29, 1916 (39 Stat. 862; U.S.C., title 43, secs. 291 and following), commonly known as the "Stock Raising Homestead Act", shall be construed as limiting the authority or policy of Congress or the President to include in national forests public lands of the character described in section 471 of Title 16, for the purposes set forth in section 475 of Title 16, or such other purposes as Congress may specify. Before grazing districts are created in any State as herein provided, a hearing shall be held in the State, after public notice thereof shall have been given, at such location convenient for the attendance of State officials, and the settlers, residents, and livestock owners of the vicinity, as may be determined by the Secretary of the Interior. No such district shall be established until the expiration of ninety days after such notice shall have been given, nor until twenty days after such hearing shall be held: Provided, however, That the publication of such notice shall have the effect of withdrawing all public lands within the exterior boundary of such proposed grazing districts from all forms of entry of settlement. Nothing in this subchapter shall be construed as in any way altering or restricting the right to hunt or fish within a grazing district in accordance with the laws of the United States or of any State, or as vesting in any permittee any right whatsoever to interfere with hunting or fishing within a grazing district.

b. EXECUTIVE ORDER OF NOVEMBER 26, 1934, NO. 6910

Reprinted from Executive Withdrawal Order of November 26, 1934, as Affecting Taylor Grazing Act and Other Prior Legislation, Solicitor of the Department of the Interior Opinion, February 8, 1935, 55 I.D. 205 (1935)

Whereas, the act of June 28, 1934 (ch. 865, 48 Stat. 1269), provides, among other things, for the prevention of injury to the public grazing lands by overgrazing and soil

deterioration; provides for the orderly use, improvement and development of such lands; and provides for the stabilization of the livestock industry dependent upon the public range; and

Whereas, in furtherance of its purposes, said act provides for the creation of grazing districts to include an aggregate area of not more than eighty million acres of vacant, unreserved and unappropriated lands from any part of the public domain of the United States; provides for the exchange of State owned and privately owned lands for unreserved, surveyed public lands of the United States; provides for the sale of isolated or disconnected tracts of the public domain; and provides for the leasing for grazing purposes of isolated or disconnected tracts of vacant, unreserved and unappropriated lands of the public domain; and

Whereas, said act provides that the President of the United States may order that unappropriated public lands be placed under national forest administration if, in his opinion, the land be best adapted thereto; and

Whereas, said act provides for the use of public land for the conservation or propagation of wild life; and

Whereas, I find and declare that it is necessary to classify all of the vacant, unreserved and unappropriated lands of the public domain within certain States for the purpose of effective administration of the provisions of said act;

Now, Therefore, by virtue of and pursuant to the authority vested in me by the act of June 25, 1910 (ch. 421, 36 Stat. 847), as amended by the act of August 24, 1912 (ch. 369, 37 Stat. 497), and subject to the conditions therein expressed, it is ordered that all of the vacant, unreserved, and unappropriated public land in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, and Wyoming be, and it hereby is, temporarily withdrawn from settlement, location, sale or entry, and reserved for classification, and pending determination of the most useful purpose to which such land may be put in consideration of the provisions of said act of June 28, 1934, and for conservation and development of natural resources.

The withdrawal hereby effected is subject to existing valid rights.

This order shall continue in full force and effect unless and until revoked by the President or by act of Congress.

c. 43 U.S.C. §315b. Grazing permits; fees; vested water rights; permits not to create right in land

The Secretary of the Interior is hereby authorized to issue or cause to be issued permits to graze livestock on such grazing districts to such bona fide settlers, residents, and other stock owners as under his rules and regulations are entitled to participate in the use of the range, upon the payment annually of reasonable fees in each case to be fixed or determined from time to time in accordance with governing law. Grazing permits shall be issued only to citizens of the United States or to those who have filed the necessary declarations of intention to become such, as required by the naturalization laws, and to groups, associations, or corporations authorized to conduct business under the laws of the State in which the grazing

district is located. Preference shall be given in the issuance of grazing permits to those within or near a district who are landowners engaged in the livestock business, bona fide occupants or settlers, or owners of water or water rights, as may be necessary to permit the proper use of lands, water or water rights owned, occupied, or leased by them, except that until July 1, 1935, no preference shall be given in the issuance of such permits to any such owner, occupant, or settler, whose rights were acquired between January 1, 1934, and December 31, 1934, both dates inclusive, except that no permittee complying with the rules and regulations laid down by the Secretary of the Interior shall be denied the renewal of such permit, if such denial will impair the value of the grazing unit of the permittee, when such unit is pledged as security for any bona fide loan. Such permits shall be for a period of not more than ten years, subject to the preference right of the permittees to renewal in the discretion of the Secretary of the Interior, who shall specify from time to time numbers of stock and seasons of use. During periods of range depletion due to severe drought or other natural causes, or in case of a general epidemic of disease, during the life of the permit, the Secretary of the Interior is hereby authorized, in his discretion to remit, reduce, refund in whole or in part, or authorize postponement of payment of grazing fees for such depletion period so long as the emergency exists: Provided further, That nothing in this subchapter shall be construed or administered in any way to diminish or impair any right to the possession and use of water for mining, agriculture, manufacturing, or other purposes which has heretofore vested or accrued under existing law validly affecting the public lands or which may be hereafter initiated or acquired and maintained in accordance with such law. So far as consistent with the purposes and provisions of this subchapter, grazing privileges recognized and acknowledged shall be adequately safeguarded, but the creation of a grazing district or the issuance of a permit pursuant to the provisions of this subchapter shall not create any right, title, interest, or estate in or to the lands.

d. 43 U.S.C. §315h. Cooperation with associations, land officials, and agencies engaged in conservation or propagation of wildlife; local hearings on appeals; acceptance and use of contributions

The Secretary of the Interior shall provide, by suitable rules and regulations, for cooperation with local associations of stockmen, State land officials, and official State agencies engaged in conservation or propagation of wild life interested in the use of the grazing districts. The Secretary of the Interior shall provide by appropriate rules and regulations for local hearings on appeals from the decisions of the administrative officer in charge in a manner similar to the procedure in the land department. The Secretary of the Interior shall also be empowered to accept contributions toward the administration, protection, and improvement of lands within or without the exterior boundaries of a grazing district, moneys so received to be covered into the Treasury as a special fund, which is hereby appropriated and made available until expended, as the Secretary of the Interior may direct, for payment of expenses incident to said administration, protection, and improvement, and for

refunds to depositors of amounts contributed by them in excess of their share of the cost.

26. COLORADO RIVER STORAGE PROJECT ACT, 43 U.S.C. §620; Upper Colorado River Basin; purpose of development of water resources; initial units; construction of Wayne N. Aspinall unit contingent upon certification; participating projects; Rainbow Bridge National Monument

In order to initiate the comprehensive development of the water resources of the Upper Colorado River Basin, for the purposes, among others, of regulating the flow of the Colorado River, storing water for beneficial consumptive use, making it possible for the States of the Upper Basin to utilize, consistently with the provisions of the Colorado River Compact, the apportionments made to and among them in the Colorado River Compact and the Upper Colorado River Basin Compact, respectively, providing for the reclamation of arid and semiarid land, for the control of floods, and for the generation of hydroelectric power, as an incident of the foregoing purposes, the Secretary of the Interior is authorized (1) to construct, operate, and maintain the following initial units of the Colorado River storage project, consisting of dams, reservoirs, powerplants, transmission facilities and appurtenant works: Wayne N. Aspinall, Flaming Gorge, Navajo (dam and reservoir only), and Glen Canyon: *Provided*, That the Wayne N. Aspinall Dam shall be constructed to a height which will impound not less than nine hundred and forty thousand acre-feet of water or will create a reservoir of such greater capacity as can be obtained by a high waterline located at seven thousand five hundred and twenty feet above mean sea level, and that construction thereof shall not be undertaken until the Secretary has, on the basis of further engineering and economic investigations, reexamined the economic justification of such unit and, accompanied by appropriate documentation in the form of a supplemental report, has certified to the Congress and to the President that, in his judgment, the benefits of such unit will exceed its costs; and (2) to construct, operate, and maintain the following additional reclamation projects (including power-generating and transmission facilities related thereto), hereinafter referred to as participating projects: Central Utah (initial phase and the Uintah unit), San Juan-Chama (initial stage), Emery County, Florida, Hammond, La Barge, Lyman, Navajo Indian, Paonia (including the Minnesota unit, a dam and reservoir on Muddy Creek just above its confluence with the North Fork of the Gunnison River, and other necessary works), Animas-La Plata, Dolores, Dallas Creek, West Divide, San Miguel, Seedskadee, Savery-Pot Hook, Bostwick Park, Fruitland Mesa, Silt and Smith Fork: *Provided further*, That as part of the Glen Canyon Unit the Secretary of the Interior shall take adequate protective measures to preclude impairment of the Rainbow Bridge National Monument.

27. R.S. 2477, Ch. 262, §8, 14 Stat. 251, 253 (1866) (codified as §2477 Revised Statutes (1873)) (recodified as 43 U.S.C. §932 (1938)), repealed by Federal Land Policy Management Act OF 1976 §706(A), PUB. L. NO. 94-579, 90 STAT. 2743

The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.

28. FEDERAL LAND POLICY AND MANAGEMENT ACT ("FLPMA"), 43 U.S.C. §§1701-1783 (Selected Sections)

a. 43 U.S.C. §1701. Congressional declaration of policy

(a) The Congress declares that it is the policy of the United States that

(2) the national interest will be best realized if the public lands and their resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process coordinated with other Federal and State planning efforts;

(5) in administering public land statutes and exercising discretionary authority granted by them, the Secretary be required to establish comprehensive rules and regulations after considering the views of the general public; and to structure adjudication procedures to assure adequate third party participation, objective administrative review of initial decisions, and expeditious decisionmaking;

(12) the public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands including implementation of the Mining and Minerals Policy Act of 1970 (84 Stat. 1876, 30 U.S.C. 21a) as it pertains to the public lands; and

(13) the Federal Government should, on a basis equitable to both the Federal and local taxpayer, provide for payments to compensate States and local governments for burdens created as a result of the immunity of Federal lands from State and local taxation.

(b) The policies of this Act shall become effective only as specific statutory authority for their implementation is enacted by this Act or by subsequent legislation and shall then be construed as supplemental to and not in derogation of the purposes for which public lands are administered under other provisions of law.

b. 43 U.S.C. §1702. Definitions

Without altering in any way the meaning of the following terms as used in any other statute, whether or not such statute is referred to in, or amended by, this Act, as used in this Act--

(a) The term "areas of critical environmental concern" means areas within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards.

(b) The term "holder" means any State or local governmental entity, individual, partnership, corporation, association, or other business entity receiving or using a right-of-way under subchapter V of this chapter.

(c) The term "multiple use" means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.

(d) The term "public involvement" means the opportunity for participation by affected citizens in rulemaking, decisionmaking, and planning with respect to the public lands, including public meetings or hearings held at locations near the affected lands, or advisory mechanisms, or such other procedures as may be necessary to provide public comment in a particular instance.

(e) The term "public lands" means any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except--

(1) lands located on the Outer Continental Shelf; and

(2) lands held for the benefit of Indians, Aleuts, and Eskimos.

(f) The term "right-of-way" includes an easement, lease, permit, or license to occupy, use, or traverse public lands granted for the purpose listed in subchapter V of this chapter.

(g) The term "Secretary", unless specifically designated otherwise, means the Secretary of the Interior.

(h) The term "sustained yield" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use.

(i) The term "wilderness" as used in section 1782 of this title shall have the same meaning as it does in section 1131(c) of Title 16.

(j) The term "withdrawal" means withholding an area of Federal land from settlement, sale, location, or entry, under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program; or transferring jurisdiction over an area of Federal land, other than "property" governed by the Federal Property and Administrative Services Act, as amended from one department, bureau or agency to another department, bureau or agency.

(k) An "allotment management plan" means a document prepared in consultation with the lessees or permittees involved, which applies to livestock operations on the public lands or on lands within National Forests in the eleven contiguous Western States and which:
(1) prescribes the manner in, and extent to, which livestock operations will be conducted in order to meet the multiple-use, sustained-yield, economic and other needs and objectives as determined for the lands by the Secretary concerned; and
(2) describes the type, location, ownership, and general specifications for the range improvements to be installed and maintained on the lands to meet the livestock grazing and other objectives of land management; and
(3) contains such other provisions relating to livestock grazing and other objectives found by the Secretary concerned to be consistent with the provisions of this Act and other applicable law.
(l) The term "principal or major uses" includes, and is limited to, domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production.
(m) The term "department" means a unit of the executive branch of the Federal Government which is headed by a member of the President's Cabinet and the term "agency" means a unit of the executive branch of the Federal Government which is not under the jurisdiction of a head of a department.

c. 43 U.S.C. §1712 Land use plans

(c) Criteria for development and revision
In the development and revision of land use plans, the Secretary shall--
(1) use and observe the principles of multiple use and sustained yield set forth in this and other applicable law;
(2) use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences;
(3) give priority to the designation and protection of areas of critical environmental concern;
(4) rely, to the extent it is available, on the inventory of the public lands, their resources, and other values;
(5) consider present and potential uses of the public lands;
(6) consider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values;
(7) weigh long-term benefits to the public against short-term benefits;
(8) provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans; and
(9) to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located, including, but not limited to, the statewide outdoor recreation plans developed under the Act of September 3, 1964 (78 Stat. 897), as

amended [16 U.S.C.A. § 460l-4 et seq.], and of or for Indian tribes by, among other things, considering the policies of approved State and tribal land resource management programs. In implementing this directive, the Secretary shall, to the extent he finds practical, keep apprised of State, local, and tribal land use plans; assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non- Federal Government plans, and shall provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands. Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him. Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.

(d) Review and inclusion of classified public lands; review of existing land use plans; modification and termination of classifications

Any classification of public lands or any land use plan in effect on October 21, 1976, is subject to review in the land use planning process conducted under this section, and all public lands, regardless of classification, are subject to inclusion in any land use plan developed pursuant to this section. The Secretary may modify or terminate any such classification consistent with such land use plans.

(e) Management decisions for implementation of developed or revised plans

The Secretary may issue management decisions to implement land use plans developed or revised under this section in accordance with the following:

(1) Such decisions, including but not limited to exclusions (that is, total elimination) of one or more of the principal or major uses made by a management decision shall remain subject to reconsideration, modification, and termination through revision by the Secretary or his delegate, under the provisions of this section, of the land use plan involved.

d. 43 U.S.C. §1714. Withdrawals of lands

(a) Authorization and limitation; delegation of authority

On and after the effective date of this Act the Secretary is authorized to make, modify, extend, or revoke withdrawals but only in accordance with the provisions and limitations of this section. The Secretary may delegate this withdrawal authority only to individuals in the Office of the Secretary who have been appointed by the President, by and with the advice and consent of the Senate.

(c) Congressional approval procedures applicable to withdrawals aggregating five thousand acres or more

(1) On and after October 21, 1976, a withdrawal aggregating five thousand acres or more may be made (or such a withdrawal or any other withdrawal involving in the aggregate five thousand acres or more which terminates after such date of approval may be extended) only for a period of not more than twenty years by the Secretary on his own motion or upon request by a department or agency head. The Secretary shall notify both Houses of Congress of such a withdrawal no later than its effective date and the withdrawal shall terminate and become ineffective at the end of ninety days (not counting days on which the Senate or the House of Representatives has adjourned for more than three consecutive days) beginning on the day notice of such withdrawal has been submitted to the Senate and the House of Representatives, if the Congress has adopted a concurrent resolution stating that such House does not approve the withdrawal.
(2) With the notices required by subsection (c)(1) of this section and within three months after filing the notice under subsection (e) of this section, the Secretary shall furnish to the committees--
(1) a clear explanation of the proposed use of the land involved which led to the withdrawal;
(2) an inventory and evaluation of the current natural resource uses and values of the site and adjacent public and nonpublic land and how it appears they will be affected by the proposed use, including particularly aspects of use that might cause degradation of the environment, and also the economic impact of the change in use on individuals, local communities, and the Nation;
(3) an identification of present users of the land involved, and how they will be affected by the proposed use;
(4) an analysis of the manner in which existing and potential resource uses are incompatible with or in conflict with the proposed use, together with a statement of the provisions to be made for continuation or termination of existing uses, including an economic analysis of such continuation or termination;
(5) an analysis of the manner in which such lands will be used in relation to the specific requirements for the proposed use;
(6) a statement as to whether any suitable alternative sites are available (including cost estimates) for the proposed use or for uses such a withdrawal would displace;
(7) a statement of the consultation which has been or will be had with other Federal departments and agencies, with regional, State, and local government bodies, and with other appropriate individuals and groups;
(8) a statement indicating the effect of the proposed uses, if any, on State and local government interests and the regional economy;
(9) a statement of the expected length of time needed for the withdrawal;
(10) the time and place of hearings and of other public involvement concerning such withdrawal;
(11) the place where the records on the withdrawal can be examined by interested parties; and
(12) a report prepared by a qualified mining engineer, engineering geologist, or geologist which shall include but not be limited to information on: general geology,

known mineral deposits, past and present mineral production, mining claims, mineral leases, evaluation of future mineral potential, present and potential market demands.

e. 43 U.S.C. §1715(a). Acquisitions of public lands and access over non-Federal lands to National Forest System units

(a) Authorization and limitations on authority of Secretary of the Interior and Secretary of Agriculture

Notwithstanding any other provisions of law, the Secretary, with respect to the public lands and the Secretary of Agriculture, with respect to the acquisition of access over non-Federal lands to units of the National Forest System, are authorized to acquire pursuant to this Act by purchase, exchange, donation, or eminent domain, lands or interests therein: *Provided*, That with respect to the public lands, the Secretary may exercise the power of eminent domain only if necessary to secure access to public lands, and then only if the lands so acquired are confined to as narrow a corridor as is necessary to serve such purpose. Nothing in this subsection shall be construed as expanding or limiting the authority of the Secretary of Agriculture to acquire land by eminent domain within the boundaries of units of the National Forest System.

f. 43 U.S.C. §1739 (e) Public participation; procedures applicable

In exercising his authorities under this Act, the Secretary, by regulation, shall establish procedures, including public hearings where appropriate, to give the Federal, State, and local governments and the public adequate notice and an opportunity to comment upon the formulation of standards and criteria for, and to participate in, the preparation and execution of plans and programs for, and the management of, the public lands.

g. Role of local governments in land use planning

i. *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 605 (1991)

When considering the validity of county land use plans, a court starts with the assumption that the historic police powers of the States were not superseded by federal law unless that was the clear manifest purpose of Congress. Even when Congress has not chosen to occupy a particular field through express or implied preemption, preemption may occur to the extent that state and federal law actually conflict. Such a conflict arises when it is physically impossible to comply with both federal and state regulations.

ii. *California Coastal Comm'n v. Granite Rock*, 480 U.S. 572, 587 (1987)

Environmental regulation of federal lands is not *per se* preempted but state or local "land use planning" decisions for federal lands (*i.e.*, choosing permissible uses of the land) are generally preempted.

iii. *Mount Olivet Cemetary Ass'n v. Salt Lake City*, 164 F.3d 480, 487 (10th Cir. 1998)

Land use policy, such as zoning, customarily has been left to local government. FLPMA requires the BLM to "coordinate ... land use inventory, planning and management activities" with state and local government agencies. 43 U.S.C. § 1712(c). This section suggests that Congress did not preempt the field when it comes to land use planning for federal land.

h. 43 U.S.C. §1732. Management of use, occupancy, and development of public lands

(a) Multiple use and sustained yield requirements applicable; exception The Secretary shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 1712 of this title when they are available, except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.

i. 43 U.S.C. §1752. Grazing leases and permits

Except as provided in subsection (b) of this section, permits and leases for domestic livestock grazing on public lands issued by the Secretary under the Act of June 28, 1934 (48 Stat. 1269, as amended; 43 U.S.C. 315 et seq.) or the Act of August 28, 1937 (50 Stat. 874, as amended; 43 U.S.C. 1181a- 1181j), or by the Secretary of Agriculture, with respect to lands within National Forests in the sixteen contiguous Western States, shall be for a term of ten years subject to such terms and conditions the Secretary concerned deems appropriate and consistent with the governing law, including, but not limited to, the authority of the Secretary concerned to cancel, suspend, or modify a grazing permit or lease, in whole or in part, pursuant to the terms and conditions thereof, or to cancel or suspend a grazing permit or lease for any violation of a grazing regulation or of any term or condition of such grazing permit or lease.

§1752(b) Terms of lesser duration

Permits or leases may be issued by the Secretary concerned for a period shorter than ten years where the Secretary concerned determines that--
(1) the land is pending disposal; or
(2) the land will be devoted to a public purpose prior to the end of ten years; or
(3) it will be in the best interest of sound land management to specify a shorter term: Provided, That the absence from an allotment management plan of details the Secretary concerned would like to include but which are undeveloped shall not be the basis for establishing a term shorter than ten years: Provided further, That the absence of completed land use plans or court ordered environmental statements shall not be the sole basis for establishing a term shorter than ten years unless the Secretary determines on a case-by-case basis that the information to be contained in such land use plan or court ordered environmental impact statement is necessary

to determine whether a shorter term should be established for any of the reasons set forth in items (1) through (3) of this subsection.

§1752(c) First priority for renewal of expiring permit or lease
So long as (1) the lands for which the permit or lease is issued remain available for domestic livestock grazing in accordance with land use plans prepared pursuant to section 1712 of this title or section 1604 of Title 16, (2) the permittee or lessee is in compliance with the rules and regulations issued and the terms and conditions in the permit or lease specified by the Secretary concerned, and (3) the permittee or lessee accepts the terms and conditions to be included by the Secretary concerned in the new permit or lease, the holder of the expiring permit or lease shall be given first priority for receipt of the new permit or lease.

§1752(d) Allotment management plan requirements
All permits and leases for domestic livestock grazing issued pursuant to this section may incorporate an allotment management plan developed by the Secretary concerned. However, nothing in this subsection shall be construed to supersede any requirement for completion of court ordered environmental impact statements prior to development and incorporation of allotment management plans. If the Secretary concerned elects to develop an allotment management plan for a given area, he shall do so in careful and considered consultation, cooperation and coordination with the lessees, permittees, and landowners involved, the district grazing advisory boards established pursuant to section 1753 of this title, and any State or States having lands within the area to be covered by such allotment management plan. Allotment management plans shall be tailored to the specific range condition of the area to be covered by such plan, and shall be reviewed on a periodic basis to determine whether they have been effective in improving the range condition of the lands involved or whether such lands can be better managed under the provisions of subsection (e) of this section. The Secretary concerned may revise or terminate such plans or develop new plans from time to time after such review and careful and considered consultation, cooperation and coordination with the parties involved. As used in this subsection, the terms "court ordered environmental impact statement" and "range condition" shall be defined as in the "Public Rangelands Improvement Act of 1978 [43 U.S.C.A. § 1901 et seq.]".

j. Title V, 43 U.S.C. §§1761-1769, Rights-of-Way

(a) Authorized purposes
The Secretary, with respect to the public lands (including public lands, as defined in section 1702(e) of this title, which are reserved from entry pursuant to section 24 of the Federal Power Act [16 U.S.C.A. § 818]) and, the Secretary of Agriculture, with respect to lands within the National Forest System (except in each case land designated as wilderness), are authorized to grant, issue, or renew rights-of-way over, upon, under, or through such lands for--

(1) reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, tunnels, and other facilities and systems for the impoundment, storage, transportation, or distribution of water;
(2) pipelines and other systems for the transportation or distribution of liquids and gases, other than water and other than oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom, and for storage and terminal facilities in connection therewith;
(3) pipelines, slurry and emulsion systems, and conveyor belts for transportation and distribution of solid materials, and facilities for the storage of such materials in connection therewith;
(4) systems for generation, transmission, and distribution of electric energy, except that the applicant shall also comply with all applicable requirements of the Federal Energy Regulatory Commission under the Federal Power Act, including part 1 [FN1] thereof (41 Stat. 1063, 16 U.S.C. 791a-825r).; [FN2]
(5) systems for transmission or reception of radio, television, telephone, telegraph, and other electronic signals, and other means of communication;
(6) roads, trails, highways, railroads, canals, tunnels, tramways, airways, livestock driveways, or other means of transportation except where such facilities are constructed and maintained in connection with commercial recreation facilities on lands in the National Forest System; or
(7) such other necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way over, upon, under, or through such lands.
(b) Procedures applicable; administration
(1) The Secretary concerned shall require, prior to granting, issuing, or renewing a right-of-way, that the applicant submit and disclose those plans, contracts, agreements, or other information reasonably related to the use, or intended use, of the right-of-way, including its effect on competition, which he deems necessary to a determination, in accordance with the provisions of this Act, as to whether a right-of-way shall be granted, issued, or renewed and the terms and conditions which should be included in the right-of-way.
(2) If the applicant is a partnership, corporation, association, or other business entity, the Secretary concerned, prior to granting a right-to-way [FN1] pursuant to this subchapter, shall require the applicant to disclose the identity of the participants in the entity, when he deems it necessary to a determination, in accordance with the provisions of this subchapter, as to whether a right-of-way shall be granted, issued, or renewed and the terms and conditions which should be included in the right-of-way. Such disclosures shall include, where applicable: (A) the name and address of each partner; (B) the name and address of each shareholder owning 3 per centum or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote; and (C) the name and address of each affiliate of the entity together with, in the case of an affiliate controlled by the entity, the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly,

by that entity, and, in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, directly or indirectly, by the affiliate.
(3) The Secretary of Agriculture shall have the authority to administer all rights-of-way granted or issued under authority of previous Acts with respect to lands under the jurisdiction of the Secretary of Agriculture, including rights-of-way granted or issued pursuant to authority given to the Secretary of the Interior by such previous Acts.
(c) Permanent easement for water systems; issuance, preconditions, etc.
(1) Upon receipt of a written application pursuant to paragraph (2) of this subsection from an applicant meeting the requirements of this subsection, the Secretary of Agriculture shall issue a permanent easement, without a requirement for reimbursement, for a water system as described in subsection (a)(1) of this section, traversing Federal lands within the National Forest System ("National Forest Lands"), constructed and in operation or placed into operation prior to October 21, 1976, if--
(A) the traversed National Forest lands are in a State where the appropriation doctrine governs the ownership of water rights;
(B) at the time of submission of the application the water system is used solely for agricultural irrigation or livestock watering purposes;
(C) the use served by the water system is not located solely on Federal lands;
(D) the originally constructed facilities comprising such system have been in substantially continuous operation without abandonment;
(E) the applicant has a valid existing right, established under applicable State law, for water to be conveyed by the water system;
(F) a recordable survey and other information concerning the location and characteristics of the system as necessary for proper management of National Forest lands is provided to the Secretary of Agriculture by the applicant for the easement; and
(G) the applicant submits such application on or before December 31, 1996.
(2)(A) Nothing in this subsection shall be construed as affecting any grants made by any previous Act. To the extent any such previous grant of right-of- way is a valid existing right, it shall remain in full force and effect unless an owner thereof notifies the Secretary of Agriculture that such owner elects to have a water system on such right-of-way governed by the provisions of this subsection and submits a written application for issuance of an easement pursuant to this subsection, in which case upon the issuance of an easement pursuant to this subsection such previous grant shall be deemed to have been relinquished and shall terminate.
(B) Easements issued under the authority of this subsection shall be fully transferable with all existing conditions and without the imposition of fees or new conditions or stipulations at the time of transfer. The holder shall notify the Secretary of Agriculture within sixty days of any address change of the holder or change in ownership of the facilities.

(C) Easements issued under the authority of this subsection shall include all changes or modifications to the original facilities in existence as of October 21, 1976, the date of enactment of this Act.
(D) Any future extension or enlargement of facilities after October 21, 1976, shall require the issuance of a separate authorization, not authorized under this subsection.
(3)(A) Except as otherwise provided in this subsection, the Secretary of Agriculture may terminate or suspend an easement issued pursuant to this subsection in accordance with the procedural and other provisions of section 1766 of this title. An easement issued pursuant to this subsection shall terminate if the water system for which such easement was issued is used for any purpose other than agricultural irrigation or livestock watering use. For purposes of subparagraph (D) of paragraph (1) of this subsection, non-use of a water system for agricultural irrigation or livestock watering purposes for any continuous five-year period shall constitute a rebuttable presumption of abandonment of the facilities comprising such system.
(B) Nothing in this subsection shall be deemed to be an assertion by the United States of any right or claim with regard to the reservation, acquisition, or use of water. Nothing in this subsection shall be deemed to confer on the Secretary of Agriculture any power or authority to regulate or control in any manner the appropriation, diversion, or use of water for any purpose (nor to diminish any such power or authority of such Secretary under applicable law) or to require the conveyance or transfer to the United States of any right or claim to the appropriation, diversion, or use of water.
(C) Except as otherwise provided in this subsection, all rights-of-way issued pursuant to this subsection are subject to all conditions and requirements of this Act.
(D) In the event a right-of-way issued pursuant to this subsection is allowed to deteriorate to the point of threatening persons or property and the holder of the right-of-way, after consultation with the Secretary of Agriculture, refuses to perform the repair and maintenance necessary to remove the threat to persons or property, the Secretary shall have the right to undertake such repair and maintenance on the right-of-way and to assess the holder for the costs of such repair and maintenance, regardless of whether the Secretary had required the holder to furnish a bond or other security pursuant to subsection (i) of this section.
(d) Rights-of-way on certain Federal lands
With respect to any project or portion thereof that was licensed pursuant to, or granted an exemption from, part I of the Federal Power Act [16 U.S.C.A. §§ 791a et seq.] which is located on lands subject to a reservation under section 24 of the Federal Power Act [16 U.S.C.A. § 818] and which did not receive a permit, right-of-way or other approval under this section prior to October 24, 1992, no such permit, right-of-way, or other approval shall be required for continued operation, including continued operation pursuant to section 15 of the Federal Power Act [16 U.S.C.A. § 808], of such project unless the Commission determines that such project involves the use of any additional public lands or National Forest lands not subject to such reservation.

§1762. Roads

(a) Authority to acquire, construct, and maintain; financing arrangements

The Secretary, with respect to the public lands, is authorized to provide for the acquisition, construction, and maintenance of roads within and near the public lands in locations and according to specifications which will permit maximum economy in harvesting timber from such lands tributary to such roads and at the same time meet the requirements for protection, development, and management of such lands for utilization of the other resources thereof. Financing of such roads may be accomplished (1) by the Secretary utilizing appropriated funds, (2) by requirements on purchasers of timber and other products from the public lands, including provisions for amortization of road costs in contracts, (3) by cooperative financing with other public agencies and with private agencies or persons, or (4) by a combination of these methods: Provided, That, where roads of a higher standard than that needed in the harvesting and removal of the timber and other products covered by the particular sale are to be constructed, the purchaser of timber and other products from public lands shall not, except when the provisions of the second proviso of this subsection apply, be required to bear that part of the costs necessary to meet such higher standard, and the Secretary is authorized to make such arrangements to this end as may be appropriate: Provided further, That when timber is offered with the condition that the purchaser thereof will build a road or roads in accordance with standards specified in the offer, the purchaser of the timber will be responsible for paying the full costs of construction of such roads.

(b) Recordation of copies of affected instruments

Copies of all instruments affecting permanent interests in land executed pursuant to this section shall be recorded in each county where the lands are located.

(c) Maintenance or reconstruction of facilities by users

The Secretary may require the user or users of a road, trail, land, or other facility administered by him through the Bureau, including purchasers of Government timber and other products, to maintain such facilities in a satisfactory condition commensurate with the particular use requirements of each. Such maintenance to be borne by each user shall be proportionate to total use. The Secretary may also require the user or users of such a facility to reconstruct the same when such reconstruction is determined to be necessary to accommodate such use. If such maintenance or reconstruction cannot be so provided or if the Secretary determines that maintenance or reconstruction by a user would not be practical, then the Secretary may require that sufficient funds be deposited by the user to provide his portion of such total maintenance or reconstruction. Deposits made to cover the maintenance or reconstruction of roads are hereby made available until expended to cover the cost to the United States of accomplishing the purposes for which deposited: Provided, That deposits received for work on adjacent and overlapping areas may be combined when it is the most practicable and efficient manner of performing the work, and cost thereof may be determined by estimates: And

provided further, That unexpended balances upon accomplishment of the purpose for which deposited shall be transferred to miscellaneous receipts or refunded.
(d) Fund for user fees for delayed payment to grantor
Whenever the agreement under which the United States has obtained for the use of, or in connection with, the public lands a right-of-way or easement for a road or an existing road or the right to use an existing road provides for delayed payments to the Government's grantor, any fees or other collections received by the Secretary for the use of the road may be placed in a fund to be available for making payments to the grantor.

§1763. Right-of-way corridors; criteria and procedures applicable for designation
In order to minimize adverse environmental impacts and the proliferation of separate rights-of-way, the utilization of rights-of-way in common shall be required to the extent practical, and each right-of-way or permit shall reserve to the Secretary concerned the right to grant additional rights-of-way or permits for compatible uses on or adjacent to rights-of-way granted pursuant to this Act. In designating right-of-way corridors and in determining whether to require that rights-of-way be confined to them, the Secretary concerned shall take into consideration national and State land use policies, environmental quality, economic efficiency, national security, safety, and good engineering and technological practices. The Secretary concerned shall issue regulations containing the criteria and procedures he will use in designating such corridors. Any existing transportation and utility corridors may be designated as transportation and utility corridors pursuant to this subsection without further review.

§1764. General requirements
(a) Boundary specifications; criteria; temporary use of additional lands
The Secretary concerned shall specify the boundaries of each right-of-way as precisely as is practical. Each right-of-way shall be limited to the ground which the Secretary concerned determines (1) will be occupied by facilities which constitute the project for which the right-of-way is granted, issued, or renewed, (2) to be necessary for the operation or maintenance of the project, (3) to be necessary to protect the public safety, and (4) will do no unnecessary damage to the environment.
The Secretary concerned may authorize the temporary use of such additional lands as he determines to be reasonably necessary for the construction, operation, maintenance, or termination of the project or a portion thereof, or for access thereto.
(b) Terms and conditions of right-of-way or permit
Each right-of-way or permit granted, issued, or renewed pursuant to this section shall be limited to a reasonable term in light of all circumstances concerning the project. In determining the duration of a right-of-way the Secretary concerned shall, among other things, take into consideration the cost of the facility, its useful life,

and any public purpose it serves. The right- of-way shall specify whether it is or is not renewable and the terms and conditions applicable to the renewal.

(c) Applicability of regulations or stipulations

Rights-of-way shall be granted, issued, or renewed pursuant to this subchapter under such regulations or stipulations, consistent with the provisions of this subchapter or any other applicable law, and shall also be subject to such terms and conditions as the Secretary concerned may prescribe regarding extent, duration, survey, location, construction, maintenance, transfer or assignment, and termination.

(d) Submission of plan of construction, operation, and rehabilitation by new project applicants; plan requirements

The Secretary concerned prior to granting or issuing a right-of-way pursuant to this subchapter for a new project which may have a significant impact on the environment, shall require the applicant to submit a plan of construction, operation, and rehabilitation for such right-of-way which shall comply with stipulations or with regulations issued by that Secretary, including the terms and conditions required under section 1765 of this title.

(e) Regulatory requirements for terms and conditions; revision and applicability of regulations

The Secretary concerned shall issue regulations with respect to the terms and conditions that will be included in rights-of-way pursuant to section 1765 of this title. Such regulations shall be regularly revised as needed. Such regulations shall be applicable to every right-of-way granted or issued pursuant to this subchapter and to any subsequent renewal thereof, and may be applicable to rights-of-way not granted or issued, but renewed pursuant to this subchapter.

(f) Removal or use of mineral and vegetative materials

Mineral and vegetative materials, including timber, within or without a right- of-way, may be used or disposed of in connection with construction or other purposes only if authorization to remove or use such materials has been obtained pursuant to applicable laws or for emergency repair work necessary for those rights-of-way authorized under section 1761(c) of this title.

(g) Rental payments; amount, waiver, etc.

The holder of a right-of-way shall pay in advance the fair market value thereof, as determined by the Secretary granting, issuing, or renewing such right-of-way. The Secretary concerned may require either annual payment or a payment covering more than one year at a time except that private individuals may make at their option either annual payments or payments covering more than one year if the annual fee is greater than one hundred dollars. The Secretary concerned may waive rentals where a right-of-way is granted, issued or renewed in consideration of a right-of-way conveyed to the United States in connection with a cooperative cost share program between the United States and the holder. The Secretary concerned may, by regulation or prior to promulgation of such regulations, as a condition of a right-of-way, require an applicant for or holder of a right-of-way to reimburse the United States for all reasonable administrative and other costs

incurred in processing an application for such right-of-way and in inspection and monitoring of construction, operation, and termination of the facility pursuant to such right-of-way: Provided, however, That the Secretary concerned need not secure reimbursement in any situation where there is in existence a cooperative cost share right-of-way program between the United States and the holder of a right-of-way. Rights-of-way may be granted, issued, or renewed to a Federal, State, or local government of any agency or instrumentality thereof, to nonprofit associations or nonprofit corporations which are not themselves controlled or owned by profitmaking corporations or business enterprises, or to a holder where he provides without or at reduced charges a valuable benefit to the public or to the programs of the Secretary concerned, or to a holder in connection with the authorized use or occupancy of Federal land for which the United States is already receiving compensation for such lesser charge, including free use as the Secretary concerned finds equitable and in the public interest. Such rights-of-way issued at less than fair market value are not assignable except with the approval of the Secretary issuing the right-of-way. The moneys received for reimbursement of reasonable costs shall be deposited with the Treasury in a special account and are hereby authorized to be appropriated and made available until expended. Rights-of-way shall be granted, issued or renewed, without rental fees, for electric or telephone facilities financed pursuant to the Rural Electrification Act of 1936, as amended [7 U.S.C.A. § 901 et seq.], or any extensions from such facilities: Provided, That nothing in this sentence shall be construed to affect the authority of the Secretary granting, issuing, or renewing the right-of-way to require reimbursement of reasonable administrative and other costs pursuant to the second sentence of this subsection.

(h) Liability for damage or injury incurred by United States for use and occupancy of rights-of-way; indemnification of United States; no-fault liability; amount of damages

(1) The Secretary concerned shall promulgate regulations specifying the extent to which holders of rights-of-way under this subchapter shall be liable to the United States for damage or injury incurred by the United States caused by the use and occupancy of the rights-of-way. The regulations shall also specify the extent to which such holders shall indemnify or hold harmless the United States for liabilities, damages, or claims caused by their use and occupancy of the rights-of-way.

(2) Any regulation or stipulation imposing liability without fault shall include a maximum limitation on damages commensurate with the foreseeable risks or hazards presented. Any liability for damage or injury in excess of this amount shall be determined by ordinary rules of negligence.

(i) Bond or security requirements

Where he deems it appropriate, the Secretary concerned may require a holder of a right-of-way to furnish a bond, or other security, satisfactory to him to secure all or any of the obligations imposed by the terms and conditions of the right-of-way or by any rule or regulation of the Secretary concerned.

(j) Criteria for grant, issue, or renewal of right-of-way

The Secretary concerned shall grant, issue, or renew a right-of-way under this subchapter only when he is satisfied that the applicant has the technical and financial capability to construct the project for which the right-of-way is requested, and in accord with the requirements of this subchapter.

§1765. Terms and conditions

Each right-of-way shall contain--

(a) terms and conditions which will (i) carry out the purposes of this Act and rules and regulations issued thereunder; (ii) minimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the environment; (iii) require compliance with applicable air and water quality standards established by or pursuant to applicable Federal or State law; and (iv) require compliance with State standards for public health and safety, environmental protection, and siting, construction, operation, and maintenance of or for rights-of-way for similar purposes if those standards are more stringent than applicable Federal standards; and

(b) such terms and conditions as the Secretary concerned deems necessary to (I) protect Federal property and economic interests; (ii) manage efficiently the lands which are subject to the right-of-way or adjacent thereto and protect the other lawful users of the lands adjacent to or traversed by such right-of-way; (iii) protect lives and property; (iv) protect the interests of individuals living in the general area traversed by the right-of-way who rely on the fish, wildlife, and other biotic resources of the area for subsistence purposes; (v) require location of the right-of-way along a route that will cause least damage to the environment, taking into consideration feasibility and other relevant factors; and (vi) otherwise protect the public interest in the lands traversed by the right-of-way or adjacent thereto.

§1766. Suspension or termination; grounds; procedures applicable

Abandonment of a right-of-way or noncompliance with any provision of this subchapter, condition of the right-of-way, or applicable rule or regulation of the Secretary concerned may be grounds for suspension or termination of the right-of-way if, after due notice to the holder of the right-of-way and, and [FN1] with respect to easements, an appropriate administrative proceeding pursuant to section 554 of Title 5, the Secretary concerned determines that any such ground exists and that suspension or termination is justified. No administrative proceeding shall be required where the right-of-way by its terms provides that it terminates on the occurrence of a fixed or agreed-upon condition, event, or time. If the Secretary concerned determines that an immediate temporary suspension of activities within a right-of-way for violation of its terms and conditions is necessary to protect public health or safety or the environment, he may abate such activities prior to an administrative proceeding. Prior to commencing any proceeding to suspend or terminate a right-of-way the Secretary concerned shall give written notice to the holder of the grounds for such action and shall give the holder a reasonable time to resume use of the right-of-way or to comply with this subchapter, condition, rule, or regulation as the case may be. Failure of the holder of the right-of-way to use the

right-of-way for the purpose for which it was granted, issued, or renewed, for any continuous five-year period, shall constitute a rebuttable presumption of abandonment of the right-of-way, except that where the failure of the holder to use the right-of-way for the purpose for which it was granted, issued, or renewed for any continuous five-year period is due to circumstances not within the holder's control, the Secretary concerned is not required to commence proceedings to suspend or terminate the right-of-way.

§1767. Rights-of-way for Federal departments and agencies
(a) The Secretary concerned may provide under applicable provisions of this subchapter for the use of any department or agency of the United States a right-of-way over, upon, under or through the land administered by him, subject to such terms and conditions as he may impose.
(b) Where a right-of-way has been reserved for the use of any department or agency of the United States, the Secretary shall take no action to terminate, or otherwise limit, that use without the consent of the head of such department or agency.

§1768. Conveyance of lands covered by right-of-way; terms and conditions
If under applicable law the Secretary concerned decides to transfer out of Federal ownership any lands covered in whole or in part by a right-of-way, including a right-of-way granted under the Act of November 16, 1973 (87 Stat. 576; 30 U.S.C. 185), the lands may be conveyed subject to the right-of- way; however, if the Secretary concerned determines that retention of Federal control over the right-of-way is necessary to assure that the purposes of this subchapter will be carried out, the terms and conditions of the right-of-way complied with, or the lands protected, he shall (a) reserve to the United States that portion of the lands which lies within the boundaries of the right- of-way, or (b) convey the lands, including that portion within the boundaries of the right-of-way, subject to the right-of-way and reserving to the United States the right to enforce all or any of the terms and conditions of the right-of-way, including the right to renew it or extend it upon its termination and to collect rents.

§1769. Existing right-of-way or right-of-use unaffected; exceptions; rights-of-way for railroad and appurtenant communication facilities; applicability of existing terms and conditions
(a) Nothing in this subchapter shall have the effect of terminating any right- of-way or right-of-use heretofore issued, granted, or permitted. However, with the consent of the holder thereof, the Secretary concerned may cancel such a right-of-way or right-of-use and in its stead issue a right-of-way pursuant to the provisions of this subchapter

k. 43 U.S.C. §1701 n. §701(g)
Section 701 of Pub. L. 94-579 provided that:

"(a) Nothing in this Act [see Short Title note set out above], or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act [Oct. 21, 1976].
"(b) Notwithstanding any provision of this Act, in the event of conflict with or inconsistency between this Act and the Acts of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181a-1181j) [sections 1181a to 1181j of this title], and May 24, 1939 (53 Stat. 753), insofar as they relate to management of timber resources, and disposition of revenues from lands and resources, the latter Acts shall prevail.
"(c) All withdrawals, reservations, classifications, and designations in effect as of the date of approval of this Act [Oct. 21, 1976] shall remain in full force and effect until modified under the provisions of this Act or other applicable law.
"(d) Nothing in this Act, or in any amendments made by this Act, shall be construed as permitting any person to place, or allow to be placed, spent oil shale, overburden, or byproducts from the recovery of other minerals found with oil shale, on any Federal land other than Federal land which has been leased for the recovery of shale oil under the Act of February 25, 1920 (41 Stat. 437, as amended; 30 U.S.C. 181 et seq.) [section 181 et seq. of Title 30].
"(e) Nothing in this Act shall be construed as modifying, revoking, or changing any provision of the Alaska Native Claims Settlement Act (85 Stat. 688, as amended; 43 U.S.C. 1601 et seq.) [section 1601 et seq. of this title].
"(f) Nothing in this Act shall be deemed to repeal any existing law by implication.

l. 43 U.S.C. §1782, Wilderness Study

(a) Lands subject to review and designation as wilderness
Within fifteen years after October 21, 1976, the Secretary shall review those roadless areas of five thousand acres or more and roadless islands of the public lands, identified during the inventory required by section 1711(a) of this title as having wilderness characteristics described in the Wilderness Act of September 3, 1964 (78 Stat. 890; 16 U.S.C. 1131 et seq.) and shall from time to time report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness: Provided, That prior to any recommendations for the designation of an area as wilderness the Secretary shall cause mineral surveys to be conducted by the United States Geological Survey and the United States Bureau of Mines to determine the mineral values, if any, that may be present in such areas: Provided further, That the Secretary shall report to the President by July 1, 1980, his recommendations on those areas which the Secretary has prior to November 1, 1975, formally identified as natural or primitive areas. The review required by this subsection shall be conducted in accordance with the procedure specified in section 3(d) of the Wilderness Act [16 U.S.C.A. §1132(d)].
(b) Presidential recommendation for designation as wilderness
The President shall advise the President of the Senate and the Speaker of the House of Representatives of his recommendations with respect to designation as wilderness of each such area, together with a map thereof and a definition of its

boundaries. Such advice by the President shall be given within two years of the receipt of each report from the Secretary. A recommendation of the President for designation as wilderness shall become effective only if so provided by an Act of Congress.

(c) Status of lands during period of review and determination

During the period of review of such areas and until Congress has determined otherwise, the Secretary shall continue to manage such lands according to his authority under this Act and other applicable law in a manner so as not to impair the suitability of such areas for preservation as wilderness, subject, however, to the continuation of existing mining and grazing uses and mineral leasing in the manner and degree in which the same was being conducted on October 21, 1976: Provided, That, in managing the public lands the Secretary shall by regulation or otherwise take any action required to prevent unnecessary or undue degradation of the lands and their resources or to afford environmental protection. Unless previously withdrawn from appropriation under the mining laws, such lands shall continue to be subject to such appropriation during the period of review unless withdrawn by the Secretary under the procedures of section 1714 of this title for reasons other than preservation of their wilderness character. Once an area has been designated for preservation as wilderness, the provisions of the Wilderness Act [16 U.S.C.A. § 1131 et seq.] which apply to national forest wilderness areas shall apply with respect to the administration and use of such designated area, including mineral surveys required by section 4(d)(2) of the Wilderness Act [16 U.S.C.A. § 1133(d)(2)], and mineral development, access, exchange of lands, and ingress and egress for mining claimants and occupants.

29. PUBLIC RANGELAND IMPROVEMENT ACT, 43 U.S.C. §§1901-1908 (Selected Section)

§1901

(a) The Congress finds and declares that--

(1) vast segments of the public rangelands are producing less than their potential for livestock, wildlife habitat, recreation, forage, and water and soil conservation benefits, and for that reason are in an unsatisfactory condition;

(2) such rangelands will remain in an unsatisfactory condition and some areas may decline further under present levels of, and funding for, management;

(3) unsatisfactory conditions on public rangelands present a high risk of soil loss, desertification, [FN1] and a resultant underproductivity for large acreages of the public lands; contribute significantly to unacceptable levels of siltation and salinity in major western watersheds including the Colorado River; negatively impact the quality and availability of scarce western water supplies; threaten important and frequently critical fish and wildlife habitat; prevent expansion of the forage resource and resulting benefits to livestock and wildlife production; increase surface runoff and flood danger; reduce the value of such lands for recreational and esthetic

purposes; and may ultimately lead to unpredictable and undesirable long-term local and regional climatic and economic changes;
(4) the above-mentioned conditions can be addressed and corrected by an intensive public rangelands maintenance, management, and improvement program involving significant increases in levels of rangeland management and improvement funding for multiple-use values;
(5) to prevent economic disruption and harm to the western livestock industry, it is in the public interest to charge a fee for livestock grazing permits and leases on the public lands which is based on a formula reflecting annual changes in the costs of production;
(6) the Act of December 15, 1971 (85 Stat. 649, 16 U.S.C. 1331 et seq.), continues to be successful in its goal of protecting wild free-roaming horses and burros from capture, branding, harrassment, [FN2] and death, but that certain amendments are necessary thereto to avoid excessive costs in the administration of the Act, and to facilitate the humane adoption or disposal of excess wild free-roaming horses and burros which because they exceed the carrying capacity of the range, pose a threat to their own habitat, fish, wildlife, recreation, water and soil conservation, domestic livestock grazing, and other rangeland values;
(b) The Congress therefore hereby establishes and reaffirms a national policy and commitment to:
(1) inventory and identify current public rangelands conditions and trends as a part of the inventory process required by section 1711(a) of this title;
(2) manage, maintain and improve the condition of the public rangelands so that they become as productive as feasible for all rangeland values in accordance with management objectives and the land use planning process established pursuant to section 1712 of this title;
(3) charge a fee for public grazing use which is equitable and reflects the concerns addressed in paragraph (a)(5) above;
(4) continue the policy of protecting wild free-roaming horses and burros from capture, branding, harassment, or death, while at the same time facilitating the removal and disposal of excess wild free-roaming horses and burros which pose a threat to themselves and their habitat and to other rangeland values

30. COLORADO RIVER COMPACT

TEXT No. 6225
UNITED STATES OF AMERICA
DEPARTMENT OF STATE

To all to whom these presents shall come, Greeting:
I Certify That the document annexed is a true copy of the "Colorado River Compact," signed 24th November, 1922, at the City of Santa Fe, New Mexico, the original of which is on file in this Department.
In testimony whereof I, Charles E. Hughes, Secretary of State, have hereunto caused the Seal of the Department of State to be affixed and my name subscribed

by the Chief Clerk of the said Department, at the City of Washington, this twenty-second day of December 1922.

[SEAL] CHARLES E. HUGHES,
Secretary of State.
By Ben G. Davis,
Chief Clerk.

COLORADO RIVER COMPACT

The States of Arizona, California, Colorado, -Nevada, New Mexico Utah, and Wyoming, having resolved to enter into a compact under the Act of the Congress of the United States of America approved August 19, 1921 (42 Statutes at Large, page 171), and the Acts of the Legislatures of the said States, have through their Governors appointed as their Commissioners:
W. S. Norviel, for the State of Arizona
W.F McClure, for the State of California
Delph E. Carpenter, for the State of Colorado
J. G. Scrugham for the State of Nevada
Stephen B. Davis, Jr., for the State of New Mexico
R. E. Caldwell, for the State of Utah
Frank C. Emerson, for the State of Wyoming

who, after negotiations participated in by Herbert Hoover appointed by The President as he representative of the United States of America, have agreed upon the following articles:

-ARTICLE- I

The major purposes of this compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado River System; to establish the relative importance of different beneficial uses of water; to promote interstate comity; to remove causes of present and future controversies; and to secure the expeditious agricultural and industrial development of the Colorado River Basin, the storage of its waters, and the protection of life and property from floods. To these ends the Colorado River Basin is divided into two Basins, and an apportionment of the use of part of the water of the Colorado River System is made to each of them with the provision that further equitable apportionments may be made.

ARTICLE- II

As used in this compact-

(a) The term "Colorado River System" means that portion of the Colorado River and its tributaries within the United States of America.

(b) The term "Colorado River Basin" means all of the drainage area of the Colorado River System and all other territory within the. United States of America to which the waters of the Colorado River System shall be beneficially applied.

(c) The term "States of the Upper Division" means the States of Colorado, New Mexico, Utah, and Wyoming.

(d) The term "States of the Lower Division" means the States of Arizona, California, and Nevada.
(e) The term "Lee Ferry" means a point in the main stream of the Colorado River one mile below the mouth of the Paria River.
(f) The term "Upper Basin" means those parts of the States of Arizona, Colorado, New Mexico, Utah, and Wyoming within and from which waters naturally drain into the Colorado River System above Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System above Lee Ferry.
(g) The term "Lower Basin" means those parts of the States of Arizona, California, Nevada, New Mexico, and Utah within and from which waters naturally drain into the Colorado River System below Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System below Lee Ferry.
(h) The term "domestic use" shall include the use of water for household, stock, municipal, mining, milling, industrial, and other like purposes, but shall exclude the generation of electrical power.
ARTICLE III
(a) There is hereby apportioned from the Colorado River System in perpetuity to the Upper Basin and to the Lower Basin, respectively, the exclusive beneficial consumptive use of 7,500,000 ac!-e-feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist.
(b) In addition to the apportionment in paragraph (a), the Lower Basin is hereby given the right to increase its beneficial consumptive use of such waters by one million acre-feet per annum.
(c) If, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right to the use of any waters of the Colorado River System, such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b); and if such surplus shall prove insufficient for this purposes then, the burden of such deficiency shall be equally borne by the Upper Basin and the Lower Basin, and whenever necessary the States of the Upper Division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d).
(d) The States of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification of this compact.
(e) The States of the Upper Division shall not withhold water, and the States of the Lower Division shall not require the delivery of water. which cannot reasonably be applied to domestic and agricultural uses.

(f) Further equitable apportionment of the beneficial uses of the waters of the Colorado River System unapportioned by paragraphs (a), (b), and (c) may be made in the manner provided in paragraph (g) at any time after October first, 1963, if and when either Basin shall have reached its total beneficial consumptive use as set out in paragraphs (a) and (b).
(g) In the event of a desire for a further apportionment as provided in paragraph (f) any two signatory States, acting through their Governors, may give joint notice of such desire to the Governors of the other signatory States and to The President of the United States of America, and it shall be the duty of the Governors of the signatory States and of The President of the United States of America forthwith to appoint representatives, whose duty it shall be to divide and apportion equitably between the Upper Basin and Lower Basin the beneficial use of the unapportioned water of the Colorado River System as mentioned in paragraph (f), subject to the legislative ratification of the signatory States and the Congress of the United States of America.
ARTICLE IV
(a) Inasmuch as the Colorado River has ceased to be navigable for commerce and the reservation of its waters for navigation would seriously limit the development of its Basin, the use of its waters for purposes of navigation shall be subservient to the uses of such waters for domestic, agricultural, and power purposes. If the Congress shall not consent to this paragraph, the other provisions of this compact shall nevertheless remain binding.
(b) Subject to the provisions of this compact, water of the Colorado river System may be impounded and used for the generation of elected power, but such impounding and use shall be subservient to the use and consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes.
(c) The provisions of this article shall not apply to or interfere with the regulation and control by any State within its boundaries of the appropriation, use, and distribution of water.
ARTICLE V
The chief official of each signatory State charged with the administration of water rights, together with the Director of the United States Reclamation Service and the Director of the United States Geological Survey shall cooperate, ex-officio:
(a) To promote the systematic determination and coordination of the facts as to flow, appropriation, consumption, and use of water in the Colorado River Basin, and the interchange of available information in such matters.
(b) To secure the asertainment and publication of the annual flow of the Colorado River at Lee Ferry.
(c) To perform such other duties as may be assigned by mutual consent of the signatories from time to time.
ARTICLE VI
Should any claim or controversy arise between any two or more of the signatory States: (a) with respect to the waters of the Colorado River System not covered by

the terms of this compact; (b) over the meaning or performance of any of the terms of this compact; (c) as to the allocation of the burdens incident to the performance of any article of this compact or the delivery of waters as herein provided; (d) as to the construction or operation of works within the Colorado River Basin to be situated in two or more States, or to be constructed in one State for the benefit of another State; or (e) as to the diversion of water in one State for the benefit of another State; the Governors of the States affected, upon the request of one of them, shall forthwith appoint Commissioners with power to consider and adjust such claim or controversy, subject to ratification by the Legislatures of the States so affected.

Nothing herein contained shall prevent the adjustment of any such claim or controversy by any present method or by direct future legislative action of the interested States.

ARTICLE VII

Nothing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes.

ARTICLE VIII

Present perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this compact. Whenever storage capacity of 5,000,000 acre-feet shall have been provided on the main Colorado River within or for the benefit of the Lower Basin, then claims of such rights, if any, by appropriators or users of water in the Lower Basin against appropriators or users of water in the Upper Basin shall attach to and be satisfied from water that may be stored not in conflict with Article III. All other rights to beneficial use of waters of the Colorado River System shall be satisfied solely from the water apportioned to that Basin in which they are situate.

ARTICLE IX

Nothing in this compact shall be construed to limit or prevent any State from instituting or maintaining any action or proceeding, legal or equitable, for the protection of any right under this compact or the enforcement of any of its provisions.

ARTICLE X

This compact may be terminated at any time by the unanimous agreement of the signatory States. In the event of such termination all rights established under it shall continue unimpaired.

ARTICLE XI

This compact shall become binding and obligatory when it shall have been approved by the Legislatures of each of the signatory States and by the Congress of the United States. Notice of approval by the Legislatures shall be given by the Governor of each signatory State to the Governors of the other signatory States and to the President of the United States, and the President of the United States is requested to give notice to the Governors of the signatory States of approval by the Congress of the United States.

In, WITNESS WHEREOF, the Commissioners have signed this compact in a single original, which shall be deposited in the archives of the Department of State of the

United States of America and of which a duly certified copy shall be forwarded to the Governor of each of the signatory States.
DONE at the City of Santa Fe, New Mexico, this twenty-fourth day of November, A. D. One Thousand Nine Hundred and Twenty-two.
(Signed) W. S. NORVIEL.
(Signed) W. F. MCCLURE.
(Signed) DELPH E. CARPENTER.
(Signed) J. G. SCRUGHAM.
(Signed) STEPHEN B. DAVIS, Jr.
(Signed) R. E. CALDWELL.
(Signed) FRANK C. EMERSON.
Approved:
(Signed) HERBERT HOOVER.

WYOMING CONSTITUTION AND WYOMING STATUTES

31. WYOMING CONSTITUTION

a. ARTICLE 1, §31 Control of water

Water being essential to industrial prosperity, of limited amount, and easy of diversion from its natural channels, its control must be in the state, which, in providing for its use, shall equally guard all the various interests involved.

b. ARTICLE 7, §2 School revenues

The following are declared to be perpetual funds for school purposes, of which the annual income only can be appropriated, to wit: Such per centum as has been or may hereafter be granted by congress on the sale of lands in this state; all moneys arising from the sale or lease of sections number sixteen and thirty-six in each township in the state, and the lands selected or that may be selected in lieu thereof; the proceeds of all lands that have been or may hereafter be granted to this state, where by the terms and conditions of the grant, the same are not to be otherwise appropriated; the net proceeds of lands and other property and effects that may come to the state by escheat or forfeiture, or from unclaimed dividends or distributive shares of the estates of deceased persons; all moneys, stocks, bonds, lands and other property now belonging to the common school funds. Provided, that the rents for the ordinary use of said lands shall be applied to the support of public schools and, when authorized by general law, not to exceed thirty-three and one-third (33 1/3) per centum of oil, gas, coal, or other mineral royalties arising from the lease of any said school lands may be so applied.

c. ARTICLE 18 §1 Acceptance of lands from United States; sale of such lands

The State of Wyoming hereby agrees to accept the grants of lands heretofore made, or that may hereafter be made by the United States to the state, for educational purposes, for public buildings and institutions and for other objects, and donations of money with the conditions and limitations that may be imposed by the act or acts of congress, making such grants or donations. Such lands shall be disposed of only at public auction to the highest responsible bidder, after having been duly appraised by the land commissioners, at not less than three-fourths the appraised value thereof, and for not less than $10 per acre; provided, that in the case of actual and bona fide settlement and improvement thereon at the time of the adoption of this constitution, such actual settler shall have the preference right to purchase the land whereon he may have settled, not exceeding 160 acres at a sum not less than the appraised value thereof, and in making such appraisement the value of improvements shall not be taken into consideration. If, at any time hereafter, the United States shall grant any arid lands in the state to the state, on the condition that the state reclaim and dispose of them to actual settlers, the legislature shall be authorized to accept such arid lands on such conditions, or other conditions, if the same are practicable and reasonable.

d. Constitutional Due ProcessConstitutional Due Process

i. *Mills v. Reynolds*, 807 P.2d 383, 395 (Wyo.1991)

The Fifth Amendment of the U.S. Constitution, which is made applicable to the state and its instrumentalities by the Fourteenth Amendment, provides that no person may be "deprived of life, liberty or property, without due process of law . . ." Due process is both procedural and substantive.

e. Procedural Due Process

i. *Munoz v. Maschner*, 590 P.2d 1352, 1355 (Wyo. 1979)

The requirements of procedural due process are applicable only upon a showing that the protected life, liberty or property interested has been affected.

***ii.* *In re "HH" Children*, 79 P.3d 997, 1008 (Wyo. 2003)**

Notice and the opportunity to be heard are touch stones of due process of law. The notice and hearing opportunity must be appropriate to the nature of the case, and the opportunity to be heard must be at a meaningful time and in a meaningful manner. The party claiming an infringement of his right to due process has the burden of demonstrating both that he has a protected interest and that such interest has been affected in an impermissible way. The question is whether there has been a denial of fundamental fairness.

iii. *Thunderbasin Land, Livestock and Inv. Co. v. County of Laramie*, 5 P.3d 774, 782 (Wyo. 2000)

The Wyoming Administrative Procedure Act ("WAPA"), Wyo. Stat. §§ 16-3-101 to 16-3-115, imposes basic procedural due process standards upon administrative activities and

provides a mechanism for agencies to adopt procedural rules, which guide agency decision making in a predictable manner.

iv. *Carlson v. Bratton*, 681 P.2d 1333, 1338 (Wyo. 1984)

Under the WAPA, a "contested case" is one where, under the law, legal rights are to be determined after opportunity for hearing. WAPA does not require an opportunity for a hearing in a contested case, it only defines a contested case as one where a hearing is otherwise required by statue or regulation, and then sets out the procedure for such hearing.

In contested cases, WAPA mandates a trial type hearing with depositions and discovery available (with exceptions) as provided for in the Wyoming Rules of Civil Procedure. Wyo. Stat. § 16-3-107(g). The WAPA also requires each agency to promulgate rules of practice and procedure for contested cases. Wyo. Stat. § 16-3-102(a)(I).

The rules of evidence applicable in courts do not apply in administrative hearings. Only "irrelevant, immaterial or unduly repetitious evidence" must be excluded. Wyo. Stat.. § 16-3-107(g). Wyo. Stat. § 16-3-108(a). Officers presiding at hearings have the authority to administer oaths, issue subpoenas, take or cause depositions to be taken, and make recommended decisions when directed to do so by the agency. Wyo. Stat. § 16-3-112.
A final decision in a contested case may be reviewed in district court. Wyo. Stat. § 16-3-114. A court will set aside agency action found to be, *inter alia*, "in excess of statutory jurisdiction" or "arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." *Id*.

f. Substantive Due Process

i. *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)

Substantive due process is concerned with the reasonableness of the content of government policy and actions. Substantive due process, therefore, bars certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them.

ii. *White v. State*, 784 P.2d 1313, 1315 (Wyo. 1989)

The Wyoming Supreme Court has adopted a two-tiered review in analyzing substantive due process challenges. If government action affects a fundamental interest such as an individual's interests in privacy and the association with his family, or his right to be free from discriminatory classifications based on race, color, or national origin, the State's interference with those rights must be necessary to the accomplishment of a compelling interest. If the action, however, only affects ordinary interests, no individual's entitlement to either property or liberty can be taken by the State unless such action is at least rationally related to a concern for the welfare of all its people.

Because the "strict scrutiny" standard of review for fundamental rights is much more stringent than the "rational basis" scrutiny for ordinary interests, the success of a substantive

due process challenge will most likely depend on whether a fundamental right has been implicated.

32. WYOMING WEED AND PEST LIST, WYO. STAT. §11-5-102

WYOMING WEED & PEST CONTROL ACT DESIGNATED LIST
Designated Noxious Weeds W.S. 11-5-102 (a)(xi) and Prohibited Noxious Weeds W.S. 11-12-104

(1) Field bindweed (Convolvulus arvensis L.)
(2) Canada thistle (Cirsium arvense L.)
(3) Leafy spurge (Euphorbia esula L.)
(4) Perennial sowthistle (Sonchus arvensis L.)
(5) Quackgrass (Agropyron repens (L.) Beauv.)
(6) Hoary cress (whitetop) (Cardaria draba and Cardaria pubescens (L.) Desv.)
(7) Perennial pepperweed (giant whitetop) (Lepidium latifolium L.)
(8) Ox-eye daisy (Chrysanthemum leucanthemum L.)
(9) Skeletonleaf bursage (Franseria discolor Nutt.)
(10) Russian knapweed (Centaurea repens L.)
(11) Yellow toadflax (Linaria vulgaris L.)
(12) Dalmatian toadflax (Linaria dalmatica (L.) Mill.)
(13) Scotch thistle (Onopordum acanthium L.)
(14) Musk thistle (Carduus nutant L.)
(15) Common burdock (Arctium minus (Hill) Bernh.)
(16) Plumeless thistle (Carduus acanthoides L.)
(17) Dyers woad (Isatis tinctoria L.)
(18) Houndstongue (Cynoglossum officinale L.)
(19) Spotted knapweed (Centaurea maculosa Lam.)
(20) Diffuse knapweed (Centaurea diffusa Lam.)
(21) Purple loosestrife (Lythrum salicaria L.)
(22) Saltcedar (Tamarix spp.)
(23) Common St. Johnswort (Hypericum perforatum)
(24) Common Tansy (Tanacetum vulgare)

Designated Pests W.S. 11-5-102 (a)(xii)

(1) Grasshoppers
(2) Mormon crickets
(3) Prairie dogs
(4) Ground squirrels
(5) Mountain pine beetle
(6) Beet Leafhopper

33. PREDATORY ANIMALS, Wyo. Stat. Title 11, Article 6

a. Predatory Animal Districts and Boards, Wyo. Stat. §§11-6-201-208

§11-6-201. Livestock board to collect and disburse fees for predatory animal control; rulemaking authority; creation and designation of districts; state predatory animal advisory board.

(a) Each county is created and designated as a predatory animal district. Each district shall be known as the "Predatory Animal District of .... County, Wyoming," and it may hold property and be a party to suits and contracts.

(b) There is created a state predatory animal advisory board composed of one (1) representative of each predatory animal district. The state predatory animal advisory board representative shall be appointed by the individual predatory animal district boards of directors and so designated in writing.

§11-6-202. Administration of districts by district boards; number and qualifications of members; term; filling of vacancies.

(a) The affairs of each district shall be administered by a board of directors, each of whom shall be a bona fide resident of Wyoming. Directors shall be elected at an annual meeting of district livestock owners. The composition of the board shall be as follows:

(i) Three (3) directors shall be sheep owners having paid taxes or predatory animal control fees on sheep in the district in the year preceding election. At each subsequent annual district meeting one (1) director shall be elected for a three (3) year term. All sheep owners whether an individual, corporation or partnership, having paid taxes or predatory animal control fees on sheep in the district regardless of the domicile of the sheep, are entitled to one (1) vote at the meeting;

(ii) Three (3) directors shall be cattle owners having paid taxes or predatory animal control fees on cattle in the district in the year preceding election. At each subsequent annual district meeting one (1) director shall be elected for a three (3) year term. All cattle owners whether an individual, corporation or partnership, having paid taxes or predatory animal control fees on cattle in the district regardless of the domicile of the cattle, are entitled to one (1) vote at the meeting; (iii) If the board of county commissioners determines that additional funds are necessary for an adequate predator control program, and county funds are appropriated for that purpose, the board of county commissioners may appoint one (1) director to serve for an initial term of two (2) years and thereafter for three (3) year terms from electors in the county not engaged in raising sheep or cattle. No appointed member may serve for a consecutive period of more than six (6) years.

(b) No director shall continue to hold office after disqualification under any of the provisions of this section. All vacancies on the district board may be filled for unexpired terms by the other directors in office except the public member's unexpired term shall be filled by board of county commissioners appointment. All members shall hold their offices until their successors are elected and qualified.

§11-6-203. Manner of calling annual meeting of sheep and cattle owners; when held; election of chairman and secretary.

(a) The annual meeting of each predatory animal district shall be in December and each board shall:
(i) On or before December 1, obtain an accurate list of all persons assessed for taxes or who paid predatory animal control fees on sheep or cattle in the district;
(ii) Publish a notice stating the time and place of any meeting of the district and that directors of the board shall be elected at the meeting. Notice shall be published once in a newspaper of general circulation in the district ten (10) days prior to the date of the meeting;
(iii) Set the date of the meeting so as not to conflict with the date of similar meetings held in adjoining districts in order that sheep and cattle owners operating in more than one (1) district may attend and vote in other districts where they are engaged in such business;
(iv) Set the annual predatory animal control fee for the district as provided by W.S. 11-6-210(a).
(b) When assembled in accordance with the provisions of the notice, the sheep and cattle owners shall elect a chairman and secretary who shall act as judges of election.

§11-6-204. District boards; election and appointment of officers; meetings; quorum; oath; appropriation requests.
Directors of predatory animal districts elected at meetings provided by W.S. 11-6-203 shall immediately after the adjournment of the meeting organize by choosing from their number a president and vice-president and shall appoint a secretary-treasurer. Subsequent meetings may be called by the president upon reasonable notice. A majority of the board constitutes a quorum for the transaction of business at any board meeting. The members of the board shall receive no compensation for serving as members. Each director shall take an oath for the faithful performance of his duties. If the board determines to request an appropriation of funds from the board of county commissioners, it shall, at least thirty (30) days prior to the time for annual levy of general taxes, notify the board of county commissioners of the amount the district board considers necessary for district operations during the following year.

§11-6-205. District boards; duties generally.
(a) Each predatory animal district board shall:
(i) Exercise general supervision over the control of predatory animals that prey upon and destroy livestock, other domestic animals and wild game;
(ii) Devise and put in operation those methods that best control predatory animals;
(iii) Administer funds received from predatory animal control fees and from other sources to carry out the predatory animal control program.

§11-6-206. District boards; powers generally.
Each predatory animal district board may adopt rules and regulations necessary for carrying out the purpose and provisions of this article. Each board may appoint

employees and assistants as necessary and fix their compensation. Each board may enter into cooperative agreements with boards of county commissioners, other predatory animal control districts, federal or state agencies or other organizations or associations for the purpose of controlling predatory animals. Each board is authorized to pay bounties for predatory animals.

§11-6-207. District boards; record of proceedings and expenditures; monthly warrants issued by county for monies collected.

(a) The secretary-treasurer of each predatory animal district shall keep a complete and accurate record of the proceedings of the board.

(b) All salaries, expenses or bounties shall be paid from the predatory animal district fund of the district by the secretary-treasurer and recorded in a cash book.

(c) All expenditures of the district shall be supported by properly approved vouchers and supporting documents in writing signed by the board president and any other director.

(d) The county treasurer shall issue monthly warrants to the predatory animal district for all monies collected in the county for the predatory animal district.

§11-6-208. District boards; annual report.

On or before January 1 of each year, the president and secretary-treasurer of each district board and each county treasurer shall make an annual report to their board of county commissioners showing all receipts and disbursement of district funds made by direction of the board during the preceding calendar year. A report of the receipts, expenditures and financial transactions of the district shall be made as provided by W.S. 9-1-507. The director of the state department of audit may call upon any district board or upon any county treasurer for further information relating to any predatory animal district.

§11-6-209. Annual meetings of sheep and cattle owners.

Annual meetings for the election of members of boards of directors of predatory animal districts shall be called by the president of each board. The meetings shall be called by a notice published in the manner provided by W.S. 11-6-203.

§11-6-210. Creation of predatory animal district fund; predatory animal control fees; donations; appropriation by county commissioners.

(a) At the time of collecting brand inspection fees imposed under W.S. 11-20-401 and 11-20-402, the brand inspector shall collect predatory animal control fees on all sheep and cattle inspected within each predatory animal district. However, predator control fees shall not be collected on cattle and sheep shipped into this state for immediate sale or slaughter. The amount of the fee for each predatory animal district shall be established by each predatory animal district board in consultation with the state predatory animal advisory board and shall not exceed eighty cents ($.80) per head on sheep and fifty cents ($.50) per head on cattle. Each predatory animal district board shall annually determine the predatory animal

control fee to be charged and collected in the district based upon a recommendation of the majority of the producers present at the district's annual meeting as provided for in W.S. 11-6-203 and shall inform the livestock board of the fee prior to January 1 each year. The fee shall not be collected on the same livestock more than once in any twelve (12) month period. The livestock board may retain not to exceed three percent (3%) of the revenues collected for the cost of administering the program. Remaining revenues collected by the livestock board under this section shall be remitted to the state treasurer for deposit in an account within the earmarked revenue fund. The state treasurer, on a quarterly basis, shall distribute the revenues to the county treasurer of the county from which the shipment originated unless, at the time of payment of the fees, the livestock owner designates the fees to be distributed in total to another county in this state in which the livestock are fed or pastured. The county treasurer shall deposit revenues distributed under this subsection into a special continuing fund, to be known as the "Predatory Animal District Fund of .... County" and to be administered by the predatory animal board of that district.

(b) Repealed by Laws 1990, ch. 87, § 3.

(c) Repealed by Laws 1990, ch. 87, § 3.

(d) The district board may receive donations and appropriations of money from any source, and such donations and appropriations shall be placed in the district fund by the county treasurer upon request of the district board. Nothing in W.S. 11-6-201 through 11-6-210 shall be construed to prohibit boards of county commissioners from appropriating funds for the purpose of controlling predatory animals, and such appropriation by boards of county commissioners is authorized.

(e) Repealed by Laws 1990, ch. 87, § 3.

(f) Notwithstanding subsection (a) of this section, the amount of the annual predatory animal control fee for sheep and cattle shipped into this state for confinement in a commercial feedlot shall not exceed fifteen cents ($0.15) per head on sheep and five cents ($0.05) per head on cattle. For purposes of this subsection, "commercial feedlot" means any place, establishment or facility commonly known as a feedlot conducted, operated or managed for profit or nonprofit for livestock producers, feeders or market agencies, consisting of pens and their appurtenances, in which livestock are received, held, fed, cared for or kept for sale or shipment in commerce. A pasture, field or other enclosure, fenced or unfenced, shall not be considered a commercial feedlot for purposes of this subsection. The predatory animal district board shall have the authority to determine if a facility qualifies as a commercial feedlot as defined in this subsection.

(g) After January 1, 1992 each predatory animal district board shall annually allocate five percent (5%) of all collections to be used for refunds, in whole or in part. If a refund is requested the board shall pay the refund within one hundred eighty (180) days of application. Refunds under this subsection shall be subject to the following:

(i) To be valid, the application for refund shall be received no later than sixty (60) days after the end of the calendar year in which the fee was paid;

(ii) No person receiving a refund shall receive any predatory animal control services funded in whole or in part by the predatory animal control fees until that person has paid one hundred fifty percent (150%) of all refunds received during the year in which the services were sought and the three (3) preceding calendar years; and
(iii) All monies not paid in refunds shall annually revert to the district predatory animal control account on December 31 of the following year.
(h) Notwithstanding subsection (a) of this section, no predatory animal control fee shall be collected on livestock shipped or trailed within this state if change of ownership does not occur.
(j) Any person failing to pay the predator animal control fee imposed by subsections [subsection] (a) or (f) of this section shall be punished as provided by W.S. 11-1-103.
(k) In addition to the other fees imposed by this section, any person paying the predator control fee may pay an additional ten cents ($.10) per head to fund the predator management activities of the Wyoming animal damage management board created by W.S. 11-6-303. Any fees collected pursuant to this subsection shall be deposited in the animal damage management account created by W.S. 11-6-306.
(m) After July 1, 2002 and before December 1, 2002, a predatory animal district board may hold a special meeting during which an adjustment of the predatory animal control fee set under subsection (a) of this section may be made for the balance of calendar year 2002. The special meeting shall be held pursuant to the procedures found in W.S. 11-6-203(a)(ii) and (iii) except that the notice shall state the time and place and that a fee increase shall be considered. The board shall immediately notify in writing the livestock board of any fee adjustment made under this subsection. The fee adjustment shall take effect thirty (30) days after the date of mailing of the notice to the livestock board and shall remain in effect through December 31, 2002.

b. Animal Damage Management Program, Wyo. Stat. §§11-6-301-313

11-6-301. Short title.

This article may be cited as the "Wyoming animal damage management program".

§11-6-302. Definitions.

(a) As used in this article:
(i) "Board" means the Wyoming animal damage management board (ADMB);
(ii) "Crop" or "agricultural crop" when not otherwise defined by statute means corn, oats, wheat, barley, flax, sorghums and other grains, potatoes, vegetables, forage legumes, hay, and any other product of cultivation, trees, bees, honey and hives;
(iii) "Damage" means any injury to or loss of livestock, agricultural crops or wildlife inflicted by predatory animals, predacious birds or depredating animals;
(iv) "Depredating animal" means any trophy game animal or furbearing animal that causes damage;
(v) "Furbearing animal" means badger, beaver, bobcat, marten, mink, muskrat or weasel;

(vi) "Livestock" means horses, mules, cattle, swine, sheep, goats, poultry, guard animals or any other animal maintained under domestication. Bison are considered livestock unless otherwise designated by the Wyoming livestock board and the Wyoming game and fish commission;
(vii) "Person" means as defined by W.S. 8-1-102(a)(vi);
(viii) "Predacious bird" means English sparrow and starling;
(ix) "Predatory animal" means:
(A) Coyote, jackrabbit, porcupine, raccoon, red fox, skunk or stray cat; and
(B) Until the date gray wolves are removed from the list of experimental nonessential population, endangered species or threatened species in Wyoming as provided by W.S. 23-1-108, "predatory animal" includes wolves. After that date, "predatory animal" shall include any gray wolf not within an area of the state in which the gray wolf is:
(I) Designated as a trophy game animal under subdivision (x)(B)(I) of this subsection; or
(II) Classified as a trophy game animal by the game and fish commission pursuant to W.S. 23-1-304(b)(i)(A).
(x) "Trophy game animal" means:
(A) Black bear, grizzly bear or mountain lion; and
(B) From and after the date gray wolves are removed from the list of experimental nonessential population, endangered species or threatened species in Wyoming as provided by W.S. 23-1-108:
(I) "Trophy game animal" shall include any gray wolf within those tracts of land within the boundaries of Wyoming designated as Yellowstone National Park, Grand Teton National Park, the John D. Rockefeller, Jr. Memorial Parkway, and those federally designated wilderness areas contiguous to these national parks and this parkway as defined by the United States congress as of January 1, 2003; and
(II) "Trophy game animal" shall include any gray wolf within any area of the state where gray wolves are classified as trophy game animals by the game and fish commission pursuant to W.S. 23-1-304(b)(i)(A).
(xi) "Wildlife" means all wild mammals, birds, fish, amphibians, reptiles, crustaceans and mollusks, and wild bison designated by the Wyoming game and fish commission and the Wyoming livestock board within this state.

§11-6-303. Animal damage management board (ADMB) created; composition; appointment; terms; vacancies; compensation.
(a) There is created the animal damage management board for the purposes of mitigating damage caused to livestock, wildlife and crops by predatory animals, predacious birds and depredating animals or for the protection of human health and safety. The board may mitigate damage caused by depredating animals by and through a memorandum of understanding with the Wyoming game and fish commission. The board shall be composed of twelve (12) members appointed by the governor as follows:
(i) The director of the Wyoming department of agriculture;

(ii) The director of the Wyoming game and fish department;
(iii) One (1) domestic sheep producer;
(iv) One (1) cattle producer;
(v) The state director for the United States department of agriculture, animal and plant health inspection service, wildlife services (USDA/APHIS/WS);
(vi) Two (2) members representing the interests of sportsmen, outfitters and hunters, not more than one (1) of these members shall be appointed to represent the interests of outfitters;
(vii) The president of the state predatory animal advisory board created under W.S. 11-6-201;
(viii) One (1) member from an urban area;
(ix) One (1) member from the Wyoming game and fish commission;
(x) One (1) member of the Wyoming board of agriculture; and
(xi) One (1) member representing the interests of nonconsumptive users of the state's wildlife resource.
(b) A representative from the United States forest service (USFS), the United States fish and wildlife service (USFWS) and United States bureau of land management (BLM) shall serve as *ex officio* nonvoting members of the board.
(c) The directors of the departments of agriculture and game and fish shall serve as co-chairs of the ADMB and shall give general direction to the ADMB and the ADMB administrative officer.
(d) The director of the department of agriculture or his designee shall serve as the ADMB's administrative officer and carry out the ADMB's administrative functions.
(e) Except for the directors of the departments of agriculture and game and fish, the state director for the United States department of agriculture, animal and plant health inspection service, wildlife services (USDA/APHIS/WS), and the president of the state predatory animal advisory board created under W.S. 11-6-201, the remaining members of the board shall hold office for staggered terms of four (4) years. For the remaining members of the initial board, four (4) members shall be appointed for a term of four (4) years, four (4) members shall be appointed for a term of two (2) years. Each appointed member shall be limited to serving on the board for eight (8) consecutive years, however, a member may be reappointed after a four (4) year absence. Each member shall hold office until his successor is appointed and has been qualified. As terms of current ADMB members expire, the governor shall appoint each new member or reappointed member to a four (4) year term.
(f) When a vacancy occurs in the membership for any reason, a replacement shall be appointed for the unexpired term.
(g) Attendance of six (6) members at a duly called meeting shall constitute a quorum for the transaction of official business. The ADMB shall convene at the times and places prescribed by the chair.
(h) Members of the board who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses

incurred in the performance of the member's official duties at the established state rate, to be paid from the animal damage management account.
(j) Members may decline to receive per diem and expenses for their service.
(k) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the ADMB at the established state rate, to be paid from the animal damage management account.
(m) State government official and employee members may decline to receive per diem and expenses for their service.

§11-6-304. ADMB responsibilities; animal damage management policy; rules; methods to manage predatory animals, predacious birds, depredating animals and rabid wildlife; manner of calling meetings; frequency.
(a) The ADMB is responsible for the formulation of the damage prevention management policy of the state, and by and through an executed memorandum of understanding (MOU) with the Wyoming game and fish commission is responsible for management of rabid wildlife, crop, livestock and wildlife damage done by depredating animals and wildlife damage by predatory animals and predacious birds. The ADMB in conjunction with its responsibility may, consistent with the Wyoming Administrative Procedure Act adopt rules to implement policies administered by the ADMB. After consultation with the livestock board and the department of health, the ADMB shall promulgate rules pertaining to rabies prevention in wildlife including surveillance, public education, vaccination protocol, post-exposure procedures and quarantines. The ADMB may enter into the agreements with law enforcing agencies to carry out the quarantine provisions. Nothing in this article shall preempt the Wyoming game and fish commission authority to manage wildlife or determine damage pursuant to any provision in title 23.
(b) In its deliberations the ADMB shall:
(i) Entertain requests for assistance in order to allow mitigation of predator damage;
(ii) Specify programs designed to prevent damage by predatory animals, rabid wildlife, predacious birds and depredating animals to livestock, agricultural crops, wildlife, property, human health and safety;
(iii) Provide various degrees of predatory animal, predacious bird and depredating animal damage management services to individual agricultural livestock and crop producers, landowners, lessors or administrators, and to urban, residential and industrial property owners. Damage management services shall also be provided and conducted for the benefit of wildlife populations and human health and safety;
(iv) Specify methods for the prevention and management of damage and for the selective control of predatory animals, rabid wildlife, predacious birds and depredating animals;
(v) Maintain responsibility and appropriate funds for the purpose of providing damage prevention and management to agricultural livestock and crops, wildlife,

property and human health and safety caused by predatory animals, rabid wildlife, predacious birds and depredating animals;
(vi) Cooperate with federal, state and county governments, educational institutions and private persons or organizations to effectuate agricultural and wildlife damage and rabid wildlife prevention policies;
(vii) Develop memorandums of understanding between the Wyoming department of agriculture and the Wyoming game and fish commission and the United States department of agriculture, animal and plant health inspection service, wildlife services (USDA/APHIS/WS) to accommodate funding sources and administrative guidelines for the program;
(viii) Consider any recommendations received from the Wyoming game and fish commission and the Wyoming department of agriculture.
(c) The ADMB shall conduct meetings in accordance with its established policy, but shall meet at least once each year in the month of January.
(d) The ADMB may adopt rules and regulations necessary for carrying out the purpose and provisions of this article. The ADMB may appoint employees and assistants as necessary and fix their compensation. The ADMB may enter into cooperative agreements with boards of county commissioners, predatory animal control districts, federal or state agencies or other commissions, organizations or associations for the purpose of managing predatory animals, rabid wildlife, predacious birds and depredating animals. Predatory animal control district boards which choose not to enter into a cooperative agreement with the ADMB shall not be precluded from continuing with, or entering into, a cooperative agreement or memorandum of understanding with the United States department of agriculture, animal and plant health inspection service, wildlife services (USDA/APHIS/WS), other entities of government, organizations or associations. This act is not intended and shall not replace, rescind, modify nor cancel cooperative agreements or cooperative service agreements between the USDA/APHIS/WS and the county predatory animal districts created under W.S. 11-6-201 through 11-6-210.
(e) The ADMB may elect to provide various degrees of predator damage management services to any other person pursuant to a separately negotiated cooperative agreement.

§11-6-305. Wyoming animal damage management board funding; sources; methods of collection.
(a) Effective January 1, 2000, there is created a "wildlife damage management" stamp. The stamp, issued at licensed selling agents as designated by the Wyoming game and fish commission may be purchased voluntarily. Proceeds from the sale of the stamp, excluding twenty-five cents ($.25) which the agent shall retain for each stamp sold, shall be deposited by the state treasurer into the animal damage management account created by W.S. 11-6-306. The Wyoming game and fish commission shall retain the fees related to those administrative costs which are required to design and print stamps, and collect, account for and disburse these funds to the ADMB. The Wyoming game and fish commission shall annually

provide to the ADMB a complete and detailed accounting of all administrative costs and fees.
(b) The purchase price for the stamp shall be determined annually by the ADMB in whole dollar increments and established at such a level to meet financial obligations as budgeted.
(c) The ADMB may receive money for predatory animal, predacious bird and depredating animal management from the federal government, state appropriations, counties, agencies, boards, associations, commissions, individuals and any other cooperators, and may expend monies to purchase supplies, materials, services, and to employ or contract personnel for predatory animal, predacious bird and depredating animal damage management. The ADMB may make supplies, materials, services and personnel available to cooperators at approximate cost.

§11-6-306. Animal damage management account.
(a) There is created in the special revenue fund the animal damage management account.
(b) Money received under W.S. 11-6-305 shall be deposited by the state treasurer in the animal damage management account to be appropriated for the purposes provided in this article.
(c) Any supplemental contributions received by the department from livestock owners for predatory animal, predacious bird or depredating animal damage management programs or the prevention and management of rabid wildlife shall be deposited into the animal damage management account.
(d) The animal damage management account shall be administered for the ADMB by the Wyoming department of agriculture.

§11-6-307. Board to request funding from game and fish commission.
The board shall annually request one hundred thousand dollars ($100,000.00) from the Wyoming game and fish commission. These funds shall be expended for wildlife priorities. The game and fish commission may provide recommendations to the board regarding expenditure of these funds.

§11-6-308. District boards; relation to ADMB; duties generally.
(a) Each predatory animal district board shall:
(i) Exercise general supervision in determining local priorities for the management of predatory animals and predacious birds that prey upon and destroy livestock, other domestic animals, wildlife and crops;
(ii) Devise and put in operation those methods that best manage predatory animals and predacious birds;
(iii) Administer funds received to carry out the animal damage management program;
(iv) Maintain existing financial and physical resources;
(v) Provide input to the ADMB.

§11-6-309. Predatory animal district participation with the ADMB.
If the predatory animal district has elected to participate in providing funding or upon approval of the ADMB, other in-kind resources, to the animal damage management account, the district may solicit funds or receive services from the ADMB under separate negotiated agreement.

§11-6-310. Applicability of chapter.
This article, unless contrary to federal law, shall apply to all federal, state and private lands.

§11-6-311. Exemptions.
The state predatory animal advisory board or the ADMB may exempt persons from payment of the imposed fees when the respective board determines that livestock as defined in this act are permanently confined within pens or corrals within incorporated city limits where animal damage control activity by state or federal agencies is prohibited or severely restricted.

§11-6-312. Cooperative agreements generally.
The ADMB may enter into cooperative agreements with other governmental agencies, counties, associations, corporations or individuals for carrying out the purposes of this article.

§11-6-313. Expiration date.
This article is repealed effective January 1, 2009.

34. WYOMING CONSERVATION DISTRICTS LAW, Wyo. Stat. §§11-16-101-134 (selected sections)

a. §11-16-101. Short title
This act may be cited as the "Wyoming Conservation Districts Law."

b. §11-16-102. Definitions
(a) As used in this act:
(i) "Agency of this state" means any subdivision, agency or instrumentality, corporate or otherwise, of the government of this state;
(ii) "At large member" means any registered voter and taxpayer within the county;
(iii) "Commission" or "state conservation commission" means the state board of agriculture;
(iv) "Conservation" means development, improvement, maintenance, preservation, protection and use of natural resources, and the control and prevention of floodwater and sediment damages, and the disposal of excess waters;
(v) "District" or "conservation district" means a governmental subdivision of this state, and a public body corporate and politic, organized in accordance with this act;

(vi) "Due notice" for those provisions other than election and referendum provisions, means notice published at least twice, with an interval of six (6) days between the two (2) publication dates, in a newspaper of general circulation within the boundaries of the proposed or organized district, or by posting at five (5) conspicuous places within the organized or proposed district, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. Except as otherwise provided in this act, the notice of any hearing required under this act shall fix the time, place and purpose, which shall be not less than ten (10) or more than fifteen (15) days after the first publication or first posting of the notice. Any hearing held pursuant to such notice may be adjourned from time to time without renewing the notice for the adjourned dates. Notice for any election or referendum required by this act shall be as specifically provided in this act, or if not specifically provided in this act, as required in the Special District Elections Act of 1994;
(vii) "Government" or "governmental" means the government of this state, the government of the United States, and any subdivision, agency or instrumentality, corporate or otherwise, of either of them;
(viii) Repealed by Laws 1987, ch. 21, § 3.
(ix) Repealed by Laws 1998, ch. 115, § 5.
(x) "Renewable natural resources," "natural resources" or "resources," means land, soil, water, vegetation, trees, wild rivers, wilderness, natural beauty, scenery and open space;
(xi) "Urban" or "urban member" means any registered voter of an incorporated Wyoming municipality;
(xii) "This act" means W.S. 11-16-101 through 11-16-134.

c. §11-16-103. Legislative Declarations and Policy

(a) It is hereby declared that the farm and grazing lands of Wyoming are among the basic assets of the state; that improper land use practices cause and contribute to serious erosion of these lands by wind and water; that among the consequences which would result from such conditions are the deterioration of soil and its fertility and the silting and sedimentation of stream channels, reservoirs, dams and ditches; that to conserve soil, and soil and water resources, and prevent the control soil erosion, it is necessary that land use practices contributing to soil erosion be discouraged and that appropriate soil conserving land use practices be adopted.
(b) It is hereby declared to be the policy of the legislature to provide for the conservation of the soil, and soil and water resources of this state, and for the control and prevention of soil erosion and for flood prevention for the conservation, development, utilization, and disposal of water, and hereby to stabilize ranching and farming operations, to preserve natural resources, protect the tax base, control floods, prevent impairment of dams and reservoirs, preserve wildlife, protect public lands, and protect and promote the health, safety and general welfare of the people of this state. (Laws, 1941, ch. 134, 2; C.S. 1945, 34-102; Wyo. Stat. 1957, 11-236; Laws 1959, ch. 193,2; Wyo. Stat. 1977, 11-19-103; Laws 1978 ch. 21, 1.)

d. §11-16-122. Powers and duties of districts and supervisors thereof generally

(a) Each conservation district organized under this act shall make an annual estimate of the funds required by the district for conservation programs and present a certified copy of the estimate, along with a budget showing all anticipated income and expenses, to the county commissioners.

(b) A conservation district organized under this act and the supervisors thereof, in addition to other powers granted by this act, may:

(i) Employ personnel and determine their duties and conditions of employment;

(ii) Call upon the attorney general of the state for legal services or employ their own counsel and legal staff;

(iii) Delegate to their chairman, to one (1) or more supervisors or to one (1) or more agents or employees such delegable powers and duties as they deem proper;

(iv) Furnish to the state conservation commission upon request, copies of ordinances, rules, regulations, orders, contracts, forms and other documents they adopt or employ, and such other information concerning their activities as it may require and to the county clerk copies of ordinances, rules, regulations and orders it adopts in accordance with law;

(v) Conduct surveys, investigations and research and disseminate information relating to range management, the character of soil erosion, flood prevention or the conservation, development, utilization and disposal of water, and the preventive and control measures and works of improvement needed, but in order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of this state or its agencies, or with the United States or its agencies;

(vi) Conduct demonstration projects within the district on lands owned or controlled by this state or its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on other lands within the district with the consent of the owner or occupier of the lands, to demonstrate range management practices, the means, methods and measures by which soil and soil resources may be conserved, and soil erosion in the form of soil blowing and washing may be prevented and controlled and works of improvement for flood prevention or the conservation, development, utilization and disposal of water may be carried out;

(vii) Carry out preventive and control measures and works of improvement within the district, including engineering operations, range management, methods of cultivation, the growing of grass or other vegetation, changes in use of land or any measure which may be developed for the control of erosion and better use of soil, and works of improvement for flood prevention or the conservation, development, utilization and disposal of water on lands owned or controlled by this state or its agencies, with the cooperation of the agency administering and having jurisdiction thereof, or on other lands within the district with the consent of the owner or occupier of the lands;

(viii) Cooperate, or enter into agreements with and furnish financial or other aid to, any agency, governmental or otherwise, or any owner or occupier of lands within

the district, in carrying on range management or erosion control and prevention operations and works of improvement for flood prevention or the conservation, development, utilization and disposal of water within the district, subject to such conditions as the supervisors deem necessary;
(ix) Repealed by Laws 1987, ch. 21, § 3.
(x) Repealed by Laws 1987, ch. 21, § 3.
(xi) Repealed by Laws 1987, ch. 21, § 3.
(xii) Repealed by Laws 1987, ch. 21, § 3.
(xiii) Repealed by Laws 1987, ch. 21, § 3.
(xiv) Make available on terms it prescribes, to owners and occupiers of land within the district, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, male breeding animals, livestock supplies and such other material or equipment as will assist the owners and occupiers of land to carry on operations upon their lands and upon those owned or leased by the district, for range improvement and stabilization, the conservation of soil and water resources, the prevention and control of soil erosion and for flood prevention or the conservation, development, utilization and disposal of water. The assistance authorized by this paragraph shall be on a limited scale for demonstration purposes and the district shall not be deemed authorized to compete with private industry;
(xv) Repealed by Laws 1987, ch. 21, § 3.
(xvi) Develop comprehensive plans for range improvement and stabilization, conservation of soil and water resources, control and prevention of soil erosion and for flood prevention or the conservation, development, utilization and disposal of water within the district, which plans shall include range management provisions and shall specify in detail the acts, procedures, performances and avoidances necessary or desirable to carry out the plans, including the specification of engineering operation, fence and stockwater developments, methods of cultivation, the growing of grass and other vegetation, cropping and range programs, tillage and grazing practices, and changes in use of lands;
(xvii) Make public the plans and information and bring them to the attention of owners and occupiers of land within the district;
(xviii) Repealed by Laws 1987, ch. 21, § 3.
(xix) Manage, as agent of the United States or any of its agencies, and enter into agreements with the United States or any of its agencies, or this state or any of its agencies, to effect cooperation with the United States or any of its agencies under United States Public Law 566 approved August 4, 1954, or amendments thereto, in connection with the acquisition, construction, operation or administration of any land utilization, soil conservation, erosion control, erosion prevention, flood prevention projects, conservation of water, water utilization, disposal of water in watershed areas and other water projects within its boundaries;
(xx) Act as representative for local groups in dealing with the United States or its representatives, in soil or water conservation matters under United States Public Law 566 approved August 4, 1954, or amendments thereto;

(xxi) Accept donations, gifts and contributions in money, services, materials or otherwise from any source which will impose no financial obligation upon the state, and use or expend the monies, services, materials or contributions in carrying on its operations;
(xxii) Sue and be sued in the name of the district;
(xxiii) Have a seal, which shall be judicially noticed;
(xxiv) Have perpetual succession unless terminated as hereinafter provided;
(xxv) Make and execute contracts and other instruments necessary to the exercise of its powers;
(xxvi) Make, amend and repeal rules and regulations not inconsistent with this act, to implement its purposes and powers;
(xxvii) As a condition to extending any benefits to or performance of work upon any land not owned or controlled by the state or its agencies, require contributions in money, services, materials or otherwise to any operations conferring benefits and require owners and occupiers of land to enter into and perform such agreements or covenants as to the permanent use of such lands as will prevent or control erosion and prevent flood water and sediment damages thereon and promote the best use of such lands.
(c) A conservation district shall not purchase or hold title to farm lands as defined by W.S. 11-34-101(a)(ii).

e. §11-16-132. Publicly owned lands to be administered in cooperation with districts

Agencies of the state, county or any political subdivision of the state which have jurisdiction over or are charged with the administration of any state, county or other publicly owned lands lying within the boundaries of any district organized hereunder, shall cooperate to the fullest extent with the supervisors of the district to effect the programs and operations undertaken by the supervisors under this act and may lease such lands to a district. The supervisors of the districts shall be given free access to enter and perform work upon the publicly owned lands. The provisions of conservation ordinances have the force and effect of law over all publicly owned lands, and shall be in all respects observed by the agencies administering the lands.

35. INTERGOVERNMENTAL COOPERATION

a. Procedural Requirements, Intergovernmental Cooperation, Wyo. Stat. §9-8-302

(a) The duty, procedures and requirements for public hearings and responsibility for land use planning at the local level shall be exercised by the cities and towns pursuant to W.S. 15-1-601 et seq. and by the respective counties pursuant to W.S. 18-5-201 et seq.
(b) For the purpose of development of local land use plans, the local government within each city, town and county may cooperate in the development of land use plans not inconsistent with established goals, policies and guidelines in accordance

with the powers granted by the Wyoming Joint Powers Act [§§ 16-1-102 through 16-1-110].

b. Wyo. Stat. §16-1-101. Authority to cooperate

In exercising, performing or carrying out any power, privilege, authority, duty or function legally vested in any one (1) or more of them by Wyoming law, the state of Wyoming, and any one (1) or more of its counties, municipal corporations, school districts, special districts, public institutions, agencies, boards, commissions and political subdivisions, and any officer or legal representative of any one (1) or more of them, may cooperate with and assist each other, and like entities or authorities of other states, the United States and the Eastern Shoshone and Northern Arapaho Tribes of the Wind River Reservation. Cooperation may be informal or subject to resolution, ordinance or other appropriate action, and may be embodied in a written agreement specifying purposes, duration, means of financing, methods of operations, termination, acquisition and disposition of property, employment of executive and subordinate agents and other appropriate provisions.

36. WYOMING ADMINISTRATIVE PROCEDURE ACT, Wyo. Stat. §§16-3-101-115 (Selected Sections)

a. §16-3-101. Short title; definitions

(a) This act may be cited as the "Wyoming Administrative Procedure Act".

(b) As used in this act:

(i) "Agency" means any authority, bureau, board, commission, department, division, officer or employee of the state, a county, city or town or other political subdivision of the state, except the governing body of a city or town, the state legislature, the University of Wyoming and the judiciary;

(ii) "Contested case" means a proceeding including but not restricted to ratemaking, price fixing and licensing, in which legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing but excludes designations under W.S. 9-2-1022(h)(i);

(iii) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law, but it does not include a license required solely for revenue purposes;

(iv) "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license;

(v) "Local agency" means any agency with responsibilities limited to less than statewide jurisdiction, except the governing body of a city or town;

(vi) "Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party;

(vii) "Person" means any individual, partnership, corporation, association, municipality, governmental subdivision or public or private organization of any character other than an agency;

(viii) "Registrar of rules" for state agency rules means the secretary of state. "Registrar of rules" for local agency rules means the county clerk of the county in which the rule is to be effective;
(ix) "Rule" means each agency statement of general applicability that implements, interprets and prescribes law, policy or ordinances of cities and towns, or describes the organization, procedures, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include:
(A) Statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public; or
(B) Rulings issued pursuant to W.S. 16-3-106; or
(C) Intra-agency memoranda; or
(D) Agency decisions and findings in contested cases; or
(E) Rules concerning the use of public roads or facilities which are indicated to the public by means of signs and signals; [or]
(F) Ordinances of cities and towns; [or]
(G) Designations under W.S. 9-2-1022(h)(i).
(x) "State agency" means any agency with statewide responsibilities;
(xi) "This act" means W.S. 16-3-101 through 16-3-115.

b. §16-3-102. General rulemaking requirements; assistance of attorney general

(a) In addition to other rulemaking requirements imposed by law, each agency shall:
(i) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available in connection with contested cases;
(ii) Make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted or used by the agency in the discharge of its functions;
(iii) Make available for public inspection all final orders, decisions and opinions.
(b) No agency rule, order or decision is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been filed with the registrar of rules and made available for public inspection as required by this act. This subsection does not apply to orders or decisions in favor of any person or party with actual knowledge of the rule, order or decision.
(c) In formulating rules of practice as required by this section, each agency may request the assistance of the attorney general and upon request the attorney general shall assist the agency or agencies in the preparation of rules of practice.

c. §16-3-103. Adoption, amendment and repeal of rules; notice; hearing; emergency rules; proceedings to contest; review and approval by governor

(a) Prior to an agency's adoption, amendment or repeal of all rules other than interpretative rules or statements of general policy, the agency shall:

(i) Give at least forty-five (45) days notice of its intended action. Notice shall be mailed to all persons making timely requests of the agency for advanced notice of its rulemaking proceedings and to the attorney general, the secretary of state's office as registrar of rules, and the legislative service office if a state agency. The agency shall submit a copy of the proposed rules, in a format conforming to any requirements prescribed pursuant to subsection (f) of this section, with the notice given to the legislative service office. The notice shall include:
(A) The time when, the place where and the manner in which interested persons may present their views on the intended action;
(B) A statement of the terms and substance of the proposed rule or a description of the subjects and issues involved;
(C) If an amendment or a repeal, the citation to the agency rule to be amended or repealed;
(D) If new rules, a statement that they are new rules and a citation of the statute which authorizes adoption of the rules;
(E) The place where an interested person may obtain a copy of the proposed rules in a format conforming to any requirements prescribed pursuant to subsection (f) of this section; and
(F) If the agency asserts that all or a portion of a rule is proposed to be adopted, amended or repealed in order for the state to comply with federal law or regulatory requirements:
(I) A statement that the adoption, amendment or repeal of the rule is required by federal law or regulation together with citations to the applicable federal law or regulation; and
(II) A statement whether the proposed rule change meets minimum federal requirements or whether the proposed rule change exceeds minimum federal requirements.
(G) A statement whether the proposed rule change meets minimum substantive state statutory requirements or whether the proposed rule change exceeds minimum substantive state statutory requirements. If the rule change exceeds minimum substantive state statutory requirements, the agency shall include a statement explaining the reason why the rule exceeds minimum substantive statutory requirements.
(ii) Afford all interested persons reasonable opportunity to submit data, views or arguments, orally or in writing, provided:
(A) In the case of substantive rules, opportunity for oral hearing shall be granted if requested by twenty-five (25) persons, or by a governmental subdivision, or by an association having not less than twenty-five (25) members. No hearing under this subparagraph shall be conducted until at least forty-five (45) days after the later of:
(I) The date notice of intended action is given under paragraph (i) of this subsection; or
(II) The date notice is published if publication is required by subsection (e) of this section.

(B) The agency shall consider fully all written and oral submissions respecting the proposed rule;
(C) If prior to final adoption any person objects to the accuracy of a statement made by the agency pursuant to W.S. 16-3-103(a)(i)(F)(I) or (II), the agency shall:
(I) Provide the objecting person with a written response explaining and substantiating the agency's position by reference to federal law or regulations; and
(II) Include with the final rules submitted for review to the governor and legislative service office a concise statement of the objection and the agency's response.
(D) Upon adoption of the rule, the agency, if requested to do so by an interested person, either prior to adoption or within thirty (30) days thereafter, shall issue a concise statement of the principal reasons for overruling the consideration urged against its adoption.
(b) When an agency finds that an emergency requires the agency to proceed without notice or opportunity for hearing required by paragraph (a)(i) of this section, it may adopt emergency rules. An emergency rule is effective when filed. A state agency emergency rule shall bear the endorsement of the governor's concurrence on the finding of emergency before the registrar of rules accepts the rule for filing. The rule so adopted shall be effective for no longer than one hundred twenty (120) days but the adoption of an identical rule under W.S. 16-3-103(a)(i) is not precluded. A local agency may proceed with the emergency rule when notice of the emergency is filed with the local registrar of rules.
(c) No rule is valid unless submitted, filed and adopted in substantial compliance with this section. A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of this section must be commenced within two (2) years from the effective date of the rule.
(d) No state agency rule or any amendment, repeal, modification or revision of the rule may be filed with the registrar of rules unless the rule has been submitted to the governor for review and the governor has approved and signed the rule. Except in the case of emergency rules and rules adopted by the game and fish commission fixing general hunting or fishing regulations, season or bag limits or establishing hunting areas, the governor shall not approve any rule until the date of receipt of the legislative management council's recommendation under W.S. 28-9-106(a) or until forty (40) days after the rule is filed with the legislative service office pursuant to W.S. 28-9-103(b), whichever is sooner. During the process of approving rules, the governor may disapprove any portion of a rule not conforming to paragraphs (d)(i), (ii) or (iii) of this section by clearly indicating the portion of the rule disapproved and the basis for the disapproval. Only those portions of a rule approved by the governor shall be filed with the registrar of rules as provided by W.S. 16-3-104(a). Any portion of a rule disapproved by the governor shall be returned to the agency and shall be null and void and shall not be filed, implemented or enforced. The governor shall report his disapproval of any rule or portion thereof to the management council within fifteen (15) days. The governor shall not approve any rule or any amendment, repeal, modification or revision of the rule unless it:
(i) Is within the scope of the statutory authority delegated to the adopting agency;

(ii) Appears to be within the scope of the legislative purpose of the statutory authority; and
(iii) Has been adopted in compliance with the procedural requirements of this act. For the purposes of this subsection, an "agency" means any authority, bureau, board, commission, department, division, officer or employee of the state, excluding the state legislature and the judiciary.
(e) If a state agency created as a licensing or regulatory board or commission for any profession or occupation regulated under title 33 regularly publishes a newsletter, memorandum or other written or electronic communication which serves as a medium to provide information to members of the regulated profession or occupation, then in addition to the notice requirements of subsection (a) of this section, the agency shall publish within that medium the proposed rules in a format conforming to any requirements prescribed pursuant to subsection (f) of this section. If the agency determines publication in such manner is not practicable, it shall publish within the chosen medium at least once prior to taking final action to adopt, amend or repeal any rule notice of its intended rulemaking proceedings and make available the full text of all proposed changes in the format conforming to any requirements prescribed pursuant to subsection (f) of this section. This subsection shall not apply to emergency rules adopted pursuant to subsection (b) of this section.
(f) The state registrar of rules shall prescribe a format for state agencies to follow in preparing proposed amendments to existing rules which shall ensure that additions to and deletions from existing language are clearly indicated.
(g) Upon receipt of a notice of intended action from a state agency under paragraph (a)(i) of this section, the secretary of state's office shall maintain a file of these notices and make them available for public inspection during regular business hours. A notice shall remain in the file until the rules are adopted or until the agency determines not to take action to adopt the proposed rules. To the extent that resources enable the office to do so, the secretary of state's office shall make these notices available to the public electronically. The secretary of state may promulgate rules specifying the format of notices submitted by state agencies under this subsection. Compliance with this subsection shall not affect the validity of rules promulgated by state agencies.
(h) An agency may incorporate, by reference in its rules and without publishing the incorporated matter in full, all or any part of a code, standard, rule or regulation that has been adopted by an agency of the United States or of this state, another state or by a nationally recognized organization or association, provided:
(i) Incorporation of the full text in agency rules would be unduly cumbersome or expensive;
(ii) The reference in the rules of the incorporating agency fully identifies the incorporated matter by location, date and otherwise, and states that the rule does not include any later amendments or editions of the incorporated matter;

(iii) The agency, organization or association originally issuing the incorporated matter makes copies of it readily available to the public and the rules of the incorporating agency state where such copies are available;
(iv) The incorporating agency maintains and makes available for public inspection a copy of the incorporated matter and the rules of the incorporating agency state where copies of the incorporated matter are available at cost from the incorporating agency; and
(v) The incorporating agency otherwise complies with all procedural requirements under this act and the rules of the registrar of state agency rules governing the promulgation and filing of agency rules.

d. §16-3-104. Filing of copies of rules; permanent register; effective dates; manner of preparation; advice and assistance of attorney general

(a) Each agency shall file in the office of the registrar of rules a certified copy of each rule adopted by it as approved by the governor. State agencies shall file each rule within sixty (60) days of the date of agency action adopting the rule or it is not effective. Except for emergency rules and rules adopted by the game and fish commission fixing general hunting or fishing regulations, season or bag limits or establishing hunting areas, no state agency shall file a rule in the office of the registrar of rules sooner than forty (40) days after filing the rule with the legislative service office pursuant to W.S. 28-9-103(b). There shall be noted upon the rule a citation of the authority by which it or any part of it was adopted. The registrar of rules shall keep a permanent register of the rules open to public inspection. Not more than ten (10) days after a state agency files a copy of a rule in the office of the registrar of rules, the agency shall mail a notice that the rule has been filed to each person who was sent a notice under W.S. 16-3-103(a)(i). The notice shall contain a citation to the rule and the date it was filed. Failure to send the notice required under this subsection does not affect the effectiveness of the rule.
(b) Each rule and any amendment or repeal adopted after June 1, 1982 is effective after filing in accordance with subsection (a) of this section and W.S. 28-9-108 except:
(i) If a later date is required by statute or specified in the rule, the later date is the effective date;
(ii) Where the agency finds that an emergency exists and the finding is concurred in by the governor, a rule or amendment or repeal may be effective immediately upon filing with the registrar of rules and if a state agency, also with the legislative service office. Existing rules remain in effect unless amended or repealed, subject to this section or W.S. 28-9-105 or 28-9-106.
(c) Rules shall be prepared in the manner and form prescribed by the state registrar of rules. The registrar of rules may refuse to accept for filing any rule that does not conform to the prescribed form.
(d) The attorney general shall furnish advice and assistance to all state agencies in the preparation of their regulations, and in revising, codifying and editing existing or new regulations.

e. §16-3-105. Compilation and indexing of rules; charges for copies; authentication by registrar

(a) The registrar of state agency rules shall compile, index and publish the rules adopted by each agency and remaining in effect. The compilation shall be supplemented or revised at least once every two (2) years.

(b) The registrar of state agency rules may make a reasonable charge for any rules published except those furnished to state officers, agencies, members of the legislature or the legislative service office and others in the employment of the state and its political subdivisions requiring the rules in the performance of their duties. The registrar of local agency rules may make a reasonable charge for copies of any rule on file.

(c) The registrar's authenticated file stamp on a rule or publication of a rule shall raise a rebuttable presumption that the rule was adopted and filed in compliance with all requirements necessary to make it effective.

(d) The registrar of state agency rules shall annually compile and publish an index of all state agency rules filed with the registrar as of December 31 of each year. The index shall list the effective date of each set of rules or the effective date of each set of amendments to an agency's rules. Copies of the index shall be distributed as provided by W.S. 16-3-105(b).

f. §16-3-106. Petition for promulgation, amendment or repeal of rules.

Any interested person may petition an agency requesting the promulgation, amendment or repeal of any rule and may accompany his petition with relevant data, views and arguments. Each agency may prescribe by rule the form of the petition and the procedure for its submission, consideration and disposition. Upon submission of a petition, the agency as soon as practicable either shall deny the petition in writing (stating its reasons for the denials) or initiate rulemaking proceedings in accordance with W.S. 16-3-103. The action of the agency in denying a petition is final and not subject to review.

Omitted Wyo. Stat. §§16-3-107 to 16-3-113, no statute authorizes a contested case hearing with respect to the District's activities.

g. §16-3-114. Judicial review of agency actions; district courts.

(a) Subject to the requirement that administrative remedies be exhausted and in the absence of any statutory or common-law provision precluding or limiting judicial review, any person aggrieved or adversely affected in fact by a final decision of an agency in a contested case, or by other agency action or inaction, or any person affected in fact by a rule adopted by an agency, is entitled to judicial review in the district court for the county in which the administrative action or inaction was taken, or in which any real property affected by the administrative action or inaction is located, or if no real property is involved, in the district court for the county in which the party aggrieved or adversely affected by the administrative action or inaction

resides or has its principal place of business. The procedure to be followed in the proceeding before the district court shall be in accordance with rules heretofore or hereinafter adopted by the Wyoming supreme court.
(b) The supreme court's authority to adopt rules governing review from agencies to the district courts shall include authority to determine the content of the record upon review, the pleadings to be filed, the time and manner for filing the pleadings, records and other documents and the extent to which supplemental testimony and evidence may be taken or considered by the district court. The rules adopted by the supreme court under this provision may supersede existing statutory provisions.
(c) To the extent necessary to make a decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. In making the following determinations, the court shall review the whole record or those parts of it cited by a party and due account shall be taken of the rule of prejudicial error. The reviewing court shall:
(i) Compel agency action unlawfully withheld or unreasonably delayed; and
(ii) Hold unlawful and set aside agency action, findings and conclusions found to be:
(A) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law;
(B) Contrary to constitutional right, power, privilege or immunity;
(C) In excess of statutory jurisdiction, authority or limitations or lacking statutory right;
(D) Without observance of procedure required by law; or
(E) Unsupported by substantial evidence in a case reviewed on the record of an agency hearing provided by statute.

h. §16-3-115. Judicial review of agency actions; supreme court.
An aggrieved party may obtain a review of any final judgment of the district court under this act by appeal to the supreme court. The appeal shall be taken as in other civil cases.

37. WYOMING PUBLIC RECORDS ACT, Wyo. Stat. §§16-4-201-205

§16-4-201 Definitions.
(a) As used in this act:
(i) "Custodian" means the official custodian or any authorized person having personal custody and control of the public records in question;
(ii) "Official custodian" means any officer or employee of the state or any agency, institution or political subdivision thereof, who is responsible for the maintenance, care and keeping of public records, regardless of whether the records are in his actual personal custody and control;
(iii) "Person in interest" means the person who is the subject of a record or any representative designated by the person, except if the subject of the record is under

legal disability or is the dependent high school student of his parents, "person in interest" means the parent or duly appointed legal representative;
(iv) "Political subdivision" means every county, city and county, city, incorporated and unincorporated town, school district and special district within the state;
(v) "Public records" when not otherwise specified includes the original and copies of any paper, correspondence, form, book, photograph, photostat, film, microfilm, sound recording, map drawing or other document, regardless of physical form or characteristics that have been made by the state of Wyoming and any counties, municipalities and political subdivisions thereof and by any agencies of the state, counties, municipalities and political subdivisions thereof, or received by them in connection with the transaction of public business, except those privileged or confidential by law;
(vi) Public records shall be classified as follows:
(A) "Official public records" includes all original vouchers, receipts and other documents necessary to isolate and prove the validity of every transaction relating to the receipt, use and disposition of all public property and public income from all sources whatsoever; all agreements and contracts to which the state or any agency or subdivision thereof is a party; all fidelity, surety and performance bonds; all claims filed against the state or any agency or subdivision thereof; all records or documents required by law to be filed with or kept by any agency or the state of Wyoming; and all other documents or records determined by the records committee to be official public records;
(B) "Office files and memoranda" includes all records, correspondence, exhibits, books, booklets, drawings, maps, blank forms, or documents not defined and classified in subparagraph (A) of this subsection as official public records; all duplicate copies of official public records filed with any agency of the state or subdivision thereof; all documents and reports made for the internal administration of the office to which they pertain but not required by law to be filed or kept with the office; and all other documents or records, determined by the records committee to be office files and memoranda.
(vii) "Writings" means all books, papers, maps, photographs, cards, tapes, recordings or other documentary materials, regardless of physical form or characteristics;
(viii) "This act" means W.S. 16-4-201 through 16-4-205.

§16-4-202 Right of inspection; rules and regulations; unavailability.
(a) All public records shall be open for inspection by any person at reasonable times, except as provided in this act or as otherwise provided by law, but the official custodian of any public records may make rules and regulations with reference to the inspection of the records as is reasonably necessary for the protection of the records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office.
(b) If the public records requested are not in the custody or control of the person to whom application is made, the person shall forthwith notify the applicant of this fact.

(c) If the public records requested are in the custody and control of the person to whom application is made but are in active use or in storage, and therefore not available at the time an applicant asks to examine them, the custodian shall notify the applicant of this situation.
(d) If a public record exists primarily or solely in an electronic format, the custodian of the record shall so inform the requester. Electronic record inspection and copying shall be subject to the following:
(i) The reasonable costs of producing a copy of the public record shall be borne by the party making the request. The costs may include the cost of producing a copy of the public record and the cost of constructing the record, including the cost of programming and computer services;
(ii) An agency shall provide an electronic record in alternative formats unless doing so is impractical or impossible;
(iii) An agency shall not be required to compile data, extract data or create a new document to comply with an electronic record request if doing so would impair the agency's ability to discharge its duties;
(iv) An agency shall not be required to allow inspection or copying of a record in its electronic format if doing so would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained;
(v) Nothing in this section shall prohibit the on-line government commission from enacting any rules pursuant to its authority under W.S. 9-2-2501.

§16-4-203 Right of inspection; grounds for denial; access of news media; order permitting or restricting disclosure; exceptions.
(a) The custodian of any public records shall allow any person the right of inspection of the records or any portion thereof except on one (1) or more of the following grounds or as provided in subsection (b) or (d) of this section:
(i) The inspection would be contrary to any state statute;
(ii) The inspection would be contrary to any federal statute or regulation issued thereunder having the force and effect of law; or
(iii) The inspection is prohibited by rules promulgated by the supreme court or by the order of any court of record.
(b) The custodian may deny the right of inspection of the following records, unless otherwise provided by law, on the ground that disclosure to the applicant would be contrary to the public interest:
(i) Records of investigations conducted by, or of intelligence information or security procedures of, any sheriff, county attorney, city attorney, the attorney general, the state auditor, police department or any investigatory files compiled for any other law enforcement or prosecution purposes;
(ii) Test questions, scoring keys and other examination data pertaining to administration of a licensing examination and examination for employment or academic examination. Written promotional examinations and the scores or results thereof shall be available for inspection, but not copying or reproduction, by the person in interest after the examination has been conducted and graded;

(iii) The specific details of bona fide research projects being conducted by a state institution;
(iv) Except as otherwise provided by Wyoming statutes or for the owner of the property, the contents of real estate appraisals made for the state or a political subdivision thereof, relative to the acquisition of property or any interest in property for public use, until such time as title of the property or property interest has passed to the state or political subdivision. The contents of the appraisal shall be available to the owner of the property or property interest at any time;
(v) Interagency or intraagency memoranda or letters which would not be available by law to a private party in litigation with the agency;
(vi) To the extent that the inspection would jeopardize the security of any structure owned, leased or operated by the state or any of its political subdivisions, facilitate the planning of a terrorist attack or endanger the life or physical safety of an individual, including:
(A) Vulnerability assessments, specific tactics, emergency procedures or security procedures contained in plans or procedures designed to prevent or respond to terrorist attacks or other security threats;
(B) Building plans, blueprints, schematic drawings, diagrams, operational manuals or other records that reveal the building's or structure's internal layout, specific location, life and safety and support systems, structural elements, surveillance techniques, alarms, security systems or technologies, operational and transportation plans or protocols, personnel deployments for airports and other mass transit facilities, bridges, tunnels, emergency response facilities or structures, buildings where hazardous materials are stored, arenas, stadiums and waste and water systems;
(C) Records of any other building or structure owned, leased or operated by the state or any of its political subdivisions that reveal the building's or structure's life and safety systems, surveillance techniques, alarm or security systems or technologies, operational and evacuation plans or protocols or personnel deployments; and
(D) Records prepared to prevent or respond to terrorist attacks or other security threats identifying or describing the name, location, pharmaceutical cache, contents, capacity, equipment, physical features, or capabilities of individual medical facilities, storage facilities or laboratories established, maintained, or regulated by the state or any of its political subdivisions.
(c) If the right of inspection of any record falling within any of the classifications listed in this section is allowed to any officer or employee of any newspaper, radio station, television station or other person or agency in the business of public dissemination of news or current events, it may be allowed to all news media.
(d) The custodian shall deny the right of inspection of the following records, unless otherwise provided by law:
(i) Medical, psychological and sociological data on individual persons, exclusive of coroners' autopsy reports;
(ii) Adoption records or welfare records on individual persons;

(iii) Personnel files except those files shall be available to the duly elected and appointed officials who supervise the work of the person in interest. Applications, performance ratings and scholastic achievement data shall be available only to the person in interest and to the duly elected and appointed officials who supervise his work. Employment contracts, working agreements or other documents setting forth the terms and conditions of employment of public officials and employees are not considered part of a personnel file and shall be available for public inspection;
(iv) Letters of reference;
(v) Trade secrets, privileged information and confidential commercial, financial, geological or geophysical data furnished by or obtained from any person;
(vi) Library, archives and museum material contributed by private persons, to the extent of any limitations placed thereon as conditions of the contributions;
(vii) Hospital records relating to medical administration, medical staff, personnel, medical care and other medical information, whether on individual persons or groups, or whether of a general or specific classification;
(viii) School district records containing information relating to the biography, family, physiology, religion, academic achievement and physical or mental ability of any student except to the person in interest or to the officials duly elected and appointed to supervise him;
(ix) Library circulation and registration records except as required for administration of the library or except as requested by a custodial parent or guardian to inspect the records of his minor child;
(x) Information obtained through a 911 emergency telephone system except to law enforcement personnel or public agencies for the purpose of conducting official business, to the person in interest, or pursuant to a court order;
(xi) Records or information compiled solely for purposes of investigating violations of, and enforcing, internal personnel rules or personnel policies the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and
(xii) Information regarding the design, elements and components, and location of state information technology security systems and physical security systems.
(e) If the custodian denies access to any public record, the applicant may request a written statement of the grounds for the denial. The statement shall cite the law or regulation under which access is denied and shall be furnished to the applicant.
(f) Any person denied the right to inspect any record covered by this act may apply to the district court of the district wherein the record is found for any order directing the custodian of the record to show cause why he should not permit the inspection of the record.
(g) If, in the opinion of the official custodian of any public record, disclosure of the contents of the record would do substantial injury to the public interest, notwithstanding the fact that the record might otherwise be available to public inspection, he may apply to the district court of the district in which the record is located for an order permitting him to restrict disclosure. After hearing, the court may issue an order upon a finding that disclosure would cause substantial injury to the public interest. The person seeking permission to examine the record shall have

notice of the hearing served upon him in the manner provided for service of process by the Wyoming Rules of Civil Procedure and has the right to appear and be heard.
(h) Notwithstanding any other provision of this section, the following applies to the Wyoming natural diversity database located at the University of Wyoming and any report prepared by the custodian from that database:
(i) The custodian may charge a reasonable fee for searching the database and preparing a report from that database information. The interpretation of the database in a report shall not contain recommendations for restrictions on any public or private land use;
(ii) The custodian shall allow the inspection of all records in the database at a level of spatial precision equal to the township, but at no more precise level;
(iii) Research reports prepared by the custodian funded completely from nonstate sources are subject to paragraph (b) (iii) of this section;
(iv) Any record contained in the database pertaining to private land shall not be released by the University of Wyoming without the prior written consent of the landowner. Nothing in this paragraph prohibits the release of any information which would otherwise be available from any other information source available to the public if the original source is cited.

§16-4-204 Right of inspection; copies, printouts or photographs; fees.
(a) In all cases in which a person has the right to inspect and copy any public records he may request that he be furnished copies, printouts or photographs for a reasonable fee to be set by the official custodian. Where fees for certified copies or other copies, printouts or photographs of the record are specifically prescribed by law, the specific fees shall apply. Nothing in this section shall be construed as authorizing a fee to be charged as a condition of making a public record available for inspection.
(b) If the custodian does not have the facilities for making copies, printouts or photographs of records which the applicant has the right to inspect, then the applicant shall be granted access to the records for the purpose of making copies, printouts or photographs. The copies, printouts or photographs shall be made while the records are in the possession, custody and control of the custodian thereof and are subject to the supervision of the custodian. When practical the copy work shall be made in the place where the records are kept, but if it is impractical to do so, the custodian may allow arrangements to be made for this purpose. If other facilities are necessary the cost of providing them shall be paid by the person desiring a copy, printout or photograph of the records. The official custodian may establish a reasonable schedule of time for making copies, printouts or photographs and may charge a reasonable fee for the services rendered by him or his deputy in supervising the copying, printing out or photographing as he may charge for furnishing copies under this section.
(c) After July 1, 2003, any fees or charges assessed by a custodian of a public record shall first be authorized by duly enacted or adopted statute, rule, resolution, ordinance, executive order or other like authority.

(d) All state agencies may adopt rules and regulations pursuant to the Wyoming Administrative Procedure Act establishing reasonable fees and charges that may be assessed for the costs and services set forth in this section.

§16-4-205 Penalty.
Any person who willfully and knowingly violates the provisions of this act is guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine not to exceed seven hundred fifty dollars ($750.00).

38. WYOMING OPEN MEETINGS ACT, Wyo. Stat. §§16-4-401-407

§16-4-401 Statement of purpose.
The agencies of Wyoming exist to conduct public business. Certain deliberations and actions shall be taken openly as provided in this act.

§16-4-402 Definitions.
(a) As used in this act:
(i) "Action" means the transaction of official business of an agency including a collective decision of a governing body, a collective commitment or promise by a governing body to make a positive or negative decision, or an actual vote by a governing body upon a motion, proposal, resolution, regulation, rule, order or ordinance;
(ii) "Agency" means any authority, bureau, board, commission, committee, or subagency of the state, a county, a municipality or other political subdivision which is created by or pursuant to the Wyoming constitution, statute or ordinance, other than the state legislature and the judiciary;
(iii) "Meeting" means an assembly of at least a quorum of the governing body of an agency which has been called by proper authority of the agency for the purpose of discussion, deliberation, presentation of information or taking action regarding public business;
(iv) "This act" means W.S. 16-4-401 through 16-4-407.

§16-4-403 Meetings to be open; participation by public; minutes.
(a) All meetings of the governing body of an agency are public meetings, open to the public at all times, except as otherwise provided. No action of a governing body of an agency shall be taken except during a public meeting following notice of the meeting in accordance with this act. Action taken at a meeting not in conformity with this act is null and void and not merely voidable.
(b) A member of the public is not required as a condition of attendance at any meeting to register his name, to supply information, to complete a questionnaire, or fulfill any other condition precedent to his attendance. A person seeking recognition at the meeting may be required to give his name and affiliation.
(c) Minutes of a meeting:

(i) Are required to be recorded but not published from meetings when no action is taken by the governing body;
(ii) Are not required to be recorded or published for day-to-day administrative activities of an agency.

§16-4-404 Types of meetings; notice; recess.
(a) In the absence of a statutory requirement, the governing body of an agency shall provide by ordinance, resolution, bylaws or rule for holding regular meetings unless the agency's normal business does not require regular meetings in which case the agency shall provide notice of its next meeting to any person who requests notice. A request for notice may be made for all future meetings of an agency.
(b) Special meetings may be called by the presiding officer of a governing body by giving notice of the meeting to each member of the governing body and to each newspaper of general circulation, radio or television station requesting the notice. The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at a special meeting.
(c) The governing body of an agency may recess any regular, special, or recessed regular or special meeting to a place and at a time specified in an order of recess. A copy of the order of recess shall be conspicuously posted on or near the door of the place where the meeting or recessed meeting was held.
(d) The governing body of an agency may hold an emergency meeting on matters of serious immediate concern to take temporary action without notice. Reasonable effort shall be made to offer public notice. All action taken at an emergency meeting is of a temporary nature and in order to become permanent shall be reconsidered and acted upon at an open public meeting within forty-eight (48) hours.
(e) Day-to-day administrative activities of an agency shall not be subject to the notice requirements of this section.

§16-4-405 Executive sessions.
(a) A governing body of an agency may hold executive sessions not open to the public:
(i) With the attorney general, county attorney, district attorney, city attorney, sheriff, chief of police or their respective deputies, or other officers of the law, on matters posing a threat to the security of public or private property, or a threat to the public's right of access;
(ii) To consider the appointment, employment, right to practice or dismissal of a public officer, professional person or employee, or to hear complaints or charges brought against an employee, professional person or officer, unless the employee, professional person or officer requests a public hearing. The governing body may exclude from any public or private hearing during the examination of a witness, any or all other witnesses in the matter being investigated. Following the hearing or executive session, the governing body may deliberate on its decision in executive sessions;

(iii) On matters concerning litigation to which the governing body is a party or proposed litigation to which the governing body may be a party;
(iv) On matters of national security;
(v) When the agency is a licensing agency while preparing, administering or grading examinations;
(vi) When considering and acting upon the determination of the term, parole or release of an individual from a correctional or penal institution;
(vii) To consider the selection of a site or the purchase of real estate when the publicity regarding the consideration would cause a likelihood of an increase in price;
(viii) To consider acceptance of gifts, donations and bequests which the donor has requested in writing be kept confidential;
(ix) To consider or receive any information classified as confidential by law;
(x) To consider accepting or tendering offers concerning wages, salaries, benefits and terms of employment during all negotiations;
(xi) To consider suspensions, expulsions or other disciplinary action in connection with any student as provided by law.

§16-4-406 Disruption of public meetings.
If any public meeting is willfully disrupted by a person or group of persons so as to render the orderly conduct of the meeting unfeasible, and order cannot be restored by the removal of the person or persons who are willfully interrupting the meeting, the governing body of an agency may order the removal of the person or group from the meeting room and continue in session, or may recess the meeting and reconvene at another location. Only matters appearing on the agenda may be acted upon in a meeting recessed to another location. A governing body of an agency shall establish procedures for readmitting an individual or individuals not responsible for disturbing the conduct of a meeting. Duly accredited members of the press or other news media except those who participated in a disturbance shall be allowed to attend any meeting permitted by this section.

§16-4-407 Conflict of law.
If the provisions of this act conflict with any other statute, the provisions of this act shall control.

39. WYOMING COUNTY PLANNING AND ZONING, Wyo. Stat. §§18-5-101 to 18-5-208

a. §18-5-208. Coordination of planning efforts with federal agencies

The board of county commissioners of a county which has officially adopted a comprehensive plan pursuant to W.S. 18-5-202(b) may participate in efforts to coordinate the plan with federal regional forest or other resource management plans as provided in the Federal Land Policy and Management Act of 1976 and federal regulations adopted pursuant to that act, including, but not limited to, Title 36, of the

Code of Federal Regulations, part 219.7 and Title 43, of the Code of Federal Regulations, part 1610.3.

40. WYOMING GAME AND FISH LAWS, §23-1-101. Definitions of wildlife

(a) As used in this act:

(i) "Big game animal" means antelope, bighorn sheep, deer, elk, moose or mountain goat;

(ii) "Exotic species" means any wild animals, including amphibians, reptiles, mollusks, crustaceans or birds not found in a wild, free or unconfined status in Wyoming;

(iii) "Furbearing animal" means badger, beaver, bobcat, marten, mink, muskrat or weasel;

(iv) "Game bird" means grouse, partridge, pheasant, ptarmigan, quail, wild turkey and migratory game birds;

(v) "Game fish" means bass, catfish, crappie, grayling, ling, northern pike, perch, salmon, sauger, sunfish, trout, walleye or whitefish;

(vi) "Migratory game bird" means all migratory game birds defined and protected under federal law;

(vii) "Predacious bird" means English sparrow and starling;

(viii) "Predatory animal" means:

(A) Coyote, jackrabbit, porcupine, raccoon, red fox, skunk or stray cat; and

(B) Until the date gray wolves are removed from the list of experimental nonessential population, endangered species or threatened species in Wyoming as provided by W.S. 23-1-108, "predatory animal" includes wolves. After that date, "predatory animal" shall include any gray wolf not within an area of the state in which the gray wolf is:

(I) Designated as a trophy game animal under subdivision (xii)(B)(I) of this subsection;

(II) Classified as a trophy game animal by the commission pursuant to W.S. 23-1-304(b)(i)(A).

(ix) "Protected animal" means black-footed ferret, fisher, lynx, otter, pika or wolverine;

(x) "Protected bird" means migratory birds as defined and protected under federal law;

(xi) "Small game animal" means cottontail rabbit or snowshoe hare, and fox, grey and red squirrels;

(xii) "Trophy game animal" means:

(A) Black bear, grizzly bear or mountain lion; and

(B) From and after the date gray wolves are removed from the list of experimental nonessential population, endangered species or threatened species in Wyoming as provided by W.S. 23-1-108:

(I) "Trophy game animal" shall include any gray wolf within those tracts of land within the boundaries of Wyoming designated as Yellowstone National Park, Grand Teton National Park, the John D. Rockefeller, Jr. Memorial Parkway, and those

federally designated wilderness areas contiguous to these national parks and this parkway as defined by the United States congress as of January 1, 2003; and
(II) "Trophy game animal" shall include any gray wolf within any area of the state where gray wolves are classified as trophy game animals by the commission pursuant to W.S. 23-1-304(b)(i)(A).
(xiii) "Wildlife" means all wild mammals, birds, fish, amphibians, reptiles, crustaceans and mollusks, and wild bison designated by the Wyoming game and fish commission and the Wyoming livestock board within Wyoming.

41. ESTABLISHMENT, VACATION OR ALTERATION OF COUNTY HIGHWAYS, Wyo. Stat. §§24-3-101 to 24-3-206 (Selected Sections)

a. §24-3-101. Resolution by county commissioners; petition of county electors; alteration authority specified

(a) The board of county commissioners of any county, may, on its own motion by resolution duly adopted, where it deems the public interest so requires, initiate the procedure for the establishment, vacation or alteration of a county highway, as the case may be, by setting forth in such resolution the point of commencement, the course and the point of termination of said road to be established, altered or vacated, as the case may be, and thereafter following out the provisions of article 2, chapter 52, Wyoming Revised Statutes, 1931, not inconsistent therewith.
(b) (i) Any person desiring the establishment, vacation or alteration of a county highway shall file in the office of the county clerk of the proper county, a petition signed by five (5) or more electors of the county residing within twenty-five (25) miles of the road proposed to be established, altered, or vacated, in substance as follows: To the Board of County Commissioners of .... County. The undersigned ask that a county highway, commencing at ___and running thence .... and terminating at .... be established (altered or vacated as the case may be).
(ii) With said petition shall be filed a list containing the names and also the known post office address of each person owning or having an interest in any land over which the proposed establishment, vacation or alteration of a county highway is to be made.
(c) In altering any county highway under this article or any other road dedicated by recorded plat as a public road, a board of county commissioners may change the designation of any road to a private road. If a board alters any road, it shall reserve the access rights of the area landowners and permit governmental agencies to retain access to that road for performing essential public services. It may also designate a nongovernmental entity to be responsible for the maintenance of any road altered pursuant to this section.

b. §24-3-201. Purpose of procedure.

The legislature finds that due to inaccurate and inconsistent records, there exist roads which are seldom used, not maintained and are not identified as or believed by the public to be county roads but are, in fact, county roads. Recognizing the

numerous difficulties resulting from the existence of such county roads, the legislature finds it in the best interest of the public to create a procedure to identify county roads, thereby altering and vacating these abandoned or unnecessary county roads without survey.

c. *Yeager v. Forbes,* 78 P.3d 241 (Wyo. 2003)

The Wyoming Supreme Court held that a trail remained a private road because it had not been recognized by the county. The court held that while R.S. 2477 roads could originally be established by construction or by the user, after 1919 when the Wyoming legislature adopted the highway statute, it became the exclusive means by which roads could become public roads in Wyoming.

d. *Sheridan County v. Spiro*, 697 P.2d 290 (Wyo. 1985)

The Wyoming Supreme Court affirmed county action to keep a road public, in the face of landowners who wanted the road declared private. The court held that public roads remain public until the county follows procedures to vacate or abandon the road.

42. WYOMING ENVIRONMENTAL QUALITY ACT, Title 35, Chapter 11 (Selected Sections)

a. General Provisions, Wyo. Stat. §§35-11-101 -103

i. §35-11-101. Short title.

This act shall be known and may be cited as the "Wyoming Environmental Quality Act".

ii. §35-11-102. Policy and purpose.

Whereas pollution of the air, water and land of this state will imperil public health and welfare, create public or private nuisances, be harmful to wildlife, fish and aquatic life, and impair domestic, agricultural, industrial, recreational and other beneficial uses; it is hereby declared to be the policy and purpose of this act to enable the state to prevent, reduce and eliminate pollution; to preserve, and enhance the air, water and reclaim the land of Wyoming; to plan the development, use, reclamation, preservation and enhancement of the air, land and water resources of the state; to preserve and exercise the primary responsibilities and rights of the state of Wyoming; to retain for the state the control over its air, land and water and to secure cooperation between agencies of the state, agencies of other states, interstate agencies, and the federal government in carrying out these objectives.

iii. §35-11-103. Definitions.

(a) For the purpose of this act, unless the context otherwise requires:
(i) "Department" means the department of environmental quality established by this act;
(ii) "Council" means the environmental quality council established by this act;
(iii) "Director" means the director of the department of environmental quality;
(iv) "Board" means one (1) or more of the advisory boards in each division of air, land, or water quality;
(v) "Administrator" means the administrator of each division of the department;
(vi) "Person" means an individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, municipality or any other political subdivision of the state, or any interstate body or any other legal entity;
(vii) "Aggrieved party" means any person named or admitted as a party or properly seeking or entitled as of right to be admitted as a party to any proceeding under this act because of damages that person may sustain or be claiming because of his unique position in any proceeding held under this act;
(viii) "Interstate agency" means an agency of two (2) or more states established by or pursuant to an agreement or compact approved by the United States Congress or any other agency of two (2) or more states, having substantial powers or duties pertaining to the control of air, land or water pollution;
(ix) "Municipality" means a city, town, county, district, association or other public body;
(x) "Nonpoint source" means any source of pollution other than a point source. For purposes of W.S. 16-1-201 through 16-1-207 only, nonpoint source includes leaking underground storage tanks as defined by W.S. 35-11-1415(a)(ix) and aboveground storage tanks as defined by W.S. 35-11-1415(a)(xi);
(xi) "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged;
(xii) The singular includes the plural, the plural the singular, and the masculine and feminine or neuter, when consistent with the intent of this act and necessary to effect its purpose;
(xiii) "This act" means W.S. 35-11-101 through 35-11-403, 35-11-405, 35-11-406, 35-11-408 through 35-11-1106, 35-11-1414 through 35-11-1428, 35-11-1601 through 35-11-1613, 35-11-1701 and 35-11-1801 through 35-11-1803.
(b) Specific definitions applying to air quality:
(i) "Air contaminant" means odorous material, dust, fumes, mist, smoke, other particulate matter, vapor, gas or any combination of the foregoing, but shall not include steam or water vapor;
(ii) "Air pollution" means the presence in the outdoor atmosphere of one (1) or more air contaminants in such quantities and duration which may be injurious to human health or welfare, animal or plant life, or property, or unreasonably interferes with the enjoyment of life or property;

(iii) "Clean Air Act" means the federal Clean Air Act of 1977, as amended by P.L. 101-549;
(iv) "Emission" means a release into the outdoor atmosphere of air contaminants;
(v) "Operating permit program" means the permitting program authorized by W.S. 35-11-203 through 35-11-212 implementing a state plan pursuant to the 1990 amendments to the Clean Air Act;
(vi) "Stationary source" means any building, structure, facility or installation which emits or may emit any air contaminant.
(c) Specific definitions applying to water quality:
(i) "Pollution" means contamination or other alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity or odor of the waters or any discharge of any acid or toxic material, chemical or chemical compound, whether it be liquid, gaseous, solid, radioactive or other substance, including wastes, into any waters of the state which creates a nuisance or renders any waters harmful, detrimental or injurious to public health, safety or welfare, to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses, or to livestock, wildlife or aquatic life, or which degrades the water for its intended use, or adversely affects the environment. This term does not mean water, gas or other material which is injected into a well to facilitate production of oil, or gas or water, derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the state, and if the state determines that such injection or disposal well will not result in the degradation of ground or surface or water resources;
(ii) "Wastes" means sewage, industrial waste and all other liquid, gaseous, solid, radioactive, or other substances which may pollute any waters of the state;
(iii) "Sewerage system" means pipelines, conduits, storm sewers, pumping stations, force mains, and all other constructions, devices, appurtenances and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal;
(iv) "Treatment works" means any plant or other works used for the purpose of treating, stabilizing or holding wastes;
(v) "Disposal system" means a system for disposing of wastes, either by surface or underground methods, including sewerage systems, treatment works, disposal wells, and absorption fields;
(vi) "Waters of the state" means all surface and groundwater, including waters associated with wetlands, within Wyoming;
(vii) "Discharge" means any addition of any pollution or wastes to any waters of the state;
(viii) "Public water supply" means a system for the provision to the public of water for human consumption through pipes or constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals. Public water supply shall include:
(A) Any collection, treatment, storage and distribution facility under control of the operator of the facility and used primarily in connection with the system; and

(B) Any collection or pretreatment storage facilities not under the control of the operator which are used primarily in connection with the system.
(ix) "Small wastewater system" means any sewerage system, disposal system or treatment works having simple hydrologic and engineering needs which is intended for wastes originating from a single residential unit serving no more than four (4) families or which distributes two thousand (2,000) gallons or less of domestic sewage per day;
(x) "Wetlands" means those areas in Wyoming having all three (3) essential characteristics:
(A) Hydrophytic vegetation;
(B) Hydric soils; and
(C) Wetland hydrology.
(xi) "Compensatory mitigation" means replacement, substitution or enhancement of ecological functions and wetland values to offset anticipated losses of those values caused by filling, draining or otherwise damaging a wetland;
(xii) "Ecological function" means the ability of an area to support vegetation and fish and wildlife populations, recharge aquifers, stabilize base flows, attenuate flooding, trap sediment and remove or transform nutrients and other pollutants;
(xiii) "Mitigation" means all actions to avoid, minimize, restore and compensate for ecological functions or wetland values lost;
(xiv) "Natural wetlands" means those wetlands that occur independently of human manipulation of the landscape;
(xv) "Man-made wetlands" means those wetlands that are created intentionally or occur incidental to human activities, and includes any enhancement made to an existing wetland which increases its function or value;
(xvi) "Wetland value" means those socially significant attributes of wetlands such as uniqueness, heritage, recreation, aesthetics and a variety of economic values;
(xvii) "Community water system" means a public water supply that has at least fifteen (15) service connections used year-round by residents or that regularly provides water to at least twenty-five (25) residents year-round, including, but not limited to, municipalities and water districts;
(xviii) "Nontransient noncommunity water system" means a public water supply which is not a community water system and which regularly provides service to at least twenty-five (25) of the same persons for more than six (6) months of the year where those persons are not full-time residents, including, but not limited to, schools, factories and office buildings;
(xix) "Credible data" means scientifically valid chemical, physical and biological monitoring data collected under an accepted sampling and analysis plan, including quality control, quality assurance procedures and available historical data.
(d) Specific definitions applying to solid waste management:
(i) "Solid waste" means garbage, and other discarded solid materials, materials, including solid waste materials resulting from industrial, commercial, and agricultural operations, and from community activities, but, unless disposed of at a solid waste management facility, does not include:

(A) Solids or dissolved material in domestic sewerage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flows or other common water pollutants;
(B) Liquids, solids, sludges or dissolved constituents which are collected or separated in process units for recycling, recovery or reuse including the recovery of energy, within a continuous or batch manufacturing or refining process; or
(C) Agricultural materials which are recycled in the production of agricultural commodities.
(ii) "Solid waste management facility" means any facility for the transfer, treatment, processing, storage or disposal of solid waste, but does not include:
(A) Lands or facilities subject to the permitting requirements of article 3 of this act;
(B) Facilities which would have been subject to the permitting requirements of article 3 of this act if constructed after July 1, 1973;
(C) Any facility described under W.S. 30-5-104(d)(vi)(A) or (B);
(D) Lands and facilities subject to the permitting requirements of article 2, 3 or 4 of this act used solely for the management of wastes generated within the boundary of the permitted facility or mine operation by the facility or mine owner or operator or from a mine mouth electric power plant or coal drier;
(E) Lands and facilities owned by a person engaged in farming or ranching and used to dispose of solid waste generated incidental to his farming and ranching operations; or
(F) Transport vehicles, storage containers and treatment of the waste in containers.
(iii) "Cost effective" means the selection of alternative responses taking into account total short-term and long-term costs of those responses including the costs of operation and maintenance for the entire activity, the presence of naturally occurring hazardous or toxic substances, current or potential uses of the natural resources impacted;
(iv) "Commercial solid waste management facility" means any facility receiving a monthly average greater than five hundred (500) short tons per day of unprocessed household refuse or mixed household and industrial refuse for management or disposal;
(v) "Commercial radioactive waste management facility" means any facility used or intended to be used to receive for disposal, storage, reprocessing or treatment, any amount of radioactive wastes which are generated by any person other than the facility owner or operator, or which are generated at a location other than the location of the facility, but does not include:
(A) Uranium mill tailings facilities licensed by the United States Nuclear Regulatory Commission which receive in situ leaching uranium mining by-product materials or are specifically authorized by the department on a limited basis to receive small quantities of wastes defined in section 11e(2) of the Atomic Energy Act of 1954 (42 U.S.C. § 2014(e)(2)) which were generated by persons other than the facility owner or operator or which were generated at a location other than the location of the facility, or both; and

(B) Facilities used for the temporary storage of radioactive wastes generated by the facility owner or operator, including facilities for the temporary storage of naturally occurring radioactive materials generated during the course of oil or natural gas exploration or production, provided the storage of radioactive wastes is in compliance with applicable state and federal law; and
(C) Permitted solid waste disposal facilities which are authorized by the director to receive small quantities of radioactive wastes containing only naturally occurring radioactive materials, or which receive radioactive materials that have been exempted from regulation under section 10 of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. § 2021i), or both if found by the department not to threaten human health and the environment; and
(D) Federally owned facilities used exclusively for the storage, reprocessing or treatment of spent reactor fuel;
(E) Facilities licensed by the United States nuclear regulatory commission whose sole purpose is to receive in situ leaching uranium mining by-product materials as defined in section 11(e)(2) of the Atomic Energy Act of 1954 (42 U.S.C. § 2014(e)(2)).
(vi) "Long term remediation and monitoring trust" means a trust account established within the trust and agency fund to provide funding for perpetual monitoring, maintenance and remediation of any commercial radioactive waste management facility. The adequacy of the initial and subsequent funding, including the quality of any bond or letter of credit, shall be determined jointly by the director, the insurance commissioner and the attorney general. Expenditures from the trust shall be only for commercial radioactive waste regulation, monitoring and remediation;
(vii) "Hazardous waste" means any liquid, solid, semisolid or contained gaseous waste or combination of those wastes which because of quantity, concentration or physical, chemical or infectious characteristics may cause or significantly contribute to detrimental human health effects, or pose a substantial present or potential hazard to human health or the environment. Only those materials listed as hazardous wastes by the United States environmental protection agency's hazardous waste management regulations or which exhibit a hazardous waste characteristic specified by the environmental protection agency shall be considered hazardous wastes. Hazardous waste does not include those hazardous wastes exempted under the Resource Conservation and Recovery Act, P.L. 94-580, or under the United States environmental protection agency's hazardous waste management regulations for the period that they remain exempted by congressional or administrative action.
(e) Specific definitions for land quality:
(i) "Reclamation" means the process of reclaiming an area of land affected by mining to use for grazing, agricultural, recreational, wildlife purposes, or any other purpose of equal or greater value. The process may require contouring, terracing, grading, resoiling, revegetation, compaction and stabilization, settling ponds, water impoundments, diversion ditches, and other water treatment facilities in order to eliminate water diminution to the extent that existing water sources are adversely

affected, pollution, soil and wind erosion, or flooding resulting from mining or any other activity to accomplish the reclamation of the land affected to a useful purpose;
(ii) "Minerals" means coal, clay, stone, sand, gravel, bentonite, scoria, rock, pumice, limestone, ballast rock, uranium, gypsum, feldspar, copper ore, iron ore, oil shale, trona, and any other material removed from the earth for reuse or further processing;
(iii) "Contouring" means grading or backfilling and grading the land affected and reclaiming it to the proposed future use with adequate provisions for drainage. Depressions to accumulate water are not allowed except if approved as part of the reclamation plan;
(iv) "Overburden" means all of the earth and other materials which lie above the mineral deposit and also means such earth and other materials disturbed from their natural state in the process of mining, or mining from exposed natural deposits;
(v) "Underground mining" means the mining of minerals by man-made excavation underneath the surface of the earth;
(vi) "Pit" means a tract of land from which overburden has been or is being removed for the purpose of surface mining or mining from an exposed natural deposit;
(vii) "Adjacent lands" means all lands within one-half mile of the proposed permit area;
(viii) "Operation" means all of the activities, equipment, premises, facilities, structures, roads, rights-of-way, waste and refuse areas excluding uranium mill tailings and mill facilities, within the Nuclear Regulatory Commission license area, storage and processing areas, and shipping areas used in the process of excavating or removing overburden and minerals from the affected land or for removing overburden for the purpose of determining the location, quality or quantity of a natural mineral deposit or for the reclamation of affected lands;
(ix) "Operator" means any person, as defined in this act, engaged in mining, either as a principal who is or becomes the owner of minerals as a result of mining, or who acts as an agent or independent contractor on behalf of such principal in the conduct of mining operations;
(x) "Surface mining" means the mining of minerals by removing the overburden lying above natural deposits thereof and mining directly from the natural deposits thereby exposed, including strip, open pit, dredging, quarrying, surface leaching, and related activities;
(xi) "Mining permit" means certification by the director that the affected land described may be mined for minerals by a licensed operator in compliance with an approved mining plan and reclamation plan. No mining may be commenced or conducted on land for which there is not in effect a valid mining permit. A mining permit shall remain valid and in force from the date of its issuance until the termination of all mining and reclamation operations, except as otherwise provided in this act;
(xii) "Spoil pile" means the overburden or any reject minerals as piled or deposited by surface or underground mining;

(xiii) "A license to mine for minerals" means the certification from the administrator that the licensee has the right to conduct mining operations on the subject lands in compliance with this act; for which a valid permit exists; that he has deposited a bond conditioned on his faithful fulfillment of the requirements thereof; and that upon investigation the administrator has determined that the licensed mining operation is within the purposes of this act;
(xiv) "Topsoil" means soil on the surface prior to mining that will support plant life;
(xv) "Exploration by dozing" means the removal of overburden by trenching with a bulldozer or other earth moving equipment to expose possible indications of mineralization;
(xvi) "Affected land" means the area of land from which overburden is removed, or upon which overburden, development waste rock or refuse is deposited, or both, including access roads, haul roads, mineral stockpiles, mill tailings excluding uranium mill tailings, and mill facilities, within the Nuclear Regulatory Commission license area, impoundment basins excluding uranium mill tailings impoundments, and all other lands whose natural state has been or will be disturbed as a result of the operations;
(xvii) "Refuse" means all waste material directly connected with mining including overburden, reject mineral or mill tailings excluding uranium mill tailings, which have passed through a processing plant prior to deposition on affected land;
(xviii) "Alluvial valley floors" means the unconsolidated stream laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation and windblown deposits;
(xix) "Prime farmland" shall have the same meaning as that previously prescribed by the United States secretary of agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface layer composition, susceptibility to flooding and erosion characteristics, and which historically have been used for intensive agricultural purposes, and as published in the federal register; and
(xx) "Surface coal mining operation" means:
(A) Activities conducted on the surface of lands in connection with a surface coal mine or with the surface impacts incident to an underground coal mine as provided in Section 516 of P.L. 95-87 [30 U.S.C. § 1266]. These activities include excavation for the purpose of obtaining coal including common methods as contour, strip, auger, mountaintop removal, box cut, open pit and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating or other processing or preparation, and the loading of coal; and
(B) The areas upon which these activities occur or where these activities disturb the land surface. These areas shall also include any adjacent land the use of which is incidental to any of these activities, all lands affected by the construction of new

roads or the improvement or use of existing roads to gain access to the site of these activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entry ways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities or other property or materials on the surface, resulting from or incident to these activities.

(xxi) "Steep slope surface coal mining operation" means a surface coal mining operation where mining occurs along the contour of a steep slope generally exceeding twenty (20) degrees and which, because of the steepness of the terrain, requires special spoil handling procedures;

(xxii) "Complete application" under W.S. 35-11-406(e) means that the application contains all the essential and necessary elements and is acceptable for further review for substance and compliance with the provisions of this chapter;

(xxiii) "Interim mine stabilization" means a temporary cessation of mining operation within the terms of a valid permit to mine;

(xxiv) "Deficiency" means an omission or lack of sufficient information serious enough to preclude correction or compliance by stipulation in the approved permit to be issued by the director;

(xxv) "Imminent or continuous threat" means, with respect to the coal mine subsidence mitigation program, physical data which shows an immediate significant threat of damage from mine subsidence or insurance claim records which support progressive and continuous mine subsidence loss damage to structure;

(xxvi) "Fish and wildlife habitat" means land dedicated wholly or partially to the production, protection or management of species of fish or wildlife;

(xxvii) "Grazingland" includes rangelands and forestlands where the indigenous native vegetation is actively managed for grazing, browsing, occasional hay production, and occasional use by wildlife;

(xxviii) Repealed by Laws 1994, ch. 87, § 2.

(xxix) Repealed by Laws 1994, ch. 87, § 2.

(xxx) Repealed by Laws 1994, ch. 87, § 2.

(f) Specific definitions applying to in situ mining are:

(i) "Best practicable technology" means a technology based process justifiable in terms of existing performance and achievability in relation to health and safety which minimizes, to the extent safe and practicable, disturbances and adverse impacts of the operation on human or animal life, fish, wildlife, plant life and related environmental values;

(ii) "Excursion" means any unwanted and unauthorized movement of recovery fluid out of the production zone as a result of in situ mining activities;

(iii) "Groundwater restoration" means the condition achieved when the quality of all groundwater affected by the injection of recovery fluids is returned to a quality of use equal to or better than, and consistent with the uses for which the water was suitable prior to the operation by employing the best practicable technology;

(iv) "In situ mining" means a method of in-place surface mining in which limited quantities of overburden are disturbed to install a conduit or well and the mineral is mined by injecting or recovering a liquid, solid, sludge or gas that causes the leaching, dissolution, gasification, liquefaction or extraction of the mineral. In situ mining does not include the primary or enhanced recovery of naturally occurring oil and gas or any related process regulated by the Wyoming oil and gas conservation commission;
(v) "Production zone" means the geologic interval into which recovery fluids are to be injected or extracted;
(vi) "Reclamation" includes groundwater restoration;
(vii) "Recovery fluid" means any material which flows or moves, whether semi-solid, liquid, sludge, gas or other form or state, used to dissolve, leach, gasify or extract a mineral;
(viii) "Research and development testing" means conducting research and development activities to indicate mineability or workability of and develop reclamation techniques for an in situ operation.
(g) Specific definitions applying to voluntary remediation, real property remediation account and innocent owners:
(i) "Adjacent" means property contiguous to an eligible site, and contiguous or noncontiguous property onto or under which contaminants are known to have migrated from such site;
(ii) "Certificate of completion" means a certificate issued by the director stating that all remediation requirements for a site have been successfully implemented or satisfied. The certificate of completion shall incorporate any required institutional and engineering controls for future use of the site, which may include deed restrictions recorded by the site owner. A certificate of completion may be conditioned upon the duty to perform any continuing requirements specified in a remedy agreement;
(iii) "Contaminant" means any chemical, material, substance or waste:
(A) Which is regulated under any applicable federal, state or local law or regulation;
(B) Which is classified as hazardous or toxic under federal, state or local law or regulation; or
(C) To which exposure is regulated under federal, state or local law or regulation.
(iv) "Covenant not to sue" means a written pledge issued by the director stating that the state shall not sue the person or any subsequent owner concerning contaminants and liability addressed by a remedy agreement. A covenant not to sue may be conditioned upon the duty to perform any continuing requirements specified in a remedy agreement;
(v) "Engineering controls" means measures, such as capping, containment, slurry walls, extraction wells or treatment methods that are capable of managing environmental and health risks by reducing contamination levels or limiting exposure pathways;

(vi) "Governmental entity" shall have the following meaning as determined by the location of an eligible site. For the purposes of this definition, city shall include both first class cities and towns:
(A) The city, for a site located entirely within the boundary of that city;
(B) Both the city and county, for a site located partially within that city or within the extraterritorial boundary of a city;
(C) The county, for a site located outside the boundary of a city and outside the extraterritorial boundary of the city; or
(D) The federal land management agency, for a site located on lands managed by that federal agency.
(vii) "Institutional controls" means restrictions on the use of a site, including deed notices, voluntary deed restrictions or other conditions, covenants or restrictions imposed by the property owner and filed with the county clerk, use control areas, and zoning regulations or restrictions;
(viii) "No further action letter" means a letter issued by the director stating that the department has determined that no further remediation is required on the site;
(ix) "Remediation" means all actions necessary to assess, test, investigate or characterize a site, and to clean up, remove, treat, or in any other way address any contaminants that are on, in or under a site or adjacent property to prevent, minimize or mitigate harm to human health or the environment;
(x) "Site" means a parcel of real property;
(xi) "Use control area" means an area designated by a governmental entity or entities for the purpose of controlling current and future property uses.

b. Article 2, Air Quality, Wyo. Stat. §§35-11-201-214 (selected sections)

i. §35-11-201. Discharge or emission of contaminants; restrictions.
No person shall cause, threaten or allow the discharge or emission of any air contaminant in any form so as to cause pollution which violates rules, regulations and standards adopted by the council.

ii. §35-11-202. Establishment of standards.
(a) Without limiting the authority of the administrator as set out in W.S. 35-11-110, he shall, after consultation with the advisory board, recommend to the director such ambient air standards or emission control requirements by rule or regulation, as may be necessary to prevent, abate, or control pollution. Such standards or requirements may be for the state as a whole or may vary from area to area, as may be appropriate to facilitate accomplishment of the purposes of this act, and in order to take account of varying local conditions.
(b) In recommending such standards or requirements the administrator shall:
(i) Consider all the facts and circumstances bearing upon the reasonableness of the emissions involved, including:
(A) The character and degree of injury to, or interference with the health and physical well being of the people, animals, wildlife and plant life;

(B) The social and economic value of the source of pollution;
(C) The priority of location in the area involved;
(D) The technical practicability and economic reasonableness of reducing or eliminating the pollution; and
(E) The social welfare and aesthetic value.
(ii) Grant such time as he shall find to be reasonable and necessary for owners and operators of air contaminant sources to comply with applicable standards or requirements;
(iii) Recommend to the director, after consultation with the advisory board, regulations to prevent construction, modification or operation of any source at any location where emissions from such source will prevent the attainment or maintenance of a state or national standard.

iii. §35-11-203. Sources subject to operating permit program.

(a) The following sources of air contaminants are subject to the provisions of W.S. 35-11-203 through 35-11-212:
(i) Any stationary source, or any group of stationary sources located within a contiguous area and under common control, that:
(A) Has the potential to emit one hundred (100) tons or more per year of any pollutant regulated under the Clean Air Act and is a major stationary source as defined in section 302 of the Clean Air Act;
(B) Has the potential to emit ten (10) tons per year of any single hazardous air pollutant or twenty-five (25) tons per year of any combination of hazardous air pollutants as defined by section 112 of the Clean Air Act. Emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or
(C) Is subject to the nonattainment area provisions of title I, part D, of the Clean Air Act.
(ii) Any other source of hazardous air pollutants, including an area source, which the environmental protection agency may designate pursuant to the provisions of section 112 of the Clean Air Act;
(iii) Any source subject to the new source performance standards promulgated by the environmental protection agency pursuant to section 111 of the Clean Air Act;
(iv) Any "affected source" subject to the acid rain provisions of title IV of the Clean Air Act as defined in section 501 of the Clean Air Act;
(v) Any source subject to preconstruction review permits pursuant to the prevention of significant deterioration regulations promulgated by the environmental protection agency pursuant to the Clean Air Act;
(vi) Any other stationary source that the environmental protection agency may designate by regulation pursuant to authority granted under the Clean Air Act.

(b) After the effective date of the operating permit program authorized under W.S. 35-11-203 through 35-11-212, it shall be unlawful for any person to violate any requirement of a permit issued under the operating permit program or to operate any source required to have a permit under this section, without having complied with the provisions of the operating permit program.
(c) The department shall exempt any nonmajor source from the obligation to obtain a permit under this section until the environmental protection agency requires such sources to obtain an operating permit in final regulations promulgated pursuant to title V of the Clean Air Act.

c. Water Quality, Wyo. Stat. §§35-11-301-307

i. §35-11-301. Prohibited acts.

(a) No person, except when authorized by a permit issued pursuant to the provisions of this act, shall:
(i) Cause, threaten or allow the discharge of any pollution or wastes into the waters of the state;
(ii) Alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state;
(iii) Construct, install, modify or operate any sewerage system, treatment works, disposal system or other facility, excluding uranium mill tailing facilities, capable of causing or contributing to pollution, except that no permit to operate shall be required for any publicly owned or controlled sewerage system, treatment works or disposal system;
(iv) Increase the quantity or strength of any discharge;
(v) Construct, install, modify or operate any public water supply or construct any subdivision water supply, except that no permit to operate shall be required for any publicly owned or controlled public water supply and a permit under this section shall not be required for subdivision water supplies consisting of individual wells serving individual lots of a subdivision.

ii. §35-11-302 Administrator's authority to recommend standards, rules, regulations or permits

(a) The administrator, after receiving public comment and after consultation with the advisory board, shall recommend to the director rules, regulations, standards and permit systems to promote the purposes of this act. Such rules, regulations, standards and permit systems shall prescribe:
(i)Water quality standards specifying the maximum short-term and long-term concentrations of pollution, the minimum permissible concentrations of dissolved oxygen and other matter, and the permissible temperatures of the waters of the state;
(ii) Effluent standards and limitations specifying the maximum amounts or concentrations of pollution and wastes which may be discharged into the waters of the state;
(iii) Standards for the issuance of permits for construction, installation, modification or operation of any public water supply and sewerage system, subdivision water

supply, treatment works, disposal system or other facility, capable of causing or contributing to pollution;
(iv) Standards for the definition of technical competency and the certification of operating personnel for community water systems and nontransient noncommunity water systems, sewerage systems, treatment works and disposal systems and for determining that the operation shall be under the supervision of certified personnel. Prior to recommending these standards to the director, the administrator shall consult with affected municipalities, water and sewer districts, counties and treatment operators;
(v) Standards for the issuance of permits as authorized pursuant to section 402(b) of the Federal Water Pollution Control Act [33 U.S.C. §§ 1342(b)] as amended in 1972, and as it may be hereafter amended;(vi) In recommending any standards, rules, regulations, or permits, the administrator and advisory board shall consider all the facts and circumstances bearing upon the reasonableness of the pollution involved including:
(A) The character and degree of injury to or interference with the health and well being of the people, animals, wildlife, aquatic life and plant life affected;
(B) The social and economic value of the source of pollution;
(C) The priority of location in the area involved;
(D) The technical practicability and economic reasonableness of reducing or eliminating the source of pollution; and
(E) The effect upon the environment.
(vii) Such reasonable time as may be necessary for owners and operators of pollution sources to comply with rules, regulations, standards or permits;
(viii) Financial assurance requirements for plugging, abandonment, post-closure monitoring and corrective actions, if required, for any underground injection facility for hazardous wastes as defined in Title 40 of the Code of Federal Regulations, Part 146, Subpart G;
(ix) Standards for housed facilities where swine are confined, fed and maintained for a total of forty-five (45) consecutive days or more in any twelve (12) month period and the feedlot or facility is designed to confine an equivalent of one thousand (1,000) or more animal units. If any county adopts a land use plan or zoning resolution which imposes stricter requirements than those found in subparagraph (C) of this paragraph, the county requirements shall prevail. These standards shall include:
(A) Financial assurance for accidents and closure requirements for facilities which contain treatment works;
(B) Waste and manure management plans to prevent pollution of waters of the state, to minimize odors for public health concerns, pathogens and vectors capable of transporting infectious diseases and to specify land application requirements;
(C) Setback requirements which will restrict the location and operation of structures housing swine and lagoons within:
(I) One (1) mile of an occupied dwelling without the written consent of the owner of the house;

(II) One (1) mile of a public or private school without the consent of the school's board of trustees or board of directors;
(III) One (1) mile of the boundaries of any incorporated municipality without the resolution and consent of the governing body of the municipality;
(IV) One-quarter (1/4) mile of a water well permitted for current domestic purposes without the written consent of the owner of the well;
(V) One-quarter (1/4) of a mile of a perennial stream unless it is demonstrated to the department that potential adverse impacts to the water quality of the stream can be avoided.
(D) Provisions for notice of intent to issue a permit and opportunity for public comment.
(x) Standards for the determination of capacity development capabilities to ensure that all new or modified community water systems and new or modified nontransient noncommunity water systems commencing operation after October 1, 1999, demonstrate capacity development capabilities and by October 1, 2001, develop a strategy to assist all community and noncommunity water systems in acquiring and maintaining capacity development by adopting procedures governing capacity development in compliance with section 1420 of the Safe Drinking Water Act (42 U.S.C. §§ 300g-9). The department shall have the authority to require new systems in noncompliance of capacity development capabilities to take steps to correct inadequacies or cease water system operations;
(xi) Standards for subdivision applications submitted to the department under W.S. 18-5-306. The administrator shall consult with county commissioners and the state engineer's office in developing standards to recommend to the director.
(b) The administrator, after receiving public comment and after consultation with the advisory board, shall recommend to the director rules, regulations and standards to promote the purposes of this act. The rules, regulations and standards shall prescribe:
(i) A schedule for the use of credible data in designating uses of surface water consistent with the requirements of the Federal Water Pollution Control Act (33 U.S.C. sections 1251 through 1387). The use of credible data shall include consideration of soils, geology, hydrology, geomorphology, climate, stream succession and human influence on the environment. The exception to the use of credible data may be in instances of ephemeral or intermittent water bodies where chemical or biological sampling is not practical or feasible;
(ii) The use of credible data in determining water body's attainment of designated uses. The exception to the use of credible data may be in instances where numeric standards are exceeded, or in ephemeral or intermittent water bodies where chemical or biological sampling is not practical or feasible.

iii. §35-11-303. Duties of the administrator of water quality division.

(a) In addition to other duties imposed by law, the administrator of the water quality division at the direction of the director:

(i) May conduct on site compliance inspections of all facilities and works during or following the completion of any construction, installation or modification for which a permit is issued under W.S. 35-11-301(a)(iii) or (v); and
(ii) Shall establish as necessary for the efficient enforcement of this act water quality districts within the state and provide for a field office to be located within the boundaries of each district created.

iv. §35-11-304. Administrator required to delegate certain management functions to local governmental entities

(a) To the extent requested by a municipality, water and sewer district or county, the administrator of the water quality division, with the approval of the director, shall delegate to municipalities, water and sewer districts or counties which apply the authority to enforce and administer within their boundaries the provisions of W.S. 35-11-301(a)(iii) and (v), including the authority to develop necessary rules, regulations, standards and permit systems and to review and approve construction plans, conduct inspections and issue permits. Any authority delegated under this section shall be subject to the following conditions:
(i) The delegation of authority under this section is limited to small wastewater facilities, publicly owned or controlled sewage collection and water distribution facilities and publicly owned or controlled nondischarging treatment works;
(ii) The delegation of authority under this section shall be by written agreement signed by the administrator and the local elected representative empowered to do so;
(iii) The local governmental entity has established rules, regulations and standards for the issuance of permits required under W.S. 35-11-301(a)(iii) and (v) which standards shall be at least as stringent as those promulgated by the state under W.S. 35-11-302(a)(iii);
(iv) The local governmental entity shall demonstrate to the administrator that all facilities will be approved by a registered professional engineer or city or county sanitarian for small wastewater facilities or other qualified individual approved by the water quality division administrator, and that it employs a properly certified waste treatment plant operator responsible for operation and maintenance of the treatment works in a manner at least as stringent as the department of environmental quality would require;
(v) The administrator shall periodically review the standards and administrative and enforcement programs of each local governmental entity receiving a delegation of authority under this section and may with the consent of the director revoke or temporarily suspend the delegation agreement entered into with any entity which has failed to perform its delegated duties or has otherwise violated the terms of its agreement of delegation.

35-11-305. Repealed by Laws 1985, ch. 141, § 1.

v. §35-11-306. Oil field waste disposal facilities; restriction

(a) In addition to any other requirement or restriction imposed under the Wyoming Environmental Quality Act, no person shall locate, construct or operate any commercial oil field waste disposal facility within one (1) mile of any:
(i) Occupied dwelling house without the written consent of the owner of the dwelling; or
(ii) Public or private school without the consent of the school's board of trustees or board of directors.
(b) Any person who knowingly locates, constructs or operates a commercial oil field waste disposal facility in violation of subsection (a) of this section is subject to the penalties provided by W.S. 35-11-901. The provisions of subsection (a) of this section relating to commercial oil field waste disposal facilities shall be enforced by the water quality division of the Wyoming department of environmental quality.
(c) As a condition of receiving a permit pursuant to W.S. 35-11-301, any person locating, constructing or operating any commercial oil field waste disposal facility shall post a bond as required by this section.
(d) The council, by rules and regulations, shall establish bonding or financial assurance requirements for commercial oil field waste disposal facilities to assure there are adequate sources of funds to provide for:
(i) Cost effective closure, post-closure inspection and maintenance, and environmental monitoring and control, including but not limited to:
(A) Removal and disposal of buildings, fences, roads and other facility developments, and reclamation of affected lands;
(B) Construction of any waste cover or containment system required as a condition of any facility permit;
(C) Removal and off-site treatment or disposal of any wastes that are being stored or treated;
(D) Decontamination, dismantling and removal of any waste storage, treatment or disposal equipment or vessels;
(E) Operating any environmental monitoring systems or pollution control systems that are required as a condition of any facility permit or by order of the director; and
(F) Conducting periodic post-closure inspections of cover systems, surface water diversion structures, monitor wells or systems, pollutant detection and control systems, and performing maintenance activities to correct deficiencies that are discovered.
(ii) The estimated costs of remedying or abating, in a cost effective manner, the violation or damages caused by the violation in the event of any discharge of pollution to the air, land or to waters of the state which is in violation of a permit, standard, rule or requirement established under the provisions of this act.
(e) The bond established under subsection (d)(i) of this section shall be available during the operating life of the commercial oil field waste disposal facility to abate or remedy any violation of a permit, standard, rule or requirement established under the provisions of this act.
(f) The amount of any bond or financial assurance requirement shall be established by the director in accordance with procedures contained in rules and regulations of

the council, but shall not be less than an amount sufficient to satisfy the purposes specified in subsection (d) of this section.

(g) The council shall provide rules for the establishment of a self-bonding program to be used if such a program will provide protection consistent with the objectives and purposes of article 3 of the act. In any such program, rules of the council shall provide for a timely reappraisal of pledged assets, require evidence of a suitable agent to receive service of process, assure that pledged assets are not already pledged for other projects, provide that pledged assets reside continuously in the state of Wyoming and provide for determination of the suitability of pledged assets.

(h) In lieu of a bond, the facility operator may deposit federally insured certificates of deposit payable to the Wyoming department of environmental quality, cash or government securities, or all three (3).

(j) Any bond may be cancelled by the surety only after ninety (90) days written notice to the director, and upon receipt of the director's written consent, which may be granted only when the requirements of the bond have been fulfilled.

(k) If the license to do business in Wyoming of any surety upon a bond filed pursuant to this act is suspended or revoked by any state authority then the facility operator, within thirty (30) days after receiving notice thereof, shall substitute a good and sufficient corporate surety licensed to do business in the state. Upon failure of the facility operator to make substitution of surety within a reasonable period of time, not to exceed sixty (60) days, the director shall suspend the facility permit to accept oil field wastes until proper substitution has been made.

(m) Bond forfeiture proceedings shall occur only after the department provides notice to the operator and surety pursuant to W.S. 35-11-701 that a violation exists and the council has approved the request of the director to begin forfeiture proceedings.

(n) With the approval of the council the director may:

(i) Expend forfeited funds to remedy and abate the circumstances with respect to which the bond was provided; and

(ii) Expend funds from the trust and agency account under W.S. 35-11-424 to remedy and abate any immediate danger to human health, safety and welfare.

(o) If the forfeited bond or other financial assurance instrument is inadequate to cover the costs to carry out the activities specified in subsection (d) of this section, or in any case where the department has expended trust and agency account monies under subsection (n) of this section, the attorney general shall bring suit to recover the cost of performing the activities where recovery is deemed possible.

(p) When the director determines that the violation has been remedied or the damage abated, the director shall release that portion of the bond or financial assurance instrument being held under paragraph (d)(ii) of this section. When the director determines that closure activities have been successfully completed at any commercial oil field waste disposal facility, the director shall release that portion of the bond or financial assurance instrument being held to guarantee performance of activities specified in subparagraphs (d)(i)(A) through (E) of this section. The remaining portion of the bond or financial assurance instrument shall be held for a

period of not less than five (5) years after the date of facility closure, or so long thereafter as necessary to assure proper performance of any post-closure activities specified in subparagraph (d)(i)(F) of this section. The retained portion of the bond or other financial assurance instrument may be returned to the facility operator at an earlier date if the director determines that the facility has been adequately stabilized and that environmental monitoring or control systems have demonstrated that the facility closure is protective of public health and the environment consistent with the purposes of this act.

vi. §35-11-307. Commercial waste treatment, storage and disposal facilities.

(a) In addition to any other requirement or restriction imposed under the Wyoming Environmental Quality Act, commercial waste treatment, storage and disposal facilities used for the management of more than ten (10) tons of dried wastewater treatment sludges or the equivalent thereto per operating day, are subject to the location restrictions and bond requirements provided for commercial oil field waste disposal facilities under W.S. 35-11-306.

(b) Any person who locates, constructs or operates a commercial waste treatment, storage and disposal facility in violation of the location restrictions provided by subsection (a) of this section and W.S. 35-11-306(a) is subject to the penalties provided by W.S. 35-11-901. This subsection shall be enforced by the water quality division of the department of environmental quality.

(c) The environmental quality council shall promulgate rules and regulations necessary to carry out this section including rules establishing bonding and financial assurance requirements in conformance with W.S. 35-11-306(d) through (p).

(d) This section shall not apply to publicly owned waste treatment, storage and disposal facilities.

d. Wyo. Stat. §§35-11-308-311, Wyoming Wetlands Act

§35-11-308 Short title.

This act, W.S. 35-11-308 through 35-11-311, may be known and shall be cited as the "Wyoming Wetlands Act".

§35-11-309. Legislative policy and intent.

(a) The legislature declares that all water, including collections of still water and waters associated with wetlands within the borders of this state are property of the state. The legislature further declares that water is one of Wyoming's most important natural resources, and the protection, development and management of Wyoming's water resources is essential for the long-term public health, safety, general welfare and economic security of Wyoming and its citizens.

(b) The legislature finds that agriculture, energy development, mining, highway construction and timbering are important industries in this state and that industrial concerns must be accommodated in the protection of wetlands. Wetlands can

have an impact on industry practices. Even though property taxes are generally paid on such lands, wetlands provide limited economic return to the landowner. Wetland policies can obstruct water development projects and water management projects for private industry as well as public entities and can affect other developments.

(c) The legislature finds that wetlands are considered important for a variety of reasons. Wetlands provide the habitat base for the production and maintenance of waterfowl and are sometimes critical to the survival of endangered plants and animals. Wetlands also serve to moderate water flow and have value as natural flood control mechanisms, can aid in water purification by trapping, filtering and storing sediment and other pollutants and by recycling nutrients, and can serve as groundwater recharge and discharge areas. Wetlands also function as nursery areas for numerous aquatic animal species and are habitat for a wide variety of plant and animal species, and provide vital habitat for resident wildlife. Wetlands also can provide scientific, aesthetic and recreational benefits. The legislature therefore concludes that wetlands and values associated therewith deserve to be effectively managed, protected and preserved.

(d) The legislature recognizes that significant differences exist in Wyoming between naturally occurring wetlands and those wetlands that result from human activities. Because portions of Wyoming are arid or semiarid, water was diverted from streams and rivers for irrigating cropland, resulting in the creation of wetlands. These wetlands have partially compensated for wetlands losses. Additionally, road and highway construction, petroleum industry operations and other human activities have created wetlands where none previously existed. While these man-made wetlands are equally as important as naturally occurring wetlands, having the same characteristics and providing the same values and functions, management flexibility is required to acknowledge their different origins and to protect the property rights of landowners and water right holders.

(e) In view of the legislative findings and conclusions of the importance of wetlands, water development and management, and industry in Wyoming it is hereby declared to be the wetlands policy of this state that water management and development and wetland preservation activities should be balanced to protect and accommodate private property, industry, water and wetland interests and objectives.

§35-11-310. Notice to drain waters required; exception.

(a) Except as provided in subsection (b) of this section, after July 1, 1996, no person shall drain water from a naturally occurring or man-made wetland, or any series thereof, which has an area comprising five (5) acres or more, without first notifying the department that the water which will be drained from the wetland, or any series thereof, will not flood or adversely affect downstream lands. Notification shall include the size and location of the wetland, and whether the wetland is natural or man-made.

(b) Subsections (a) and (c) of this section do not apply to disturbances of wetlands resulting from mining operations conducted pursuant to mining permits issued by the department of environmental quality.
(c) Any person draining, or causing to be drained, water of a naturally occurring wetland, or any series thereof, which has an area comprising five (5) acres or more, without first notifying the department as required by subsection (a) of this section, shall not be eligible to participate in the mitigation credit banking system as provided by W.S. 35-11-311. Failure to notify the department pursuant to this section does not constitute a violation for purposes of W.S. 35-11-901.

§35-11-311. Mitigation; guidelines.
(a) The department, after consultation with the Wyoming department of agriculture, state engineer, game and fish department, Wyoming water development commission and the department of transportation, shall adopt guidelines for evaluating ecological function and values and for establishing and administering a mitigation credit banking system for compensatory mitigation. The guidelines shall, at a minimum, provide for:
(i) Criteria under which mitigation credits may be earned, with credit to be recognized for man-made wetlands created after July 1, 1991;
(ii) Geographical and other appropriate limitations for the application of mitigation bank credits;
(iii) Criteria for the use, banking or sale of banked credits;
(iv) The approval by the department for the earning, using, banking, transfer or selling of mitigation bank credits; and
(v) Requirements for the maintenance and submission by the department of records concerning ecological function and wetland value losses, and credit and debit accounts for each mitigation bank.

43. STATE LAND BOARD, Wyo. Stat. §36-1-101 through §36-1-105

§36-1-101. Definitions.
(a) Unless the context indicates otherwise, as used in this act:
(i) The term "board" shall mean the board of land commissioners;
(ii) The term "director" means the director of the office of state lands and investments;
(iii) The term "state" shall mean the state of Wyoming;
(iv) The terms "state lands", "land" or "lands" shall mean and include all lands under the jurisdiction of the board of land commissioners;
(v) The terms "school land" or "school lands" shall mean and include all lands granted to the state of Wyoming by the United States of America for the benefit and support of public schools, either directly or through exchange for other lands;
(vi) The term "institutional lands" shall mean state lands selected for the benefit of state institutions or any lands other than school lands;

(vii) The term "old lessee" means the person, firm, association or corporation in whose name the expiring lease appeared of record in the office of state lands and investments at the time of its expiration;
(viii) "This act" means W.S. 36-1-101 through 36-3-111, 36-5-101 through 36-7-510 and 36-9-101 through 36-9-120.

§36-1-102. Recording and filing documents of title.
Every department, institution, board and commission of the state of Wyoming which now has or shall hereafter acquire an interest in real property, except leases, easements and rights-of-way for a term not exceeding three (3) years, shall record the document of title with the appropriate county clerk, unless previously recorded, and after recording, shall file the original document with the director excepting, however, easement and right-of-way conveyances previously obtained by the state department of transportation or state transportation commission. This section shall have no effect on existing recording statutes.
When the provisions of this act [§§ 36-1-101 through 36-1-105, 36-1-112, 36-2-101 through 36-2-107, 36-5-101 through 36-5-105, 36-5-108 through 36-5-113] or the rules and regulations of the board require registered notice to be given, the time shall be reckoned from the date of delivery of such notice by the United States post office, or in the event of nondelivery thereof, from the date of the return thereof to the board by the United States post office.

§36-1-104. Acceptance of school lands.
Under the provisions of article 18 of the constitution of the state of Wyoming, the state of Wyoming hereby accepts the lands granted to it by the act of congress entitled "An act to provide for the admission of the state of Wyoming into the union, and for other purposes", approved July 10, 1890 [26 U.S. Stat. at Large, ch. 664, p. 222], for the purposes in the said act specified; and hereby accepts the grant of numbered school sections mineral in character as made by the act of congress entitled "An act confirming in states and territories title to lands granted by the United States of America in aid of common or public schools", approved January 25, 1927 [43 U.S.C. §§ 870, 871], subject to the provisions and conditions of the said act, and the said lands so granted by the United States of America to the state of Wyoming are hereby solemnly set apart to the purposes specified in the said acts.

§36-1-105. Exchange of land granted by federal government.
Whenever, in the judgment of a majority of the members of the board, the interests of the state will be advanced by granting, conveying or deeding to the United States of America, any lands which have been heretofore granted, selected by, and patented to the state, then, in such case said board is hereby authorized and empowered to so grant, convey and deed to the United States of America, such lands. And the president of said board, and the director are authorized and empowered to execute and deliver all necessary instruments to complete such grant, or conveyance; provided, always, that no such lands shall be so granted,

conveyed and deeded, unless the United States of America shall, and will permit and allow this state to select, and have patented to it, an equal area of other lands in lieu of the lands so reconveyed to the United States of America; provided, however, that the state shall not give both surface and mineral rights with any lands exchanged unless it receives the same from the federal government.

44. STATE PARKS AND CULTURAL RESOURCES, Wyo. Stat. §§36-4-101-124

§36-4-101. Commission established; composition; appointment and terms of members; removal; representation from appointment districts; vacancies; meetings; president.

(a) There is established the Wyoming parks and cultural resources commission within the department of state parks and cultural resources which shall consist of nine (9) members, citizens of Wyoming, not more than five (5) of whom shall be registered in the same political party. Commission members shall be appointed by the governor, by and with the advice and consent of the state senate, and may be removed by the governor as provided in W.S. 9-1-202. Appointments made between sessions of the legislature shall be made in accordance with W.S. 28-12-101. In addition, the governor is an ex officio member of the commission.

(b) The term for commission members is five (5) years, and shall expire on March 1, providing that the terms of the members first appointed shall be staggered as follows:

(i) Three (3) members shall be appointed for a term of two (2) years;

(ii) Three (3) members shall be appointed for a term of four (4) years; and

(iii) Three (3) members shall be appointed for a term of five (5) years.

(c) Each appointment district pursuant to W.S. 9-1-218 shall at all times be represented by at least one (1) commissioner who is a resident of that district.

(d) All vacancies occurring on the commission shall be filled by the governor in accordance with W.S. 28-12-101.

(e) The first meeting of the commission shall be at the call of the governor. Thereafter, the commission shall meet at least once every three (3) months. Other meetings may be held at the call of the president of the commission, the governor or a majority of the commission members.

(f) At the first meeting of the commission and thereafter at the regular September meeting of each year, the commission shall elect one (1) of its members president who shall hold his office for a term of one (1) year. If a vacancy occurs in the office of president, the commission shall elect a member of the commission to serve as president for the remainder of that term.

(g) Effective July 1, 1979, appointments and terms under this section shall be in accordance with W.S. 28-12-101 through 28-12-103.

(h) Any statute or legal or other document which refers to the Wyoming recreation commission established under subsection (a) of this section, as existing on and after April 1, 1990 and serving in an advisory capacity to the department of state parks and cultural resources, means the Wyoming parks and cultural resources

commission which is the successor to the recreation commission, as existing on and after April 1, 1990.

§36-4-102. Advisory board.
(a) There is established an advisory board consisting of one (1) member from each county to be appointed by the governor and to serve for a term of two (2) years. The governor may remove any board member as provided in W.S. 9-1-202.

(b) The president of the commission shall serve as the chairman of the advisory board. The advisory board shall meet at the call of the president of the commission or the governor.

§36-4-103. What constitutes outdoor recreation areas and facilities.
For the purposes of this act [§§ 36-4-101 through 36-4-119], outdoor recreation areas and facilities shall include state parks, public recreation grounds, historical parks, and historical, archaeological, geological and ecological sites now in existence or hereafter created. As used in this section, W.S. 36-4-105 and 36-4-108, "historical parks" includes all land and structures at South Pass City and Fort Fred Steele.

§36-4-104. Powers; interpretive service agreements.
(a) The department of state parks and cultural resources, in consultation with the commission, may:
(i) Acquire and accept title in the name of the state of Wyoming, by grant, dedication, gift, devise, donation, or demise, to any lands suitable as an outdoor recreation area or facility;
(ii) With the concurrence of the board of land commissioners, set aside and designate as an outdoor recreation area or facility any suitable tract of land belonging to the state of Wyoming which is not appropriated to some other fund or use;
(iii) Take options to purchase lands subject to the approval and appropriation therefor of the next succeeding legislature;
(iv) Accept any gifts or grants for archives, museums and historical purposes;
(v) Deaccession artifacts from the state's collection.
(b) To provide interpretive and educational services at recreation areas and facilities, the department may enter into agreements with private, nonprofit scientific, historic or educational organizations organized solely for the purpose of providing interpretive and educational services at Wyoming recreation areas and facilities. The department may under any agreement entered into pursuant to this subsection, provide personnel services to assist any private, nonprofit organization with carrying out its interpretive and educational program and may provide space at or within any recreation area or facility for interpretive materials provided by the organization. Any organization entering into an agreement may:

(i) Offer interpretive or educational materials for sale at recreation areas and facilities. Revenues collected from sales under this paragraph shall be retained by the organization solely for use in providing interpretive or educational services at the area or facility for which the organization provides these services;
(ii) Acquire display materials and equipment for exhibit at areas and facilities;
(iii) Support special area or facility interpretive or educational programs, other interpretive projects related to a specific area or facility and may support area or facility resource centers.
(c) The department, with the advice of the commission, shall promulgate rules and regulations as necessary to implement subsection (b) of this section. Rules and regulations adopted under this subsection shall specify:
(i) Procedures for entering into agreements for interpretive and educational services;
(ii) Guidelines for approving interpretive materials which present both sides of an issue, if appropriate, in a balanced manner to be provided by the contracting organization at recreation areas and facilities; and
(iii) Procedures for renewal and dissolution of agreements between the department and private, nonprofit organizations.
(d) As used in subsections (b) and (c) of this section, "recreation areas and facilities" include both indoor and outdoor facilities at state parks, historic sites, recreation areas and historical, archaeological, geological and ecological sites as enumerated under W.S. 36-4-103.

§36-4-105. Naming of sites and parks.
Each state park, public recreation ground, historic park or archaeological, geological or ecological site created and established under this act shall be given an appropriate name by the department of state parks and cultural resources, in consultation with the commission.

§36-4-106. Plan for acquisition and development of resources; authority of department; coordination of activities; agreements with United States; state archaeologist.
(a) The department of state parks and cultural resources, in consultation with the commission, shall prepare, maintain and keep up to date a comprehensive plan for the acquisition and development of outdoor recreation resources of the state. Authority is hereby granted to the department of state parks and cultural resources, in consultation with the commission, to develop, operate and maintain outdoor recreation areas and facilities of the state and to acquire pursuant to provisions of law, but not by the power of eminent domain, land, waters and interest in land and waters for such areas and facilities. Authority is hereby granted to the department, in consultation with the commission, enter into contracts and agreements with the United States, or any appropriate agency thereof, to keep financial and other records relating thereto, and to furnish to appropriate officials and agencies of the United States such reports and information as may be reasonably necessary to

enable such officials or agencies to perform their duties under the provisions of Public Law 88-578 or any other applicable federal statutes.

(b) In connection with obtaining the benefits of any such program for the state of Wyoming, the department shall coordinate its activities with and fairly represent the interests of all agencies of the state, county, city and any other governmental units having interests in the planning, acquisition, development or maintenance of outdoor recreation resources and facilities within the state.

(c) The department, in consultation with the commission, may enter into and administer agreements with the United States or any appropriate agency thereof for planning, acquisition and development of projects involving participation under federal aid funds on behalf of any county, city or other governmental unit; provided that such county, city or other local government unit gives necessary assurance to the department that it has available sufficient funds to meet its share of the cost of the project and that the acquired and developed areas will be operated and maintained at its expense for public outdoor recreation use.

(d) There shall be appointed within the department of state parks and cultural resources a state archaeologist, who shall be a member of the department of anthropology of the University of Wyoming. The state archaeologist shall receive an annual salary to be determined by the Wyoming human resources division, which shall be in addition to any compensation received from the university. The state archaeologist may:

(i) Investigate, study, preserve and record such evidence of prehistoric and early historic human activity as shall be reported from time to time by citizens of the state or of which the survey may otherwise become aware;

(ii) Begin and carry out as time permits an archaeological survey of the state, locating and recording all evidences of prehistoric and early historic human activity that may be encountered and maintaining records in the form of filed maps and documents deposited permanently at the University of Wyoming;

(iii) Engage in systematic, intensive archaeological investigations of significance to the reconstruction of the prehistory and early history of the state as time and facilities permit and to solicit funds for this work from the various public and private foundations and other sources generally available to the field archaeologist;

(iv) Prepare and publish from time to time technical reports bearing on the investigations carried out or of significance to the reconstruction of the prehistory and early history of the state;

(v) Cooperate to the extent of capacity with communities and other agencies in the state interested in the establishment of local archaeological museums and related activities;

(vi) Cooperate with all agencies to the extent of capacity in the protection from vandalism, natural and other kinds of destruction of all objects of archaeological significance and to render aid in the enforcement of the Wyoming Antiquities Act;

(vii) Distribute all publications of the survey to the public on request, either free or at a price to be determined.

§36-4-107. Authority to lease; exchange of lands and contracts with United States.

The department, in consultation with the commission, shall have the power and is hereby authorized to lease, grant or operate any outdoor recreation area or facility belonging to the state which is not subject to lease, grant or operation by another agency of the state. The department, in consultation with the commission, may exchange state lands which are not appropriated to other use for United States outdoor recreation areas and facilities, and under contract with the United States, may take over the management, leasing and operation of any such area or facility. Where the department deems it to be in the best interest of the state, it may, in consultation with the commission, contract with the United States government or any authorized federal agency for the operation of any outdoor recreation area or facility established by the department.

§36-4-108. Acquisition and supervision of historical parks and sites.

(a) The department, in consultation with the commission, may receive or acquire, but not by use of the power of eminent domain, historical parks and sites within the state. Nothing in this section limits the authority of the department to receive, acquire and to maintain, but not by use of the power of eminent domain, land for other outdoor recreation areas and facilities.

(b) The department shall:

(i) Supervise, maintain and control historic parks, including furnishing and controlling employees and equipment, possessing and controlling all items, objects and furnishings, and erecting all signs and markers;

(ii) Interpret historic parks and prepare and arrange all items, objects, furnishings and information;

(iii) Repealed by Laws 1990, ch. 44, § 3.

(iv) Administer the state trails program; and

(v) Erect, maintain and remove monuments and markers.

§36-4-109. Contracts and agreements with United States for improvements and maintenance.

The department, in consultation with the commission, is authorized to enter into contracts and agreements with the United States or any duly authorized representative or agency thereof to cause state outdoor recreation areas and facilities to be improved and maintained and for that purpose may contract to secure the labor of members of organizations under the control of the federal government or some duly authorized representative or agency thereof.

§36-4-110. Power to lease or rent concessions.

The department, in consultation with the commission, is empowered to lease or rent concessions of all lawful kinds and nature on state outdoor recreation areas or

facilities to persons, partnerships, and corporations for a valuable consideration upon such terms and conditions as the department deems fit and proper.

§36-4-111. Authority to receive and expend monies; investments.
(a) The state treasurer, after consultation with the governor, is hereby authorized and directed to receive and credit to the trust and agency fund any grant, donation, or bequest which is made to the state of Wyoming or the department which contains a condition or restriction that the income only therefrom shall be expended for the purposes provided by this act [§§ 36-4-101 through 36-4-119].
(b) The department, in consultation with the commission, shall have the authority to receive in trust, any money or property of any kind or character, donated, granted, or bequeathed to the commission, the department or the state of Wyoming for outdoor recreation areas and facilities and to carry out the terms, if any, of any such grant, donation or bequest, or in the absence of any terms or limitations, to expend the money or the proceeds of any such property as it may deem advisable for outdoor recreation areas or facilities under the provisions of this act.
(c) Money received and the proceeds or other property likewise received and disposed of by the department, in consultation with the commission, may be expended by the department for the purposes of this act.
(d) Any money under this section shall be invested by the state treasurer in securities of any of the classes in which he is permitted by law to invest the general school funds of this state, and the interest received thereon shall be placed at the disposal of the department to be used by it in carrying out the purposes of this act.

§36-4-112. Receipt and expenditure of federal funds; use of funds from land and water conservation fund.
Authority is hereby granted for the state of Wyoming and its authorized representatives, with the approval of the governor, to receive and to disburse federal monies which may now and hereafter be available under the provisions of Public Law 88-578 or any other applicable federal statutes, for the acquisition, development, operation and maintenance of outdoor recreation areas and facilities of the state. All funds received because of state participation in the Land and Water Conservation Fund Act shall accrue to the state treasurer who shall deposit them in the appropriate accounts. No funds so received shall be used for any purpose other than the administration of the provisions of the Land and Water Conservation Fund Act. Such projects may be undertaken by the department in consultation with the commission only after it has been determined that sufficient funds are available for meeting the state's share of project costs.

§36-4-113. Private improvement permits.
The department of state parks and cultural resources may grant permits to any individual, improvement club or voluntary association, or committee representing such clubs and associations, to improve, without expense to the state, any outdoor recreation area or facility established under the provisions of this act. All such

improvements, changes, alterations or restorations shall be outlined in writing or set forth in drawings and specifications furnished by the department and the work undertaken shall be subject to inspection and supervision by the department during the course thereof.

§36-4-114. Repealed by Laws 1990, ch. 44, § 3.

§36-4-115. Rules and regulations; general penalty for violations.
(a) The department of state parks and cultural resources in consultation with the commission shall promulgate and enforce all reasonable rules and regulations necessary to carry out this act.
(b) Rules and regulations promulgated by the department under this act and governing state parks and historic sites shall include the:
(i) Conservation of peace and good order within each park;
(ii) Preservation of state property;
(iii) Promotion of the well-being of park visitors and residents; and
(iv) Definition of a public nuisance within state parks and historic sites.
(c) The department of state parks and cultural resources shall enforce its rules and regulations.
(d) Any person violating this act or any rule and regulation promulgated by the department under subsection (b) of this section is guilty of a misdemeanor and shall be fined not more than seven hundred fifty dollars ($750.00), imprisoned for not more than six (6) months, or both.

§36-4-116. Repealed by Laws 1982, ch. 48, § 3.

§36-4-117. Jurisdiction over grazing districts.
Nothing in this act, shall be construed as giving jurisdiction to the department of state parks and cultural resources over interest in any grazing district established under the terms of the Taylor Grazing Act unless and until agreement and consent of the board of directors of the grazing district to this effect is formally secured.

§36-4-118. Compensation prohibited; per diem and travel expenses permitted.
The members of the commission and the advisory board shall not receive any compensation for their services, but when actually engaged in the performance of their duties, they shall be paid a per diem for each day of such actual service and be reimbursed for their travel expenses at the same rate applicable to travel expenses of other state officers.

§36-4-119. Existing agreements binding; successor to records and duties; taxation exemption.
(a) Effective April 1, 1990 the department of commerce shall be bound by any and all agreements, contracts and obligations incurred by the Wyoming recreation commission to which it had been bound because they were incurred by the

Wyoming state parks commission and land and water conservation commission and Old South Pass historical preserve commission prior to July 1, 1973, and shall succeed to all records, documents, equipment, and other personal or real property under the control and management of the parks commission of Wyoming and the state land and water conservation commission of Wyoming and the Old South Pass historical preserve commission of Wyoming acquired and used in the performance of duties previously imposed upon those commissioners. All money from operation of the Old South Pass historical preserve shall be credited to the general fund. Effective July 1, 1999 the department of state parks and cultural resources shall be bound by any and all agreements, contracts and obligations incurred by the department of commerce to which it had been bound because they were incurred by the Wyoming state parks commission and land and water conservation commission and Old South Pass historical preserve commission prior to July 1, 1973, and shall succeed to all records, documents, equipment, and other personal or real property under the control and management of the parks commission of Wyoming and the state land and water conservation commission of Wyoming and the Old South Pass historical preserve commission of Wyoming acquired and used in the performance of duties previously imposed upon those commissioners. All money from operation of the Old South Pass historical preserve shall be credited in accordance with W.S. 36-4-121(h).

(b) The department of state parks and cultural resources, in consultation with the commission, is hereby charged with the duties and responsibilities heretofore devolved upon the Old South Pass historical preserve, and for the purpose of discharging same is hereby invested with all the powers and authority heretofore vested in such Old South Pass historical preserve, subject to the same limitations thereof; and the department of state parks and cultural resources, in consultation with the commission, is authorized to delegate the same, or so much thereof as it shall provide, to an administrator or to a committee appointed by it for the performance of its functions hereunder.

(c) User fees and other charges for the South Pass preserve development are exempt from taxation by the state.

§36-4-120. Repealed by Laws 1990, ch. 44, § 3.

§36-4-121. Permits to use state parks, recreation areas and historic sites.

(a) The department of state parks and cultural resources shall offer for sale permits that allow use of the state parks, recreation areas, archeological sites and historic sites. Daily use permits shall be required at Glendo, Guernsey, Curt Gowdy, Edness Kimball Wilkins, Buffalo Bill, Boysen, Seminoe and Keyhole state parks and Fort Bridger, South Pass City, Trail End, Fort Fetterman and Fort Phil Kearney state historic sites, and Hawk Springs state recreation area. The department may establish voluntary pay stations at Bear River and Hot Springs state parks to allow users of those parks to make voluntary contributions for the use of the state parks. Persons who enter or use Bear River or Hot Springs state park without paying daily

use fees shall not be subject to the penalties provided for in subsection (j) of this section. Overnight camping permits shall be required at Boysen, Buffalo Bill, Curt Gowdy, Glendo, Guernsey, Keyhole, Seminoe and Sinks Canyon state parks, Connor Battlefield state historic site, Medicine Lodge state archeological site and Hawk Springs state recreation area by the department during the entire calendar year. Except for the lifetime permit issued without cost pursuant to subsection (n) of this section, the cost of the permits authorized under this section shall be:

(i) Twenty-five dollars ($25.00) per calendar year for a resident annual bucking horse daily use permit and forty dollars ($40.00) for a nonresident annual bucking horse daily use permit to designated state parks, historic sites, archeological sites and recreation areas, valid for the holder and occupants of the holder's vehicle, provided resident permits purchased pursuant to this paragraph between January 1 through February 15 of each year shall cost twenty dollars ($20.00) and nonresident permits purchased during the same period shall cost thirty-five dollars ($35.00);

(ii) Thirty dollars ($30.00) per calendar year for an annual resident overnight camping permit, and sixty dollars ($60.00) per calendar year for an annual nonresident overnight camping permit, authorizing overnight camping at designated state parks, historic sites, archeological sites and recreation areas for the holder and occupants of the holder's vehicle;

(iii) Except as provided under paragraph (a)(v) of this section, two dollars ($2.00) for residents and four dollars ($4.00) for nonresidents for the daily use fee for designated state parks, archeological sites and recreation areas, valid for the date of purchase for the holder and occupants of the holder's vehicle and for the holder entering the park or area by bicycle, horseback or on foot;

(iv) Except as provided under paragraph (a)(v) of this section, one dollar ($1.00) per person for residents and two dollars ($2.00) per person for nonresidents for the daily use fee for designated state historic sites, valid for the date of purchase for the holder only. The fee is not required for persons under the age of eighteen (18) years;

(v) Two dollars ($2.00) per person for the daily use fee for buses used in guided tours at designated state parks, historic sites and recreation areas, valid for the date of purchase only. The bucking horse annual permit authorized under paragraphs (a)(i) and (ii) of this section is not valid for and shall not be issued to buses used for purposes specified under this paragraph. The fee imposed under this paragraph shall not apply to persons under the age of eighteen (18) years;

(vi) Four dollars ($4.00) per night for residents and eight dollars ($8.00) for nonresidents for overnight camping at any designated state park, historic site, archeological site and recreation area valid for the date of purchase and the following day until 3:00 p.m. for the holder and occupants of the holder's vehicle;

(vii) Five dollars ($5.00) for each additional vehicle annual bucking horse entrance permit issued under subsection (b) of this section;

(viii) Five dollars ($5.00) for each additional vehicle annual resident or nonresident overnight camping permit issued under subsection (b) of this section;

(ix) Five dollars ($5.00) for each duplicate annual bucking horse entrance permit issued under subsection (c) of this section;
(x) Five dollars ($5.00) for each duplicate annual resident overnight camping permit issued under subsection (c) of this section;
(xi) Any group may be charged a fee of not more than seventy-five dollars ($75.00) for a twenty-four (24) hour period for the use of the lodges located at Curt Gowdy or Buffalo Bill State Parks;
(xii) Any group may be charged a fee of not more than fifty dollars ($50.00) for a twelve (12) hour period for a group picnic shelter and adjacent grounds located at any department location;
(xiii) Upon written request of a group sponsoring a special event or upon the department's sponsorship of a special event, the director of the department may, with the approval of the parks and cultural resources commission, waive any fees required under this subsection. A fee which may exceed the daily use permit fee specified in this section may be charged for entry to special events. Holders of annual bucking horse daily or overnight permits may be charged the special event fee. A special event fee may be charged at any park, area or site under the jurisdiction of the department, regardless of whether a daily use fee has been established by law;
(xiv) Waived for the following:
(A) Persons needing to pass through a state park or historic site to access private property shall be exempt from the entrance permit requirements of this section;
(B) Persons needing access to a state park or historic site to conduct official business or only to access a private commercial business without further use of the state park or historic site shall be exempt from the entrance permit requirements of this section;
(C) School groups on school sanctioned events including events sanctioned by educational programs defined under W.S. 21-4-101(a)(iii), (iv) and (v), and residents and staff of publicly owned homes or institutions while on official agency functions shall be exempt from the entrance permit requirements of this section;
(D) Not for profit groups or organizations needing access to a state park or historic site to provide volunteer assistance or services that have been previously agreed upon by the department of state parks and cultural resources shall be exempt from the permit requirements of this section.
(b) Any holder of an annual bucking horse entrance permit or an annual resident or nonresident overnight camping permit may obtain additional vehicle annual bucking horse entrance permits or additional vehicle annual overnight camping permits from the department or any selling agent of the department upon payment of the fee prescribed under paragraph (a)(vii) or (viii) of this section, as applicable, and upon submission of proof satisfactory to the department that an original annual permit was purchased and that the additional vehicle is registered in the same name as the vehicle for which the original annual permit is obtained, or that the additional vehicle is operated by the person who purchased the original annual permit or a member of his family under duly granted authority from his employer. The director

shall determine the validity of the authority of an applicant to operate an employer-owned vehicle prior to issuance of an additional vehicle permit for that vehicle under this section. Any vehicle in tow by another vehicle owned by the same person shall be considered a single vehicle for purposes of this section and only a single annual bucking horse daily use permit shall be required for entrance at state parks and a single annual overnight camping permit shall be required for overnight camping at state parks.

(c) If an annual bucking horse daily use permit or an annual resident or nonresident overnight camping permit is lost, mutilated or destroyed, the holder of the permit may obtain a duplicate annual permit from the department or any selling agent of the department upon filing an affidavit showing the loss, mutilation or destruction of the original permit and upon payment of the fee imposed under paragraph (a)(ix) or (x) of this section, as applicable.

(d) Repealed by Laws 1992, ch. 50, § 3.

(e) The department through the division of state parks and historic sites shall in accordance with W.S. 36-4-123, appoint selling agents to sell bucking horse permits authorized under this section. Each appointed selling agent shall retain ten percent (10%) of the cost of each permit sold under this section as his sales commission. Designated department employees may sell annual bucking horse daily use permits and other permits required by this section but no employee of the department shall receive any commission on permits sold.

(f) Repealed by Laws 1992, ch. 50, § 3.

(g) Repealed by Laws 1992, ch. 50, § 3.

(h) The funds received by the department from the sale of the permits shall be deposited as follows:

(i) Eighty percent (80%) shall be deposited in a capital construction account within the enterprise fund and may be expended by the division for capital construction projects subject to approval by the legislature;

(ii) Twenty percent (20%) shall be deposited in the general fund.

(j) Any person using state parks, recreation areas and historic sites and failing to obtain a bucking horse permit or the other permits required by this section and any person otherwise violating this section is guilty of a misdemeanor punishable by a fine of not more than seven hundred fifty dollars ($750.00), imprisonment for not more than six (6) months, or both.

(k) The department of state parks and cultural resources is authorized to contract with the town of Ranchester to implement a fee collection program at Connor Battlefield state historic site and to provide for park maintenance and operation. Notwithstanding subsection (h) of this section, fees collected pursuant to paragraphs (a)(ii) and (v) of this section for overnight camping at Connor Battlefield state historic site shall be deposited into a separate account within the earmarked revenue fund and may be expended by the department pursuant to contracts entered into under this subsection.

(m) Notwithstanding subsection (h) of this section, fees collected at Keyhole state park by the department of state parks and cultural resources shall first be applied

to expenses incurred by the department of state parks and cultural resources to implement and conduct the collection of such fees, and then shall be used to reimburse water development account I for the funds deposited in the Keyhole reservoir account established by W.S. 41-2-1001(a)(v) and funds expended to purchase water necessary to initially fill the recreation pool in Keyhole reservoir. Upon the repayment of the water development account, the fees shall be deposited in accordance with subsection (h) of this section. The game and fish department shall, from nonlicensure fees, reimburse water development account I in the amount of five thousand dollars ($5,000.00) per year until the water development account I is repaid.

(n) Any resident disabled veteran who receives fifty percent (50%) or more service connected disability compensation from the United States department of veteran's affairs may apply to the department for a lifetime bucking horse permit authorizing the use of state parks, recreation areas, archeological sites and historic sites without payment of any daily use, overnight or other fee authorized to be charged pursuant to this section. Only one (1) permit shall be issued to any qualified applicant under this subsection and shall be valid for the applicant and for all occupants of the applicant's vehicle. In addition to information and other application procedural requirements prescribed by rule and regulation of the department, application for the lifetime permit shall include proof of residency and certification of the service connected disability. The lifetime permit is valid as long as the holder is a Wyoming resident. A permit under this subsection shall be issued to an eligible applicant without the imposition of a fee.

(o) The department is authorized to sponsor special events and to contract with groups sponsoring special events at state parks, recreation areas, archeological sites or historic sites. A special event fee may be charged as provided in paragraph (a)(xiii) of this section. All funds received from special events sponsored by the department shall be deposited in special events account within the enterprise fund. The funds deposited within the account are continuously appropriated to and may be expended by the department to conduct special events directly or pursuant to contracts entered under this subsection.

(p) The Wyoming Veterans' Memorial Museum is exempt from the permit and fee requirements in this section.

§36-4-122. Administration of Hot Springs state park.

(a) Effective April 1, 1990, the authority for management, control and administration of the Hot Springs state park located at Thermopolis, Hot Springs county, is vested in the department of state parks and cultural resources, in consultation with the commission. Effective July 1, 1999, the authority for management, control and administration of the Hot Springs state park located at Thermopolis, Hot Springs county, is vested in the department of state parks and cultural resources, in consultation with the commission. The state park will be administered by the department in accordance with W.S. 36-8-301 through 36-8-405.

(b) Repealed by Laws 1990, ch. 44, § 3.

(c) Repealed by Laws 1990, ch. 44, § 3.

§36-4-123. Selling agents for registrations, licenses and permits.

(a) The department of state parks and cultural resources through the division of parks and historic sites shall appoint selling agents to sell snowmobile registrations pursuant to W.S. 31-2-402, bucking horse permits under W.S. 36-4-121 and other licenses, registrations and permits for which the department may by law be required to issue and collect fees. Selling agents appointed under this section shall be bonded by the department, subject to the following:

(i) The appointed agent, prior to September 1 preceding the calendar year for which the bond is to be in effect, shall pay to the department a nonrefundable annual bonding fee of fifty dollars ($50.00);

(ii) Any newly appointed agent shall pay the bonding fee prescribed under paragraph (a)(i) of this section to the department immediately upon appointment for the remainder of the calendar year in which appointed;

(iii) Bonding fees collected under this subsection shall be deposited in a bond pool account within the trust and agency fund, from which any claim against the bond of any selling agent and not directly collected from the agent shall be paid.

(b) Each selling agent appointed under subsection (a) of this section shall:

(i) On or before the tenth day of each month on forms provided by the division, file a report with the division stating all sales of registrations, licenses or permits by the agent during the preceding month;

(ii) Remit to the division all revenues collected by the agent from registration, license or permit sales during the preceding month reported under paragraph (b)(i) of this section, less any sales commission authorized by law;

(iii) Annually account for and deliver to the division all unused, surplus or damaged registration decals, licenses or permits received by the agent.

(c) In addition to any other penalty imposed by law, any selling agent failing to comply with this section and other applicable law shall not receive any sales commission authorized by law.

45. STATE CONTROL OF CERTAIN LAND; §§ 36-12-102 MANAGEMENT

(a) Upon transfer to the state of Wyoming [of] the jurisdiction and ownership of lands and mineral resources subject to this act, the board shall manage such in an orderly manner in trust for the optimum benefit and use of all the people of Wyoming and in conformity with established concepts of multiple use and sustained yield which will permit the development of uses for agriculture, grazing, recreation, minerals, timber, and the development, production and transmission of energy and other public utility services. It shall be managed in such a manner as to permit the conservation and protection of watersheds and wildlife habitat, and historic, scenic, fish and wildlife, recreational and natural values.

(b) The board of land commissioners shall develop a plan for the transfer and management of lands and minerals subject to this act [§§§§ 36-12-101 through 36-12-109]. This plan will be submitted to the governor and legislature prior to January

1, 1983 and will be subject to their approval. Such a management plan shall consider:
(i) Management of the land pursuant to subsection (a);
(ii) Policy and program regarding disposal, lease or exchange of any lands or resources acquired pursuant to this act;
(iii) Policy and program regarding public access to use of such lands;
(iv) Conservation of lands for wildlife habitat or recreational purposes; and
(v) Program regarding use or transfer of lands to municipalities and other governmental entities for public purposes.
(c) As used in this section:
(i) Sustained yield means the maintenance of a high-level annual or regular periodic output of the various renewable resources of the state lands consistent with multiple use;
(ii) Multiple use means the management of the land in a combination of balanced and diverse resource uses that takes into account the long-term needs for renewable and nonrenewable resources, including but not limited to recreation, range, timber, minerals, watershed, wildlife and fish, natural, scenic, scientific and historical values, and the coordinated management of the resources without permanent impairment of the productivity of the land or the quality of the environment.

46. WYOMING WATER LAWS, Wyo. Stat. §§41-3-101 to 41-3-1014 (Selected Sections)

a. §41-3-101. Nature of water rights and beneficial use

A water right is a right to use the water of the state, when such use has been acquired by the beneficial application of water under the laws of the state relating thereto, and in conformity with the rules and regulations dependent thereon. Beneficial use shall be the basis, the measure and limit of the right to use water at all times, not exceeding the statutory limit except as provided by W.S. 41-4-317. In addition to any beneficial use specified by law or rule and regulation promulgated pursuant thereto, the use of water for the purpose of extracting heat therefrom is considered a beneficial use subject to prior rights. Water being always the property of the state, rights to its use shall attach to the land for irrigation, or to such other purposes or object for which acquired in accordance with the beneficial use made for which the right receives public recognition, under the law and the administration provided thereby. Water rights for the direct use of the natural unstored flow of any stream cannot be detached from the lands, place or purpose for which they are acquired, except as provided in W.S. 41-3-102 and 41-3-103, pertaining to a change to preferred use, and except as provided in W.S. 41-4-514.

b. §41-3-102. Preferred uses; defined; order of preference.

(a) Water rights are hereby defined as follows according to use: preferred uses shall include rights for domestic and transportation purposes, steam power plants,

and industrial purposes; existing rights not preferred, may be condemned to supply water for such preferred uses in accordance with the provisions of the law relating to condemnation of property for public and semi-public purposes except as hereinafter provided.
(b) Preferred water uses shall have preference rights in the following order:
(i) Water for drinking purposes for both man and beast;
(ii) Water for municipal purposes;
(iii) Water for the use of steam engines and for general railway use, water for culinary, laundry, bathing, refrigerating (including the manufacture of ice), for steam and hot water heating plants, and steam power plants; and
(iv) Industrial purposes.
(c) The use of water for irrigation shall be superior and preferred to any use where water turbines or impulse water wheels are installed for power purposes; provided, however, that the preferred use of steam power plants and industrial purposes herein granted shall not be construed to give the right of condemnation.

c. §41-3-103. Preferred uses; procedure for change of use.
Where it can be shown to the board of control under the provisions hereof [§§ 41-3-101 through 41-3-103], that a preferred use is to be made, the procedure for a change of such use shall embrace a public notice, an inspection and hearing if necessary by and before the proper division superintendent, a report of such superintendent to the board of control, and an order by said board. If the change of use is approved, just compensation shall be paid and under the direction of the board, proper instruments shall be drawn and recorded.

d. §41-3-104. Procedure to change use or place of use.
(a) When an owner of a water right wishes to change a water right from its present use to another use, or from the place of use under the existing right to a new place of use, he shall file a petition requesting permission to make such a change. The petition shall set forth all pertinent facts about the existing use and the proposed change in use, or, where a change in place of use is requested, all pertinent information about the existing place of use and the proposed place of use. The board may require that an advertised public hearing or hearings be held at the petitioner's expense. The petitioner shall provide a transcript of the public hearing to the board. The change in use, or change in place of use, may be allowed, provided that the quantity of water transferred by the granting of the petition shall not exceed the amount of water historically diverted under the existing use, nor exceed the historic rate of diversion under the existing use, nor increase the historic amount consumptively used under the existing use, nor decrease the historic amount of return flow, nor in any manner injure other existing lawful appropriators. The board of control shall consider all facts it believes pertinent to the transfer which may include the following:
(i) The economic loss to the community and the state if the use from which the right is transferred is discontinued;

(ii) The extent to which such economic loss will be offset by the new use;
(iii) Whether other sources of water are available for the new use.
(a) In all cases where the matter of compensation is in dispute, the question of compensation shall be submitted to the proper district court for determination.

e. Instream Flows, Wyo. Stat. §§41-3-1001-1014

i. §41-3-1001. Waters stored for instream flows a beneficial use of water; natural stream flows allowed for instream flows

(a) The storage of water in any drainage in Wyoming for the purpose of providing a recreational pool or the release of water for instream flows to establish or maintain new or existing fisheries is a beneficial use of water subject to normal stream loss.
(b) Unappropriated water flowing in any stream or drainage in Wyoming may be appropriated for instream flows to maintain or improve existing fisheries and declared a beneficial use of water on a case by case basis by the state engineer if such use does not impair or diminish the rights of any other appropriator in Wyoming.
(c) Waters used for the purpose of providing instream flows under subsection (a) of this section shall be the minimum flow necessary to establish or maintain fisheries.
(d) Waters used for the purpose of providing instream flows under subsection (b) of this section shall be the minimum flow necessary to maintain or improve existing fisheries.

ii. §41-3-1002. Instream flows to be by stream segment; waters for instream flows may be sold, transferred or otherwise conveyed under certain restrictions; ownership restricted.

(a) All waters used for the purpose of providing instream flows shall be applied only to that segment of the stream for which they are granted. The stream segment and the determination of a minimum amount of water required for instream flow purposes shall be defined specifically.
(b) After waters allowed for instream flows have passed through the specific stream segment, all rights to those instream flow waters are relinquished, and the water shall be available for reappropriation, diversion and beneficial use.
(c) Storage water appropriated for the purpose of providing instream flows in specified stream segments or existing water rights which are converted to instream flow under provisions of W.S. 41-3-1007 of this act may later be sold, transferred or otherwise conveyed to any other purpose pursuant to the requirements of W.S. 41-3-104, except that the board of control shall require that an advertised public hearing be held.
(d) Any person may divert and appropriate, as provided by law, instream flow waters for any beneficial use other than for instream flows at the following places:
(i) Within one (1) mile upstream from any point where the instream flows cross the Wyoming state line;

(ii) Within one (1) mile upstream from any point where the instream flows enter the main stem of the North Platte River;
(iii) Within one (1) mile upstream from any point where the instream flows enter the Big Horn Lake;
(iv) Within one (1) mile upstream from any point where the instream flows enter the Flaming Gorge Reservoir;
(v) Within one (1) mile upstream from any point where the instream flows enter the Palisades Reservoir.
(e) No person other than the state of Wyoming shall own any instream flow water right.

iii. §41-3-1003. Game and fish commission; construction of measuring devices; recommendations; permits; fees and costs.

(a) The game and fish commission shall construct any measuring device the state engineer considers necessary for the administration of an instream flow right.
(b) The state game and fish commission may report to the water development commission annually those specific segments of stream which the game and fish commission considers to have the most critical need for instream flows. The game and fish commission shall identify the points on the stream at which the need for instream flows begins and ends, the time of year when the flows are most critical and a detailed description of the minimum amount of water necessary to provide adequate instream flows.
(c) The water development commission shall file applications in the name of the state of Wyoming for permits to appropriate water for instream flows in those segments of stream recommended by the game and fish commission. The state engineer shall not grant any permits to appropriate or store water for instream flows prior to the completion of the study provided by W.S. 41-3-1004 or prior to the hearing required by W.S. 41-3-1006. Fees and costs of the commission associated with permit applications and adjudication of water rights shall be borne by the game and fish commission.

iv. §41-3-1004. Water development commission to determine storage feasibility; report to the game and fish commission and the legislature.

(a) Immediately after permits have been applied for under W.S. 41-3-1003(c), the water development commission shall determine the feasibility of providing instream flows for the recommended segments of streams from unappropriated direct flows or from existing storage facilities or from new facilities. The feasibility study shall include a determination of water necessary to maintain or improve existing fisheries for water rights under W.S. 41-3-1001(b) or of water necessary to provide fisheries for water rights under W.S. 41-3-1001(a). The feasibility study shall also include the availability of storage sites, the estimated cost of providing any required storage and such other findings and conclusions as the water development commission deems appropriate.

(b) The water development commission shall make a report to the game and fish commission and the legislature outlining their findings.
(c) Repealed by Laws 1987, ch. 50, § 2.

v. §41-3-1005. Approval of storage project.

If the water development commission determines that storage of water to provide instream flows is feasible and in the interest of the state of Wyoming, it shall request authority from the legislature to proceed with the design and construction of storage facilities and the storage of sufficient water for such purposes. The costs of the project may be shared with other water users benefiting therefrom, or paid solely from funds appropriated from the water development account, or otherwise as the legislature directs.

vi. §41-3-1006. Appropriation of unappropriated waters for direct instream flows.

(a) Any application for a permit to appropriate direct flow waters for the purpose of providing instream flows shall be by stream segment, as defined in W.S. 41-3-1002.
(b) If the water development commission, under W.S. 41-3-1004, determines that storage of water for the purpose of providing instream flows is not feasible but that appropriation of direct flow water appears feasible, the state engineer shall act on applications for permits to appropriate water filed under W.S. 41-3-1003(c) in the name of the state of Wyoming.
(c) Subsequent to submission of an application for an instream flow appropriation, the game and fish commission shall conduct relevant studies on the proposal.
(d) The applicant for an instream flow water right shall publish a notice of the application and hearing in a newspaper of general circulation in the area near the proposed reservoir site or stream segment, once each week for at least two (2) consecutive weeks prior to the hearing provided by subsection (e) of this section which notice shall briefly describe the application.
(e) Prior to granting or denying the application, the state engineer shall conduct any studies as are deemed necessary to evaluate the proposed instream flow and the necessary amount of water to maintain existing fisheries and shall hold a public hearing. At the public hearing, the game and fish commission shall present its studies and any other interested parties shall present views on the proposed instream flow appropriation. The state engineer may place a condition on the permit, if one is granted, requiring a review of the continuation of the permit as an instream flow appropriation. (f) If an application for an instream flow appropriation is approved by the state engineer, it shall be deemed that work has been commenced and completed and beneficial use made thirty (30) days after the date of approval for purposes of W.S. 41-4-506 and proof of appropriation shall not be submitted until three (3) years thereafter.
(g) The state engineer shall not issue an instream flow permit where the instream flow right would be included as a portion of the consumptive share of water

allocated to the state of Wyoming under any interstate compact or United States supreme court decree.
(h) The amount of water appropriated for instream flow in each river basin in Wyoming shall not result in more water leaving the state than the amount of water that is allocated by interstate compact or United States supreme court decree for downstream uses outside of Wyoming.

vii. §41-3-1007. Acquisition of existing rights for instream flow purposes.

(a) The state of Wyoming may acquire any existing water rights in streams of Wyoming by transfer or gift for the purpose of providing instream flows, provided that a change in use of the right acquired shall be in accordance with W.S. 41-3-104. Any right acquired and changed shall be in the name of the state of Wyoming and shall be administered by the state engineer and the board of control, who shall insure that the use of water for instream flows shall not interfere with existing water rights or impair the value of such rights or related property. The game and fish commission shall act as a petitioner in a petition for change in use under this section.
(b) Any such water rights acquired and changed shall be limited to a specified stream segment by the board of control with priority date intact.

viii. §41-3-1008. Regulation of streams.

(a) The game and fish commission shall report to the water development commission the need to regulate a stream to protect the priority of an instream flow right. The report shall include information establishing present or future damage to the fishery if the stream is not regulated. The commission, on the next working day, shall submit the report to the state engineer and call for stream regulation. The state engineer shall not regulate the stream to protect the instream flow right:
(i) Unless present or future injury to the fishery has been shown;
(ii) If the call for regulation is a futile call; or
(iii) If the call for regulation will impair senior water rights.

ix. §41-3-1009. Statement regarding condemnation and impairment of existing water rights.

This act [§§ 41-3-1001 through 41-3-1014] does not grant, nor shall it operate or be so construed to grant the power of condemnation to the game and fish department for acquisition of existing water rights for the purpose of providing instream flows, nor shall it operate or be so construed as to impair or diminish the value of or divest existing water rights.

x. §41-3-1010. Litigation costs.

If any other appropriator in a drainage where waters are allowed for instream flows proves in district court that his right to use appropriated waters has been impaired

or diminished by the allowance for instream flows, the costs of litigation, including reasonable attorney fees, shall be borne by the holder of the instream flow right.

xi. §41-3-1011. Abandonment.

No right to water for the purposes of providing instream flow may be acquired through the process of abandonment nor shall any beneficiary of instream flow rights granted under this act [§§ 41-3-1001 through 41-3-014] be qualified under W.S. 41-3-401 and 41-3-402 to file for abandonment.

EXECUTIVE ORDERS AND DIRECTION

47. Executive Order 12630, Takings Assessment, 53 *Fed.Reg.* 8859 (March 15, 1988)

Executive Order 12630
Governmental Actions and Interference With Constitutionally Protected Property Rights
March 15, 1988

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to ensure that government actions are undertaken on a well-reasoned basis with due regard for fiscal accountability, for the financial impact of the obligations imposed on the Federal government by the Just Compensation Clause of the Fifth Amendment, and for the Constitution, it is hereby ordered as follows:

Section 1. Purpose. (a) The Fifth Amendment of the United States Constitution provides that private property shall not be taken for public use without just compensation. Government historically has used the formal exercise of the power of eminent domain, which provides orderly processes for paying just compensation, to acquire private property for public use. Recent Supreme Court decisions, however, in reaffirming the fundamental protection of private property rights provided by the Fifth Amendment and in assessing the nature of governmental actions that have an impact on constitutionally protected property rights, have also reaffirmed that governmental actions that do not formally invoke the condemnation power, including regulations, may result in a taking for which just compensation is required.

(b) Responsible fiscal management and fundamental principles of good government require that government decision-makers evaluate carefully the effect of their administrative, regulatory, and legislative actions on constitutionally protected property rights. Executive departments and agencies should review their actions carefully to prevent unnecessary takings and should account in decision-making for those taking that are necessitated by statutory mandate.

(c) The purpose of this Order is to assist Federal departments and agencies in undertaking such reviews and in proposing, planning, and implementing actions with due regard for the constitutional protections provided by the Fifth Amendment and to reduce the risk of undue or inadvertent burdens on the public fisc resulting from lawful governmental action. In

furtherance of the purpose of this Order, the Attorney General shall, consistent with the principles stated herein and in consultation with the Executive departments and agencies, promulgate Guidelines for the Evaluation of Risk and Avoidance and Unanticipated Takings to which each Executive department or agency shall refer in making the evaluations required by this Order or in otherwise taking any action that is the subject of this Order. The Guidelines shall be promulgated no later than May 1, 1988, and shall be disseminated to all units of each Executive department and agency no later than July 1, 1988. The Attorney General shall, as necessary, update these guidelines to reflect fundamental changes in takings law occurring as a result of Supreme Court decisions.

Sec. 2. Definitions. For the purpose of this Order: (a) "Policies that have takings implications" refers to Federal regulations, proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, or other Federal policy statements that, if implemented or enacted, could effect a taking, such as rules and regulations that propose or implement licensing, permitting, or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property. "Policies that have takings implications" does not include:

(1) Actions abolishing regulations, discontinuing governmental programs, or modifying regulations in a manner that lessens interference with the use of private property;

(2) Actions taken with respect to properties held in trust by the United States or in preparation for or during treaty negotiations with foreign nations;

(3) Law enforcement actions involving seizure, for violations of law, of property for forfeiture or as evidence in criminal proceedings;

(4) Studies or similar efforts or planning activities;

(5) Communications between Federal agencies or departments and State or local land-use planning agencies regarding planned or proposed State or local actions regulating private property regardless of whether such communications are initiated by a Federal agency or department or are undertaken in response to an invitation by the State or local authority;

(6) The placement of military facilities or military activities involving the use of Federal property alone; or

(7) Any military or foreign affairs functions (including procurement functions thereunder) but not including the U.S. Army Corps of Engineers civil works program.

(b) Private property refers to all property protected by the Just Compensation Clause of the Fifth Amendment.

(c) "Actions" refers to proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, applications of Federal regulations to specific property, of Federal governmental actions physically invading or occupying private property, or other policy statements or actions related to Federal regulation or direct physical invasion or occupancy, but does not include:

(1) Actions in which the power of eminent domain is formally exercised;

(2) Actions taken with respect to properties held in trust by the United States or in preparation for or during treaty negotiations with foreign nations;

(3) Law enforcement actions involving seizure, for violations of law, of property for forfeiture or as evidence in criminal proceedings;

(4) Studies or similar efforts or planning activities;

(5) Communications between Federal agencies or departments and State or local land-use planning agencies regarding planned or proposed State or local actions regulating private property regardless of whether such communications are initiated by a Federal agency or department or are undertaken in response to an invitation by the State or local authority;
(6) The placement of military facilities or military activities involving the use of Federal property alone; or
(7) Any military of foreign affairs functions (including procurement functions thereunder), but not including the U.S. Army Corps of Engineers civil works program.
Sec. 3. General Principles. In formulating or implementing policies that have takings implications, each Executive department and agency shall be guided by the following general principles:
(a) Governmental officials should be sensitive to, anticipate, and account for, the obligations imposed by the Just Compensation Clause of the Fifth Amendment in planning and carrying out governmental actions so that they do not result in the imposition of unanticipated or undue additional burdens on the public fisc.
(b) Actions undertaken by governmental officials that result in a physical invasion or occupancy of private property, and regulations imposed on private property that substantially affect its value or use, may constitute a taking of property. Further, governmental action may amount to a taking even though the action results in less than a complete deprivation of all use or value, or of all separate and distinct interests in the same private property and even if the action constituting a taking is temporary in nature.
(c) Government officials whose actions are taken specifically for purposes of protecting public health and safety are ordinarily given broader latitude by courts before their actions are considered to be takings. However, the more assertion of a public health and safety purpose is insufficient to avoid a taking. Actions to which this Order applies asserted to be for the protection of public health and safety, therefore, should be undertaken only in response to real and substantial threats to public health and safety, be designed to advance significantly the health and safety purpose, and be no greater than is necessary to achieve the health and safety purpose.
(d) While normal governmental processes do not ordinarily effect takings, undue delays in decision-making during which private property use if interfered with carry a risk of being held to be takings. Additionally, a delay in processing may increase significantly the size of compensation due if a taking is later found to have occurred.
(e) The Just Compensation Clause is self-actuating, requiring that compensation be paid whenever governmental action results in a taking of private property regardless of whether the underlying authority for the action contemplated a taking or authorized the payment of compensation. Accordingly, governmental actions that may have a significant impact on the use or value of private property should be scrutinized to avoid undue or unplanned burdens on the public fisc.
Sec. 4. Department and Agency Action. In addition to the fundamental principles set forth in Section 3, Executive departments and agencies shall adhere, to the extent permitted by law, to the following criteria when implementing policies that have takings implications:

(a) When an Executive department or agency requires a private party to obtain a permit in order to undertake a specific use of, or action with respect to, private property, any conditions imposed on the granting of a permit shall:
(1) Serve the same purpose that would have been served by a prohibition of the use or action; and
(2) Substantially advance that purpose.
(b) When a proposed action would place a restriction on a use of private property, the restriction imposed on the use shall not be disproportionate to the extent to which the use contributes to the overall problem that the restriction is imposed to redress.
(c) When a proposed action involves a permitting process or any other decision-making process that will interfere with, or otherwise prohibit, the use of private property pending the completion of the process, the duration of the process shall be kept to the minimum necessary.
(d) Before undertaking any proposed action regulating private property use for the protection of public health or safety, the Executive department or agency involved shall, in internal deliberative documents and any submissions to the Director of the Office of Management and Budget that are required:
(1) Identify clearly, with as much specificity as possible, the public health or safety risk created by the private property use that is the subject of the proposed action;
(2) Establish that such proposed action substantially advances the purpose of protecting public health and safety against the specifically identified risk;
(3) Establish to the extent possible that the restrictions imposed on the private property are not disproportionate to the extent to which the use contributes to the overall risk; and
(4) Estimate, to the extent possible, the potential cost to the government in the event that a court later determines that the action constituted a taking.
In instances in which there is an immediate threat to health and safety that constitutes an emergency requiring immediate response, this analysis may be done upon completion of the emergency action.
Sec. 5. Executive Department and Agency Implementation. (a) The head of each Executive department and agency shall designate an official to be responsible for ensuring compliance with this Order with respect to the actions of that department or agency.
(b) Executive departments and agencies shall, to the extent permitted by law, identify the takings implications of proposed regulatory actions and address the merits of those actions in light of the identified takings implications, if any, in all required submissions made to the Office of Management and Budget. Significant takings implications should also be identified and discussed in notices of proposed rule-making and messages transmitting legislative proposals to the Congress, stating the departments' and agencies' conclusions on the takings issues.
(c) Executive departments and agencies shall identify each existing Federal rule and regulation against which a takings award has been made or against which a takings claim is pending including the amount of each claim or award. A "takings" award has been made or a "takings" claim pending if the award was made, or the pending claim brought, pursuant to the Just Compensation Clause of the Fifth Amendment. An itemized compilation of all such awards made in Fiscal Years 1985, 1986, and 1987 and all such pending claims shall

be submitted to the Director, Office of Management and Budget, on or before May 16, 1988.
(d) Each Executive department and agency shall submit annually to the Director, Office of Management and Budget, and to the Attorney General an itemized compilation of all awards of just compensation entered against the United States for takings, including awards of interest as well as monies paid pursuant to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601.
(e)(1) The Director, Office of Management and Budget, and the Attorney General shall each, to the extent permitted by law, take action to ensure that the policies of the Executive departments and agencies are consistent with the principles, criteria, and requirements stated in Sections 1 through 5 of this Order, and the Office of Management and Budget shall take action to ensure that all takings awards levied against agencies are properly accounted for in agency budget submissions.
(2) In addition to the guidelines required by Section 1 of this Order, the Attorney General shall, in consultation with each Executive department and agency to which this Order applies, promulgate such supplemental guidelines as may be appropriate to the specific obligations of that department or agency.
Sec. 6. Judicial Review. This Order is intended only to improve the internal management of the Executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

RONALD REAGAN
THE WHITE HOUSE,
March 15, 1988.

48. EXECUTIVE ORDER 12866. REGULATORY PLANNING AND REVIEW 58 F.R. 51735 (SEPT. 30, 1993) provided:

The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory approaches that respect the role of State, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable. We do not have such a regulatory system today. With this Executive order, the Federal Government begins a program to reform and make more efficient the regulatory process. The objectives of this Executive order are to enhance planning and coordination with respect to both new and existing regulations; to reaffirm the primacy of Federal agencies in the regulatory decision-making process; to restore the integrity and legitimacy of regulatory review and oversight; and to make the process more accessible and open to the public. In pursuing these objectives, the regulatory process shall be conducted so as to meet

applicable statutory requirements and with due regard to the discretion that has been entrusted to the Federal agencies. Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Statement of Regulatory Philosophy and Principles. (a) The Regulatory Philosophy. Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people. In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach. (b) The Principles of Regulation. To ensure that the agencies' regulatory programs are consistent with the philosophy set forth above, agencies should adhere to the following principles, to the extent permitted by law and where applicable: (1) Each agency shall identify the problem that it intends to address (including, where applicable, the failures of private markets or public institutions that warrant new agency action) as well as assess the significance of that problem. (2) Each agency shall examine whether existing regulations (or other law) have created, or contributed to, the problem that a new regulation is intended to correct and whether those regulations (or other law) should be modified to achieve the intended goal of regulation more effectively. (3) Each agency shall identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. (4) In setting regulatory priorities, each agency shall consider, to the extent reasonable, the degree and nature of the risks posed by various substances or activities within its jurisdiction. (5) When an agency determines that a regulation is the best available method of achieving the regulatory objective, it shall design its regulations in the most cost-effective manner to achieve the regulatory objective. In doing so, each agency shall consider incentives for innovation, consistency, predictability, the costs of enforcement and compliance (to the government, regulated entities, and the public), flexibility, distributive impacts, and equity. (6) Each agency shall assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. (7) Each agency shall base its decisions on the best reasonably obtainable

scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation. (8) Each agency shall identify and assess alternative forms of regulation and shall, to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt. (9) Wherever feasible, agencies shall seek views of appropriate State, local, and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Each agency shall assess the effects of Federal regulations on State, local, and tribal governments, including specifically the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving regulatory objectives. In addition, as appropriate, agencies shall seek to harmonize Federal regulatory actions with related State, local, and tribal regulatory and other governmental functions. (10) Each agency shall avoid regulations that are inconsistent, incompatible, or duplicative with its other regulations or those of other Federal agencies. (11) Each agency shall tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations. (12) Each agency shall draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.

Sec. 2. Organization. An efficient regulatory planning and review process is vital to ensure that the Federal Government's regulatory system best serves the American people. (a) The Agencies. Because Federal agencies are the repositories of significant substantive expertise and experience, they are responsible for developing regulations and assuring that the regulations are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order. (b) The Office of Management and Budget. Coordinated review of agency rulemaking is necessary to ensure that regulations are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order, and that decisions made by one agency do not conflict with the policies or actions taken or planned by another agency. The Office of Management and Budget (OMB) shall carry out that review function. Within OMB, the Office of Information and Regulatory Affairs (OIRA) is the repository of expertise concerning regulatory issues, including methodologies and procedures that affect more than one agency, this Executive order, and the President's regulatory policies. To the extent permitted by law, OMB shall provide guidance to agencies and assist the President, the Vice President, and other regulatory policy advisors to the President in regulatory planning and shall be the entity that reviews individual regulations, as provided by this Executive order. (c) The Vice President. The Vice President is the principal advisor to the President on, and shall coordinate the development and presentation of recommendations concerning, regulatory policy, planning, and review, as set

forth in this Executive order. In fulfilling their responsibilities under this Executive order, the President and the Vice President shall be assisted by the regulatory policy advisors within the Executive Office of the President and by such agency officials and personnel as the President and the Vice President may, from time to time, consult.

Sec. 3. Definitions. For purposes of this Executive order: (a) ``Advisors'' refers to such regulatory policy advisors to the President as the President and Vice President may from time to time consult, including, among others: (1) the Director of OMB; (2) the Chair (or another member) of the Council of Economic Advisers; (3) the Assistant to the President for Economic Policy; (4) the Assistant to the President for Domestic Policy; (5) the Assistant to the President for National Security Affairs; (6) the Assistant to the President for Science and Technology; (7) the Assistant to the President for Intergovernmental Affairs; (8) the Assistant to the President and Staff Secretary; (9) the Assistant to the President and Chief of Staff to the Vice President; (10) the Assistant to the President and Counsel to the President; (11) the Deputy Assistant to the President and Director of the White House Office on Environmental Policy; and (12) the Administrator of OIRA, who also shall coordinate communications relating to this Executive order among the agencies, OMB, the other Advisors, and the Office of the Vice President. (b) ``Agency,'' unless otherwise indicated, means any authority of the United States that is an ``agency'' under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10). (c) ``Director'' means the Director of OMB. (d) ``Regulation'' or ``rule'' means an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency. It does not, however, include: (1) Regulations or rules issued in accordance with the formal rulemaking provisions of 5 U.S.C. 556, 557; (2) Regulations or rules that pertain to a military or foreign affairs function of the United States, other than procurement regulations and regulations involving the import or export of non- defense articles and services; (3) Regulations or rules that are limited to agency organization, management, or personnel matters; or (4) Any other category of regulations exempted by the Administrator of OIRA. (e) ``Regulatory action'' means any substantive action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking. (f) ``Significant regulatory action'' means any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or

the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Sec. 4. Planning Mechanism. In order to have an effective regulatory program, to provide for coordination of regulations, to maximize consultation and the resolution of potential conflicts at an early stage, to involve the public and its State, local, and tribal officials in regulatory planning, and to ensure that new or revised regulations promote the President's priorities and the principles set forth in this Executive order, these procedures shall be followed, to the extent permitted by law: (a) Agencies' Policy Meeting. Early in each year's planning cycle, the Vice President shall convene a meeting of the Advisors and the heads of agencies to seek a common understanding of priorities and to coordinate regulatory efforts to be accomplished in the upcoming year. (b) Unified Regulatory Agenda. For purposes of this subsection, the term ``agency'' or ``agencies'' shall also include those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10). Each agency shall prepare an agenda of all regulations under development or review, at a time and in a manner specified by the Administrator of OIRA. The description of each regulatory action shall contain, at a minimum, a regulation identifier number, a brief summary of the action, the legal authority for the action, any legal deadline for the action, and the name and telephone number of a knowledgeable agency official. Agencies may incorporate the information required under 5 U.S.C. 602 and [former] 41 U.S.C. 402 into these agendas. (c) The Regulatory Plan. For purposes of this subsection, the term ``agency'' or ``agencies'' shall also include those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10). (1) As part of the Unified Regulatory Agenda, beginning in 1994, each agency shall prepare a Regulatory Plan (Plan) of the most important significant regulatory actions that the agency reasonably expects to issue in proposed or final form in that fiscal year or thereafter. The Plan shall be approved personally by the agency head and shall contain at a minimum: (A) A statement of the agency's regulatory objectives and priorities and how they relate to the President's priorities; (B) A summary of each planned significant regulatory action including, to the extent possible, alternatives to be considered and preliminary estimates of the anticipated costs and benefits; (C) A summary of the legal basis for each such action, including whether any aspect of the action is required by statute or court order; (D) A statement of the need for each such action and, if applicable, how the action will reduce risks to public health, safety, or the environment, as well as how the magnitude of the risk addressed by the action relates to other risks within the jurisdiction of the agency; (E) The agency's schedule for action, including a statement of any applicable statutory or judicial deadlines; and (F) The name, address, and telephone number of a person the public may contact for additional information about the planned regulatory action. (2) Each agency shall forward its Plan to OIRA by June 1st of each year. (3) Within 10 calendar days after OIRA has received an agency's Plan, OIRA shall circulate it to other affected agencies, the

Advisors, and the Vice President. (4) An agency head who believes that a planned regulatory action of another agency may conflict with its own policy or action taken or planned shall promptly notify, in writing, the Administrator of OIRA, who shall forward that communication to the issuing agency, the Advisors, and the Vice President. (5) If the Administrator of OIRA believes that a planned regulatory action of an agency may be inconsistent with the President's priorities or the principles set forth in this Executive order or may be in conflict with any policy or action taken or planned by another agency, the Administrator of OIRA shall promptly notify, in writing, the affected agencies, the Advisors, and the Vice President. (6) The Vice President, with the Advisors' assistance, may consult with the heads of agencies with respect to their Plans and, in appropriate instances, request further consideration or inter-agency coordination. (7) The Plans developed by the issuing agency shall be published annually in the October publication of the Unified Regulatory Agenda. This publication shall be made available to the Congress; State, local, and tribal governments; and the public. Any views on any aspect of any agency Plan, including whether any planned regulatory action might conflict with any other planned or existing regulation, impose any unintended consequences on the public, or confer any unclaimed benefits on the public, should be directed to the issuing agency, with a copy to OIRA. (d) Regulatory Working Group. Within 30 days of the date of this Executive order, the Administrator of OIRA shall convene a Regulatory Working Group (``Working Group''), which shall consist of representatives of the heads of each agency that the Administrator determines to have significant domestic regulatory responsibility, the Advisors, and the Vice President. The Administrator of OIRA shall chair the Working Group and shall periodically advise the Vice President on the activities of the Working Group. The Working Group shall serve as a forum to assist agencies in identifying and analyzing important regulatory issues (including, among others (1) the development of innovative regulatory techniques, (2) the methods, efficacy, and utility of comparative risk assessment in regulatory decision-making, and (3) the development of short forms and other streamlined regulatory approaches for small businesses and other entities). The Working Group shall meet at least quarterly and may meet as a whole or in subgroups of agencies with an interest in particular issues or subject areas. To inform its discussions, the Working Group may commission analytical studies and reports by OIRA, the Administrative Conference of the United States, or any other agency. (e) Conferences. The Administrator of OIRA shall meet quarterly with representatives of State, local, and tribal governments to identify both existing and proposed regulations that may uniquely or significantly affect those governmental entities. The Administrator of OIRA shall also convene, from time to time, conferences with representatives of businesses, nongovernmental organizations, and the public to discuss regulatory issues of common concern.

Sec. 5. Existing Regulations. In order to reduce the regulatory burden on the American people, their families, their communities, their State, local, and tribal

governments, and their industries; to determine whether regulations promulgated by the executive branch of the Federal Government have become unjustified or unnecessary as a result of changed circumstances; to confirm that regulations are both compatible with each other and not duplicative or inappropriately burdensome in the aggregate; to ensure that all regulations are consistent with the President's priorities and the principles set forth in this Executive order, within applicable law; and to otherwise improve the effectiveness of existing regulations: (a) Within 90 days of the date of this Executive order, each agency shall submit to OIRA a program, consistent with its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified or eliminated so as to make the agency's regulatory program more effective in achieving the regulatory objectives, less burdensome, or in greater alignment with the President's priorities and the principles set forth in this Executive order. Any significant regulations selected for review shall be included in the agency's annual Plan. The agency shall also identify any legislative mandates that require the agency to promulgate or continue to impose regulations that the agency believes are unnecessary or outdated by reason of changed circumstances. (b) The Administrator of OIRA shall work with the Regulatory Working Group and other interested entities to pursue the objectives of this section. State, local, and tribal governments are specifically encouraged to assist in the identification of regulations that impose significant or unique burdens on those governmental entities and that appear to have outlived their justification or be otherwise inconsistent with the public interest. (c) The Vice President, in consultation with the Advisors, may identify for review by the appropriate agency or agencies other existing regulations of an agency or groups of regulations of more than one agency that affect a particular group, industry, or sector of the economy, or may identify legislative mandates that may be appropriate for reconsideration by the Congress. Sec. 6. Centralized Review of Regulations. The guidelines set forth below shall apply to all regulatory actions, for both new and existing regulations, by agencies other than those agencies specifically exempted by the Administrator of OIRA: (a) Agency Responsibilities. (1) Each agency shall (consistent with its own rules, regulations, or procedures) provide the public with meaningful participation in the regulatory process. In particular, before issuing a notice of proposed rulemaking, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation (including, specifically, State, local, and tribal officials). In addition, each agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days. Each agency also is directed to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking. (2) Within 60 days of the date of this Executive order, each agency head shall designate a Regulatory Policy Officer who shall report to the agency head. The Regulatory Policy Officer shall be involved at each stage of the regulatory process to foster the development of effective, innovative, and least burdensome

regulations and to further the principles set forth in this Executive order. (3) In addition to adhering to its own rules and procedures and to the requirements of the Administrative Procedure Act [5 U.S.C. 551 et seq., 701 et seq.], the Regulatory Flexibility Act [5 U.S.C. 601 et seq.], the Paperwork Reduction Act [44 U.S.C. 3501 et seq.], and other applicable law, each agency shall develop its regulatory actions in a timely fashion and adhere to the following procedures with respect to a regulatory action: (A) Each agency shall provide OIRA, at such times and in the manner specified by the Administrator of OIRA, with a list of its planned regulatory actions, indicating those which the agency believes are significant regulatory actions within the meaning of this Executive order. Absent a material change in the development of the planned regulatory action, those not designated as significant will not be subject to review under this section unless, within 10 working days of receipt of the list, the Administrator of OIRA notifies the agency that OIRA has determined that a planned regulation is a significant regulatory action within the meaning of this Executive order. The Administrator of OIRA may waive review of any planned regulatory action designated by the agency as significant, in which case the agency need not further comply with subsection (a)(3)(B) or subsection (a)(3)(C) of this section. (B) For each matter identified as, or determined by the Administrator of OIRA to be, a significant regulatory action, the issuing agency shall provide to OIRA: (i) The text of the draft regulatory action, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need; and (ii) An assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate and, to the extent permitted by law, promotes the President's priorities and avoids undue interference with State, local, and tribal governments in the exercise of their governmental functions. (C) For those matters identified as, or determined by the Administrator of OIRA to be, a significant regulatory action within the scope of section 3(f)(1), the agency shall also provide to OIRA the following additional information developed as part of the agency's decision-making process (unless prohibited by law): (i) An assessment, including the underlying analysis, of benefits anticipated from the regulatory action (such as, but not limited to, the promotion of the efficient functioning of the economy and private markets, the enhancement of health and safety, the protection of the natural environment, and the elimination or reduction of discrimination or bias) together with, to the extent feasible, a quantification of those benefits; (ii) An assessment, including the underlying analysis, of costs anticipated from the regulatory action (such as, but not limited to, the direct cost both to the government in administering the regulation and to businesses and others in complying with the regulation, and any adverse effects on the efficient functioning of the economy, private markets (including productivity, employment, and competitiveness), health, safety, and the natural environment), together with, to the extent feasible, a quantification of those costs; and (iii) An assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, identified

by the agencies or the public (including improving the current regulation and reasonably viable nonregulatory actions), and an explanation why the planned regulatory action is preferable to the identified potential alternatives. (D) In emergency situations or when an agency is obligated by law to act more quickly than normal review procedures allow, the agency shall notify OIRA as soon as possible and, to the extent practicable, comply with subsections (a)(3)(B) and (C) of this section. For those regulatory actions that are governed by a statutory or court-imposed deadline, the agency shall, to the extent practicable, schedule rulemaking proceedings so as to permit sufficient time for OIRA to conduct its review, as set forth below in subsection (b)(2) through (4) of this section. (E) After the regulatory action has been published in the Federal Register or otherwise issued to the public, the agency shall: (i) Make available to the public the information set forth in subsections (a)(3)(B) and (C); (ii) Identify for the public, in a complete, clear, and simple manner, the substantive changes between the draft submitted to OIRA for review and the action subsequently announced; and (iii) Identify for the public those changes in the regulatory action that were made at the suggestion or recommendation of OIRA. (F) All information provided to the public by the agency shall be in plain, understandable language. (b) OIRA Responsibilities. The Administrator of OIRA shall provide meaningful guidance and oversight so that each agency's regulatory actions are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order and do not conflict with the policies or actions of another agency. OIRA shall, to the extent permitted by law, adhere to the following guidelines: (1) OIRA may review only actions identified by the agency or by OIRA as significant regulatory actions under subsection (a)(3)(A) of this section. (2) OIRA shall waive review or notify the agency in writing of the results of its review within the following time periods: (A) For any notices of inquiry, advance notices of proposed rulemaking, or other preliminary regulatory actions prior to a Notice of Proposed Rulemaking, within 10 working days after the date of submission of the draft action to OIRA; (B) For all other regulatory actions, within 90 calendar days after the date of submission of the information set forth in subsections (a)(3)(B) and (C) of this section, unless OIRA has previously reviewed this information and, since that review, there has been no material change in the facts and circumstances upon which the regulatory action is based, in which case, OIRA shall complete its review within 45 days; and (C) The review process may be extended (1) once by no more than 30 calendar days upon the written approval of the Director and (2) at the request of the agency head. (3) For each regulatory action that the Administrator of OIRA returns to an agency for further consideration of some or all of its provisions, the Administrator of OIRA shall provide the issuing agency a written explanation for such return, setting forth the pertinent provision of this Executive order on which OIRA is relying. If the agency head disagrees with some or all of the bases for the return, the agency head shall so inform the Administrator of OIRA in writing. (4) Except as otherwise provided by law or required by a Court, in order to ensure greater openness, accessibility, and accountability in the regulatory review process, OIRA shall be governed by the

following disclosure requirements: (A) Only the Administrator of OIRA (or a particular designee) shall receive oral communications initiated by persons not employed by the executive branch of the Federal Government regarding the substance of a regulatory action under OIRA review; (B) All substantive communications between OIRA personnel and persons not employed by the executive branch of the Federal Government regarding a regulatory action under review shall be governed by the following guidelines: (i) A representative from the issuing agency shall be invited to any meeting between OIRA personnel and such person(s); (ii) OIRA shall forward to the issuing agency, within 10 working days of receipt of the communication(s), all written communications, regardless of format, between OIRA personnel and any person who is not employed by the executive branch of the Federal Government, and the dates and names of individuals involved in all substantive oral communications (including meetings to which an agency representative was invited, but did not attend, and telephone conversations between OIRA personnel and any such persons); and (iii) OIRA shall publicly disclose relevant information about such communication(s), as set forth below in subsection (b)(4)(C) of this section. (C) OIRA shall maintain a publicly available log that shall contain, at a minimum, the following information pertinent to regulatory actions under review: (i) The status of all regulatory actions, including if (and if so, when and by whom) Vice Presidential and Presidential consideration was requested; (ii) A notation of all written communications forwarded to an issuing agency under subsection (b)(4)(B)(ii) of this section; and (iii) The dates and names of individuals involved in all substantive oral communications, including meetings and telephone conversations, between OIRA personnel and any person not employed by the executive branch of the Federal Government, and the subject matter discussed during such communications. (D) After the regulatory action has been published in the Federal Register or otherwise issued to the public, or after the agency has announced its decision not to publish or issue the regulatory action, OIRA shall make available to the public all documents exchanged between OIRA and the agency during the review by OIRA under this section. (5) All information provided to the public by OIRA shall be in plain, understandable language.

Sec. 7. Resolution of Conflicts. To the extent permitted by law, disagreements or conflicts between or among agency heads or between OMB and any agency that cannot be resolved by the Administrator of OIRA shall be resolved by the President, or by the Vice President acting at the request of the President, with the relevant agency head (and, as appropriate, other interested government officials). Vice Presidential and Presidential consideration of such disagreements may be initiated only by the Director, by the head of the issuing agency, or by the head of an agency that has a significant interest in the regulatory action at issue. Such review will not be undertaken at the request of other persons, entities, or their agents. Resolution of such conflicts shall be informed by recommendations developed by the Vice President, after consultation with the Advisors (and other executive branch officials or personnel whose responsibilities to the President include the subject matter at

issue). The development of these recommendations shall be concluded within 60 days after review has been requested. During the Vice Presidential and Presidential review period, communications with any person not employed by the Federal Government relating to the substance of the regulatory action under review and directed to the Advisors or their staffs or to the staff of the Vice President shall be in writing and shall be forwarded by the recipient to the affected agency(ies) for inclusion in the public docket(s). When the communication is not in writing, such Advisors or staff members shall inform the outside party that the matter is under review and that any comments should be submitted in writing. At the end of this review process, the President, or the Vice President acting at the request of the President, shall notify the affected agency and the Administrator of OIRA of the President's decision with respect to the matter.

Sec. 8. Publication. Except to the extent required by law, an agency shall not publish in the Federal Register or otherwise issue to the public any regulatory action that is subject to review under section 6 of this Executive order until (1) the Administrator of OIRA notifies the agency that OIRA has waived its review of the action or has completed its review without any requests for further consideration, or (2) the applicable time period in section 6(b)(2) expires without OIRA having notified the agency that it is returning the regulatory action for further consideration under section 6(b)(3), whichever occurs first. If the terms of the preceding sentence have not been satisfied and an agency wants to publish or otherwise issue a regulatory action, the head of that agency may request Presidential consideration through the Vice President, as provided under section 7 of this order. Upon receipt of this request, the Vice President shall notify OIRA and the Advisors. The guidelines and time period set forth in section 7 shall apply to the publication of regulatory actions for which Presidential consideration has been sought.

Sec. 9. Agency Authority. Nothing in this order shall be construed as displacing the agencies' authority or responsibilities, as authorized by law.

Sec. 10. Judicial Review. Nothing in this Executive order shall affect any otherwise available judicial review of agency action. This Executive order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 11. Revocations. Executive Orders Nos. 12291 and 12498; all amendments to those Executive orders; all guidelines issued under those orders; and any exemptions from those orders heretofore granted for any category of rule are revoked.

William J. Clinton.

49. NATIONAL ENERGY POLICY

a. Executive Orders 13211 National Energy Policy, 66 *Fed. Reg.* 28355 (May 22, 2001)

Executive Order 13211
Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
May 18, 2001

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to appropriately weigh and consider the effects of the Federal Government's regulations on the supply, distribution, and use of energy, it is hereby ordered as follows:

Section 1. Policy. The Federal Government can significantly affect the supply, distribution, and use of energy. Yet there is often too little information regarding the effects that governmental regulatory action can have on energy. In order to provide more useful energy-related information and hence improve the quality of agency decisionmaking, I am requiring that agencies shall prepare a Statement of Energy Effects when undertaking certain agency actions. As described more fully below, such Statements of Energy Effects shall describe the effects of certain regulatory actions on energy supply, distribution, or use.

Sec. 2. Preparation of a Statement of Energy Effects.
(a) To the extent permitted by law, agencies shall prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for those matters identified as significant energy actions.
(b) A Statement of Energy Effects shall consist of a detailed statement by the agency responsible for the significant energy action relating to:
(i) any adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increased use of foreign supplies) should the proposal be implemented, and
(ii) reasonable alternatives to the action with adverse energy effects and the expected effects of such alternatives on energy supply, distribution, and use.
(c) The Administrator of the Office of Information and Regulatory Affairs shall provide guidance to the agencies on the implementation of this order and shall consult with other agencies as appropriate in the implementation of this order.

Sec. 3. Submission and Publication of Statements.
(a) Agencies shall submit their Statements of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget,

whenever they present the related submission under Executive Order 12866 of September 30, 1993, or any successor order.
(b) Agencies shall publish their Statements of Energy Effects, or a summary thereof, in each related Notice of Proposed Rulemaking and in any resulting Final Rule.

Sec. 4. Definitions. For purposes of this order:
(a) "Regulation" and "rule" have the same meaning as they do in Executive Order 12866 or any successor order.
(b) "Significant energy action" means any action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking:
(1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and
(ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or
(2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.
(c) "Agency" means any authority of the United States that is an "agency" under 44

U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

Sec. 5. Judicial Review. Nothing in this order shall affect any otherwise available judicial review of agency action. This order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

GEORGE W. BUSH
THE WHITE HOUSE,
May 18, 2001.

b. Executive Order 13212, 65 Fed. Reg. 28357 (May 22, 2001)

Executive Order 13212
Actions To Expedite Energy-Related Projects
May 18, 2001

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to take additional steps to expedite the increased supply and availability of energy to our Nation, it is hereby ordered as follows:

Section 1. Policy. The increased production and transmission of energy in a safe and environmentally sound manner is essential to the well-being of the American people. In general, it is the policy of this Administration that executive departments and agencies (agencies) shall take appropriate actions, to the extent consistent with applicable law, to expedite projects that will increase the production, transmission, or conservation of energy.

Sec. 2. Actions to Expedite Energy-Related Projects. For energy-related projects, agencies shall expedite their review of permits or take other actions as necessary to accelerate the completion of such projects, while maintaining safety, public health, and environmental protections. The agencies shall take such actions to the extent permitted by law and regulation, and where appropriate.

Sec. 3. Interagency Task Force. There is established an interagency task force (Task Force) to monitor and assist the agencies in their efforts to expedite their review of permits or similar actions, as necessary, to accelerate the completion of energy-related projects, increase energy production and conservation, and improve transmission of energy. The Task Force also shall monitor and assist agencies in setting up appropriate mechanisms to coordinate Federal, State, tribal, and local permitting in geographic areas where increased permitting activity is expected. The Task Force shall be composed of representatives from the Departments of State, the Treasury, Defense, Agriculture, Housing and Urban Development, Justice, Commerce, Transportation, the Interior, Labor, Education, Health and Human Services, Energy, Veterans Affairs, the Environmental Protection Agency, Central Intelligence Agency, General Services Administration, Office of Management and Budget, Council of Economic Advisers, Domestic Policy Council, National Economic Council, and such other representatives as may be determined by the Chairman of the Council on Environmental Quality. The Task Force shall be chaired by the Chairman of the Council on Environmental Quality and housed at the Department of Energy for administrative purposes.

Sec. 4. Judicial Review. Nothing in this order shall affect any otherwise available judicial review of agency action. This order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

GEORGE W. BUSH
THE WHITE HOUSE,
May 18, 2001.

c. Executive Order 13302, Amending Executive Order 13212, Actions to Expedite Energy-Related Projects, 68 Fed. Reg. 27429 (May 15, 2003)

By the authority vested in me as President by the Constitution and the laws of the United States, including section 60133 of title 49, United States Code, and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. Amendments to Executive Order 13212. Executive Order 13212 of May 18, 2001, as amended, is further amended by:
(a) in section 1, immediately before the period at the end of the section, inserting "and projects that will strengthen pipeline safety";
(b) in section 2, after "energy-related projects" inserting "(including pipeline safety projects)"; and
(c) revising section 3 to read as follows:
"Sec. 3. Interagency Task Force. (a) There is established, within the Department of Energy for administrative purposes, an interagency task force (Task Force) to perform the following functions: (i) monitor and assist the agencies in their efforts to expedite their reviews of permits or similar actions, as necessary, to accelerate the completion of energy-related projects (including pipeline safety projects), increase energy production and conservation, and improve the transmission of energy;
(ii) monitor and assist agencies in setting up appropriate mechanisms to coordinate Federal, State, tribal, and local permitting in geographic areas where increased permitting activity is expected; and
(iii) perform the functions of the interagency committee for which section 60133 of title 49, United States Code, provides.
(b)(i) The Task Force shall consist exclusively of the following members:
(A) in the performance of all Task Force functions set out in sections 3(a)(i) and (ii) of this order, the Secretaries of State, the Treasury, Defense, Agriculture, Housing and Urban Development, Commerce, Transportation, the Interior, Labor, Education, Health and Human Services, Energy, and Veterans Affairs, the Attorney General, the Administrator of the Environmental Protection Agency, the Director of Central Intelligence, the Administrator of General Services, the Director of the Office of Management and Budget, the Chairman of the Council of Economic Advisers, the Assistant to the President for Domestic Policy, the Assistant to the President for Economic Policy, and such other heads of agencies as the Chairman of the Council on Environmental Quality may designate; and
(B) in the performance of the functions to which section 3(a)(iii) of this order refers, the officers listed in section 60133(a)(2)(A)-(H) of title 49, United States Code, and such other representatives of Federal agencies with responsibilities relating to pipeline repair projects as the Chairman of the Council on Environmental Quality may designate.
(ii) A member of the Task Force may designate, to perform the Task Force functions of the member, a full-time officer or employee of that member's agency or office.

(c) The Chairman of the Council on Environmental Quality shall chair the Task Force.
(d) Consultation in the implementation of this order with State and local officials and other persons who are not full-time or permanent part-time employees of the Federal Government shall be conducted in a manner that elicits fully the individual views of each official or other person consulted, without deliberations or efforts to achieve consensus on advice or recommendations.
(e) This order shall be implemented in a manner consistent with the President's constitutional authority to supervise the unitary executive branch."

Sec. 2. Judicial Review. This order is intended only to improve the internal management of the Federal Government, and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, instrumentalities or entities, its officers or employees, or any other person.

GEORGE W. BUSH
THE WHITE HOUSE,
Washington, May 15, 2003.
Exec. Order No. 13302, 68 FR 27429, 2003 WL 21144882 (Pres.)

50. SCIENTIFIC INVENTORY OF ONSHORE FEDERAL LANDS' OIL AND GAS RESOURCES AND RESERVES AND THE EXTENT AND NATURE OF RESTRICTS OR IMPEDIMENTS TO THEIR DEVELOPMENT, IN COMPLIANCE WITH ENERGY POLICY AND CONSERVATION ACT AMENDMENTS OF 2000, Pub. L. 106-469, §604 (January 2003)

§604. SCIENTIFIC INVENTORY OF OIL AND GAS RESERVES.
(a) IN GENERAL.--The Secretary of the Interior, in consultation with the Secretaries of Agriculture and Energy, shall conduct an inventory of all onshore Federal lands. The inventory shall identify--
(1) the United States Geological Survey reserve estimates of the oil and gas resources underlying these lands; and
(2) the extent and nature of any restrictions or impediments to the development of such resources.
(b) REGULAR UPDATE.--Once completed, the USGS reserve estimates and the surface availability data as provided in subsection (a)(2) shall be regularly updated and made publically available.
(c) INVENTORY.--The inventory shall be provided to the Committee on Resources of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate within 2 years after the date of the enactment of this section.
(d) AUTHORIZATION OF APPROPRIATIONS.--There are authorized to be appropriated such sums as may be necessary to implement this section.

51. EXECUTIVE ORDER 13272, CONSIDERATION OF SMALL BUSINESS ENTITIES IN RULEMAKING, 67 *Fed. Reg.* 53461 (August 13, 2002)

Executive Order 13272
Proper Consideration of Small Entities in Agency Rulemaking
August 13, 2002

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. General Requirements. Each agency shall establish procedures and policies to promote compliance with the Regulatory Flexibility Act, as amended (5 U.S.C. 601 et seq.) (the "Act"). Agencies shall thoroughly review draft rules to assess and take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations, as provided by the Act. The Chief Counsel for Advocacy of the Small Business Administration (Advocacy) shall remain available to advise agencies in performing that review consistent with the provisions of the Act.

Sec. 2. Responsibilities of Advocacy. Consistent with the requirements of the Act, other applicable law, and Executive Order 12866 of September 30, 1993, as amended, Advocacy:
(a) shall notify agency heads from time to time of the requirements of the Act, including by issuing notifications with respect to the basic requirements of the Act within 90 days of the date of this order;
(b) shall provide training to agencies on compliance with the Act; and
(c) may provide comment on draft rules to the agency that has proposed or intends to propose the rules and to the Office of Information and Regulatory Affairs of the Office of Management and Budget (OIRA).

Sec. 3. Responsibilities of Federal Agencies. Consistent with the requirements of the Act and applicable law, agencies shall:
(a) Within 180 days of the date of this order, issue written procedures and policies, consistent with the Act, to ensure that the potential impacts of agencies' draft rules on small businesses, small governmental jurisdictions, and small organizations are properly considered during the rulemaking process. Agency heads shall submit, no later than 90 days from the date of this order, their written procedures and policies to Advocacy for comment. Prior to issuing final procedures and policies, agencies shall consider any such comments received within 60 days from the date of the submission of the agencies' procedures and policies to Advocacy. Except to the extent otherwise specifically provided by statute or Executive Order, agencies shall make the final procedures and policies available to the public through the Internet or other easily accessible means;

(b) Notify Advocacy of any draft rules that may have a significant economic impact on a substantial number of small entities under the Act. Such notifications shall be made (i) when the agency submits a draft rule to OIRA under Executive Order 12866 if that order requires such submission, or (ii) if no submission to OIRA is so required, at a reasonable time prior to publication of the rule by the agency; and
(c) Give every appropriate consideration to any comments provided by Advocacy regarding a draft rule. Consistent with applicable law and appropriate protection of executive deliberations and legal privileges, an agency shall include, in any explanation or discussion accompanying publication in the Federal Register of a final rule, the agency's response to any written comments submitted by Advocacy on the proposed rule that preceded the final rule; provided, however, that such inclusion is not required if the head of the agency certifies that the public interest is not served thereby.
Agencies and Advocacy may, to the extent permitted by law, engage in an exchange of data and research, as appropriate, to foster the purposes of the Act.

Sec. 4. Definitions. Terms defined in section 601 of title 5, United States Code, including the term "agency," shall have the same meaning in this order.

Sec. 5. Preservation of Authority. Nothing in this order shall be construed to impair or affect the authority of the Administrator of the Small Business Administration to supervise the Small Business Administration as provided in the first sentence of section 2(b)(1) of Public Law 85-09536 (15 U.S.C. 633(b)(1)).

Sec. 6. Reporting. For the purpose of promoting compliance with this order, Advocacy shall submit a report not less than annually to the Director of the Office of Management and Budget on the extent of compliance with this order by agencies.

Sec. 7. Confidentiality. Consistent with existing law, Advocacy may publicly disclose information that it receives from the agencies in the course of carrying out this order only to the extent that such information already has been lawfully and publicly disclosed by OIRA or the relevant rulemaking agency.

Sec. 8. Judicial Review. This order is intended only to improve the internal management of the Federal Government. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

GEORGE W. BUSH
THE WHITE HOUSE,
August 13, 2002.

52. Wetlands Delineation, Memorandum of Agreement, 59 *Fed. Reg.* 2920 (January 19, 1994)

NOTICES
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF AGRICULTURE
Soil Conservation Service
DEPARTMENT OF DEFENSE
Corps of Engineers, Department of the Army
DEPARTMENT OF THE INTERIOR
Fish and Wildlife Service
Interagency Memorandum of Agreement Concerning Wetlands Determinations for Purposes of Section 404 of the Clean Water Act and Subtitle B of the Food Security Act
Wednesday, January 19, 1994
AGENCIES: Environmental Protection Agency; Soil Conservation Service, USDA; Army Corps of Engineers, DoD; Fish and Wildlife Service, DoI.
ACTION: Notice.

SUMMARY: On January 6, 1994, the Departments of the Army, Agriculture, the Interior, and the Environmental Protection Agency signed a Memorandum of Agreement (MOA) that recognizes the Soil Conservation Service (SCS) as the lead Federal agency for wetlands delineations on agricultural lands. Specifically, the MOA articulates the policy and procedures to be used in the determination of wetlands jurisdiction for purposes of both Section 404 of the Clean Water Act and Subtitle B of the Food Security Act (also known as the Swampbuster program). The MOA, which establishes minimum training requirements and requires the use of standard interagency approved methods, will improve the quality and consistency of wetlands determinations on agricultural lands. The actual text of the MOA is published as part of this notice.

DATES: The effective date of this MOA is January 6, 1994.

ADDRESSES: Copies of this MOA are available from:
EPA Wetlands Hotline, (800) 832-7828.
U.S. Soil Conservation Service Conservation Planning Division, Washington, DC 20013.
U.S. Army Corps of Engineers CECW-OR, 20 Massachusetts Ave., NW, Washington, DC 20314-1000.
U.S. Fish and Wildlife Service Division of Habitat Conservation (400ARLSQ), 1849 C. St., NW, Washington, DC 20240

FOR FURTHER INFORMATION CONTACT: The EPA Wetlands Hotline, (800) 832-7828; Gregory Peck of the Environmental Protection Agency, 202/260-8794; Michael Davis of the Office of the Assistant Secretary of the Army (Civil Works), 703/695-1376; Warren Lee of the Soil Conservation Service, 202/720-1845; or Stephen Forsythe of the Fish and Wildlife Service, (703) 358-2161.

SUPPLEMENTARY INFORMATION: On August 24, 1993, the Clinton Administration announced a comprehensive package of wetlands policy reforms that will improve the protection of wetlands and make wetlands programs more fair and flexible for landowners. The MOA signed on January 6, 1994, implements one of the more than 40 initiatives in the Administrations's Wetlands Plan. The MOA signatory agencies recognize the important contribution of agricultural producers to society, our economy, and our environment. The agencies are committed to ensuring that Federal wetlands programs are administered in a manner that minimizes the impacts on affected landowners to the extent possible consistent with the important goal of protecting wetlands. The MOA was developed in response to concerns that previous practices may have led to confusion and inconsistent application of Federal wetlands programs and policies on agricultural lands.

The MOA will minimize duplication and inconsistencies between Swampbuster and the Clean Water Act wetlands programs and articulate clearly the procedures by which the Nation's farmers can rely on SCS wetlands jurisdictional determinations on agricultural land for purposes of both the Clean Water Act and Swampbuster programs. The MOA includes provisions to ensure that agency personnel are properly trained, that standard agreed-upon methods are utilized in making wetlands determinations, and that appropriate monitoring and oversight is undertaken. The MOA also places emphasis on local cooperation between the signatory agencies and the improvement of analytical methods for making wetland determinations.

While the MOA became effective on January 6, 1994, full implementation will vary from state to state depending on the level of training required and the development of state wetlands mapping conventions. The signatory agencies will take appropriate action to expedite implementation of the MOA consistent with such prerequisites.

The full text of the MOA follows.

Dated: January 7, 1994.
Approved: James R. Lyons, Assistant Secretary for Natural Resources and Environment, Department of Agriculture.
Dated: January 12, 1994.
Approved: Robert Perciasepe, Assistant Administrator for Water Environmental Protection Agency.

Dated: January 7, 1994.
Approved: G. Edward Dickey, Acting Assistant Secretary of the Army for Civil Works, Department of the Army.
Dated: January 7, 1994.
Approved: George T. Frampton, Jr., Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior.

Memorandum of Agreement Among the Department of Agriculture, the Environmental Protection Agency, the Department of the Interior, and the Department of the Army Concerning the Delineation of Wetlands for Purposes of Section 404 of the Clean Water Act and Subtitle B of the Food Security Act.

I. Background

The Departments of the Army, Agriculture, and the Interior, and the Environmental Protection Agency (EPA) recognize fully that the protection of the Nation's remaining wetlands is an important objective that will be supported through the implementation of the Wetland Conservation (Swampbuster) provision of the Food Security Act (FSA) and Section 404 of the Clean Water Act (CWA). The agencies further recognize and value the important contribution of agricultural producers to our society, our economy, and our environment. We are committed to ensuring that Federal wetlands programs are administered in a manner that minimizes the impacts on affected landowners to the fullest possible extent consistent with the important goal of protecting wetlands. We are also committed to minimizing duplication and inconsistencies between Swampbuster and the CWA Section 404 program. On August 24, 1993, the Administration announced a comprehensive package of reforms that will improve both the protection of wetlands and make wetlands programs more fair and flexible for landowners, including the Nations's agriculture producers. This Memorandum of Agreement (MOA) implements one of over 40 components of the Administration's Wetland Plan.

II. Purpose and Applicability

A. Purpose
The purpose of this MOA is to specify the manner in which wetland delineations and certain other determinations of waters of the United States made by the U.S. Department of Agriculture (USDA) under the FSA will be relied upon for purposes of CWA Section 404. While this MOA will promote consistency between CWA and FSA wetlands programs, it is not intended in any way to diminish the protection of these important aquatic resources. In this regard, all signatory agencies to this MOA will ensure that wetlands programs are administered in a manner consistent with the objectives and requirements of applicable laws, implementing regulations, and guidance.

B. Applicability
1. The Administrator of EPA has the ultimate authority to determine the geographic scope of waters of the United States subject to jurisdiction under the CWA, including the Section 404 regulatory program. Consistent with a current MOA between EPA and the Department of the Army, the Army Corps of Engineers (Corps) conducts jurisdictional delineations associated with the day- to-day administration of the Section 404 program.

2. The Secretary of the USDA, acting through the Chief of the Soil Conservation Service (SCS), has the ultimate authority to determine the geographic scope of wetlands for FSA purposes and to make delineations relative to the FSA, in consultation with the Department of the Interior, Fish and Wildlife Service (FWS).

III. Definition of Agricultural Lands
For the purposes of this MOA, the term "agricultural lands" means those lands intensively used and managed for the production of food or fiber to the extent that the natural vegetation has been removed and cannot be used to determine whether the area meets applicable hydrophytic vegetation criteria in making a wetland delineation.
A. Areas that meet the above definition may include intensively used and managed cropland, hayland, pasture land, orchards, vineyards, and areas which support wetland crops (e.g., cranberries, taro, watercress, rice). For example, lands intensively used and managed for pasture or hayland where the natural vegetation has been removed and replaced with planted grasses or legumes such as ryegrass, bluegrass, or alfalfa, are considered agricultural lands for the purposes of this MOA.

B. "Agricultural lands" do not include range lands, forest lands, wood lots, or tree farms. Further, lands where the natural vegetation has not been removed, even though that vegetation may be regularly grazed or mowed and collected as forage or fodder (e.g., uncultivated meadows and prairies, salt hay), are not considered agricultural lands for the purposes of this MOA.

Other definitions for the purposes of this MOA are listed below in section VI.

IV. Allocation of Responsibility

A. In accordance with the terms and procedures of this MOA, wetland delineations made by SCS on agricultural lands, in consultation with FWS, will be accepted by EPA and the Corps for the purposes of determining Section 404 wetland jurisdiction. In addition, EPA and the Corps will accept SCS wetland delineations on non-agricultural lands that are either narrow bands immediately adjacent to, or small pockets interspersed among, agricultural lands. SCS is responsible for making wetland delineations for agricultural lands whether or not the person who owns, manages, or operates the land is a participant in USDA programs.

B. Lands owned or operated by a USDA program participant that are not agricultural lands and for which a USDA program participant requests a wetland delineation, will be delineated by SCS in coordination with the Corps, or EPA as appropriate, and in consultation with FWS. Final wetland delineations conducted by SCS pursuant to the requirements of this paragraph shall not be revised by SCS except where an opportunity for coordination and consultation is provided to the other signatory agencies.

C. SCS may conduct delineations of other waters for the purposes of Section 404 of the CWA, such as lakes, ponds, and streams, in coordination with the Corps, or EPA as appropriate, on lands on which SCS is otherwise engaged in wetland delineations pursuant to paragraphs IV.A or IV.B of this MOA. Delineations of "other waters" will not be made until the interagency oversight team convened pursuant to Section V.B.2 has agreed on appropriate local procedures and guidance for making such delineations.

D. For agricultural lands, the signatory agencies will use the procedures for delineating wetlands as described in the National Food Security Act Manual, Third Edition (NFSAM). For areas that are not agricultural lands, SCS will use the 1987 Corps Wetland Delineation Manual, with current national Corps guidance, to make wetland delineations applicable to Section 404.

E. Delineations on "agricultural lands" must be performed by personnel who are trained in the use of the NFSAM. Delineations on other lands and waters must be performed by personnel who are trained in the use of the 1987 Corps Wetland Delineation Manual. This MOA includes provisions for the appropriate interagency delineation training below in Section V.E.

F. In the spirit of the agencies' commitment to develop agreed upon methods for use in making wetland delineations, subsequent revisions or amendments to the Corps 1987 manual or portions of the NFSAM affecting the wetland delineation procedures upon which this agreement is based will require the concurrence of the four signatory agencies.

G. A final written wetland delineation made by SCS pursuant to the terms of this MOA will be adhered to by all the signatory agencies and will be effective for a period of five years from the date the delineation is made final, unless new information warrants revision of the delineation before the expiration date. Such new information may include, for example, data on landscape changes caused by a major flood, or a landowner's notification of intent to abandon agricultural use and the return of wetland conditions on a prior converted cropland. In accordance with Section 1222 of the FSA, SCS will update wetland delineations on this five-year cycle. Circumstances under which SCS wetland delineations made prior to the

effective date of this agreement will be considered as final for Section 404 purposes are addressed in Paragraph V.C.

H. Within the course of administering their Swampbuster responsibilities, SCS and FWS will provide landowners/operators general written information (i.e., EPA/Corps fact sheets) regarding the CWA Section 404 program permit requirements, general permits, and exemptions. The SCS and FWS will not, however, provide opinions regarding the applicability of CWA Section 404 permit requirements or exemptions.

I. USDA will maintain documentation of all final written SCS wetland delineations and record the appropriate label and boundary information on an official wetland delineation map. USDA will make this information available to the signatory agencies upon request.

J. In pursuing enforcement activities, the signatory agencies will rely upon delineations made by the lead agency, as clarified below, providing a single Federal delineation for potential violations of Section 404 or Swampbuster. Nothing in this MOA will diminish, modify, or otherwise affect existing EPA and Corps enforcement authorities under the CWA and clarified in the 1989 "EPA/Army MOA Concerning Federal Enforcement for the Section 404 Program of the Clean Water Act." EPA, the Corps, and SCS may gather information based on site visits or other means to provide additional evidentiary support for a wetland delineation which is the subject of a potential or ongoing CWA Section 404 or Swampbuster enforcement action.

K. For those lands where SCS has not made a final written wetland delineation, and where the Corps or EPA is pursuing, a potential CWA violation, the lead agency for the CWA enforcement action will conduct a jurisdictional delineation for the purposes of Section 404 and such delineations will be used by SCS for determining Swampbuster jurisdiction and potential Swampbuster violations. For those lands where the Corps has not made a final written wetland delineation, and where SCS is pursuing a potential Swampbuster violation, SCS will make a final written wetland delineation consistent with Sections IV.A, IV.B, and IV.C of this MOA and provide copies to the Corps and EPA. Such delineations will be used by the Corps and EPA for the purpose of determining potential violations of the CWA. In circumstances in which either the Corps or EPA is pursuing a potential CWA violation on land that is subject to an ongoing SCS appeal, a wetland delineation will be conducted by the Corps or EPA in consultation with SCS and FWS.

L. In making wetland delineations, the agencies recognize that discharges of dredged or fill material that are not authorized under Section 404 cannot eliminate Section 404 jurisdiction, and that wetlands that were converted as a result of unauthorized discharges remain subject to Section 404 regulation.

V. Procedures
Accurate and consistent wetland delineations are critical to the success of this MOA. For this reason, the signatory agencies will work cooperatively at the field level to:

(1) Achieve interagency concurrence on mapping conventions used by SCS for wetland delineations on agricultural lands,
(2) provide EPA and Corps programmatic review of SCS delineations, and
(3) certify wetland delineations in accordance with Section 1222(a)(2) of the FSA, as amended. The following sections describe the procedures that will be followed to accomplish these objectives.

A. Mapping Conventions

1. Each SCS State Conservationist will take the lead in convening representatives of the Corps, EPA, FWS, and SCS to obtain the written concurrence of each of the signatory agencies, within 120 calendar days of the effective date of this MOA, on a set of mapping conventions for use in making wetland delineations. Only mapping conventions concurred upon by all signatory agencies will be used by SCS for wetland delineations.

2. If interagency consensus on mapping conventions is not reached within 120 days of the date of this MOA, the State Conservationist will refer documentation of the unresolved issues to the Chief of SCS. The Chief of SCS will immediately forward copies of the State Conservationist's documentation of unresolved issues to the Corps Director of Civil Works; the EPA Director of the Office of Wetlands, Oceans, and Watersheds; and the FWS Director. Immediately thereafter, the Chief of SCS or an appropriate designee will lead necessary discussions to achieve interagency concurrence on resolution of outstanding issues, and will forward documentation of the resolution to the State Conservationist and the appropriate Headquarters offices of the signatory agencies.

3. Once interagency concurrence on mapping conventions is obtained, such mapping conventions will be used immediately in place of the earlier mapping conventions.

4. Agreed-upon mapping conventions developed at the state level will be documented and submitted, for each state, through the Chief of SCS to the Headquarters of each of the signatory agencies. State-level agreements will be reviewed by the Headquarters of the signatory agencies for the purpose of ensuring national consistency.

B. Delineation Process Review and Oversight

1. This MOA emphasizes the need to ensure consistency in the manner in which wetlands are identified for CWA and FSA purposes, and provides a number of mechanisms to increase meaningful interagency coordination and consultation in order for the agencies to work toward meeting this goal. In this regard, the agencies believe it is critical that efforts for achieving consistency be carefully monitored and evaluated. Consequently, this MOA establishes a monitoring and review process that will be used to provide for continuous improvement in the wetland delineation process specified in this MOA.

2. EPA will lead the signatory agencies in establishing interagency oversight teams at the state level to conduct periodic review of wetland delineations conducted under the provisions of this MOA. These reviews will include delineations done by SCS pursuant to Sections IV.A, IV.B, and IV.C of this MOA and delineations done by EPA or the Corps pursuant to Section IV.K. of this MOA. These reviews also will include changes to wetland delineations resulting from the SCS appeals process, as well as disagreements regarding allocation of responsibility. These reviews will occur, at a minimum, on a quarterly basis for the first year, on a semi-annual basis for the second year, and annually thereafter. In addition, a review will be initiated whenever one or more of the signatory agencies believes a significant issue needs to be addressed. The purpose of each review will be to evaluate the accuracy of an appropriate sample of wetland delineations. When feasible, this will include actual field verifications of wetland delineations. Should the interagency oversight team identify issues regarding implementation of this MOA or wetland delineations conducted under the provisions of this MOA, the team will work to resolve those issues and reach agreement on any necessary corrective actions. Each review, and any necessary corrective action, will be documented in a report to be distributed to the signatory agencies' appropriate field and Headquarters offices.

3. In situations in which the interagency oversight team identifies and reports unresolved issues concerning wetland delineations conducted under the provisions of this MOA, including changes to wetland delineations resulting from the SCS appeals process, the Headquarters offices of the signatory agencies will informally review the issue and work to reach agreement on any necessary corrective actions. This informal process notwithstanding, the EPA Regional Administrator or the Corps District Engineer may, at any time, propose to designate a geographic area as a "special case".

4. Similar to the terms of the current Memorandum of Agreement between the Department of the Army and the EPA Concerning the Determination of the Geographic Jurisdiction of the Section 404 Program and the Application of the Exemptions under Section 404(f) of the CWA, the EPA Regional Administrator or the Corps District Engineer may propose to designate a geographic area, or a particular wetland type within a designated geographic area, as a special case. A special case may be designated only after the interagency oversight team (EPA,

Corps, SCS, and FWS) has reviewed the relevant issues and been unable to reach a consensus on an appropriate resolution. Special cases will be designated by an easily identifiable political or geographic subdivision, such as a township, county, parish, state, EPA Region, or Corps division or district, and will be marked on maps or using some other clear format and provided to the appropriate EPA, Corps, FWS, and SCS field offices. Proposed designations of special cases will not be effective until approved by EPA or Corps Headquarters, as appropriate.

5. Upon proposing a special case, the EPA Regional Administrator or Corps District Engineer, as appropriate, will notify the appropriate SCS State Conservationist in writing. Following notification of the proposed designation, SCS will not make wetland delineations for the purposes of CWA jurisdiction within the proposed special case for a period of 20 working days from the date of the notification. SCS may proceed to make wetland delineations for CWA purposes in the proposed special case after the 20-day period if the SCS State Conservationist has not been notified by the EPA Regional Administrator or Corps District Engineer of approval of the proposed special case designation by EPA Headquarters or the Corps Director of Civil Works, as appropriate.

6. Following approval of the proposed special case, the Corps, or EPA as appropriate, will make final CWA wetland delineations in the special case area, rather than SCS. In addition, the referring field office (i.e., either the EPA Regional Administrator or Corps District Engineer) will develop draft guidance relevant to the specific issues raised by the special case and forward the draft guidance to its Headquarters office. The Headquarters office of the agency which designated the special case will develop final guidance after consulting with the signatory agencies' Headquarters offices. EPA concurrence will be required for final guidance for any special case designated by the Corps. Special cases remain in effect until final guidance is issued by the Headquarters office of the agency which designated the special case or the designation is withdrawn by the EPA Regional Administrator or Corps District Engineer, as appropriate.

C. Reliance on Previous SCS Wetland Delineations for CWA Purposes

1. Section 1222 of the FSA, as amended by the Food Agriculture Conservation and Trade Act, provides that SCS will certify SCS wetland delineations made prior to November 28, 1990. The intent of this process is to ensure the accuracy of wetland delineations conducted prior to November 28, 1990, for the purposes of the FSA. This certification process also will provide a useful basis for establishing reliance on wetland delineations for CWA purposes. All certifications done after the effective date of this MOA that are done using mapping conventions will use the agreed-upon mapping conventions pursuant to Section V.A of this MOA.

2. Written SCS wetland delineations for lands identified in section IV.A of his MOA conducted prior to the effective date of this MOA will be used for purposes of establishing CWA jurisdiction, subject to the provisions of section V.C.3 below. If such SCS wetland delineations are subsequently modified or revised through updated certification, these modifications or revisions will supersede the previous delineations for purposes of establishing CWA jurisdiction. Written SCS wetland delineations for lands identified in sections IV.B and IV.C of this MOA conducted prior to the effective date of this MOA will require coordination with the Corps, or EPA as appropriate, before being used for purposes of determining CWA jurisdiction.

3. As part of the certification effort, SCS will establish priorities to certify SCS wetland delineations. In addition to responding to requests from individual landowners who feel their original wetland determinations were made in error, SCS will give priority to certifying those wetland delineations where at least two of the four signatory agencies represented on the interagency oversight team convened pursuant to section V.B.2 of this MOA agree that SCS wetland delineations in a particular area, or a generic class of SCS wetland delineations in a particular area, raise issues regarding their accuracy based on current guidance. These priority areas will be identified only after mapping conventions are agreed upon pursuant to section V.A of this MOA. Identification of these high priority certification needs shall be made at the level of the SCS State Conservationist, FWS Regional Director, EPA Regional Administrator, and the Corps District Engineer. Following identification of these high priority certification needs, the SCS State Conservationist will immediately notify the affected landowner(s), by letter, that the relevant SCS wetland delineations have been identified as a high priority for being certified under Section 1222 of the FSA. In addition, the notification will inform the landowner that while previous wetland delineations remain valid for purposes of the FSA until certification or certification update is completed, the landowner will need to contact the Corps before proceeding with discharges of dredged or fill material. This communication by the landowner will enable the Corps to review the wetland delineation to establish whether it can be used for purposes of CWA jurisdiction. The SCS State Conservationist will initiate, within 30 calendar days of landowner notification, corrective measures to resolve the wetland delineation accuracy problem.

D. Appeals

Landowners for whom SCS makes wetland delineations for either Swampbuster or Section 404 will be afforded the opportunity to appeal such wetland delineations through the SCS appeals process. In circumstances where an appeal is made and the State Conservationist is considering a change in the original delineation, the State Conservationist will notify the Corps District Engineer and the EPA Regional Administrator to provide the opportunity for their participation and input on the

appeal. FWS also will be consulted consistent with the requirements of current regulations. The Corps and EPA reserve the right, on a case-by-case basis, to determine that a revised delineation resulting from an appeal is not valid for purposes of Section 404 jurisdiction.

E. Training

1. SCS, in addition to FWS and EPA, will continue to participate in the interagency wetland delineation training sponsored by the Corps, which is based on the most current manual used to delineate wetlands for purposes of Section 404. Completion of this training will be a prerequisite for field staff of all signatory agencies who delineate wetlands on non-agricultural lands using the 1987 Corps Wetland Delineation Manual.

2. The interagency wetland delineation training will address agency wetland delineation responsibilities as defined by this MOA, including SCS NFSAM wetland delineation procedures.

3. Field offices of the signatory agencies are encouraged to provide supplemental interagency wetland delineation training (i.e., in addition to that required in paragraph IV.E), as necessary, to prepare SCS field staff for making Section 404 wetland delineations. For training on the use of the 1987 Corps Wetland Delineation Manual, such supplemental training will rely on the training materials used for the Corps delineation training program and will provide an equivalent level of instruction.

VI. Definitions

A. Coordination means that SCS will contact the Corps, or EPA as appropriate, and provide an opportunity for review, comment, and approval of the findings of SCS prior to making a final delineation. The Corps, or EPA as appropriate, will review the proposed delineation and respond to SCS regarding its acceptability for CWA Section 404 purposes within 45 days of receipt of all necessary information. SCS will not issue a final delineation until agreement is reached between SCS and the Corps or EPA, as appropriate.

B. Consultation means that SCS, consistent with current provisions of the FSA, will provide FWS opportunity for full participation in the action being taken and for timely review and comment on the findings of SCS prior to a final wetland delineation pursuant to the requirements of the FSA.

C. A wetland delineation is any determination of the presence of wetlands and their boundaries.

D. A special case for the purposes of this MOA refers to those geographic areas or wetland types where the Corps or EPA will make final CWA wetland delineations.

E. Signatory agencies means the EPA and the Departments of Army (acting through the Corps), Agriculture (acting through SCS), and Interior (acting through FWS).

F. USDA program participant means individual landowners/operators eligible to receive USDA program benefits covered under Title XII of the Food Security Act of 1985, as amended by the Food, Agriculture, Conservation and Trade Act of 1990.

VII. General

A. The policy and procedures contained within this MOA do not create any rights, either substantive or procedural, enforceable by any party regarding an enforcement action brought by the United States. Deviation or variance from the administrative procedures included in this MOA will not constitute a defense for violators or others concerned with any Section 404 enforcement action.

B. Nothing in this MOA is intended to diminish, modify, or otherwise affect statutory or regulatory authorities of any of the signatory agencies. All formal guidance interpreting this MOA and background materials upon which this MOA is based will be issued jointly by the agencies.

C. Nothing in this MOA will be construed as indicating a financial commitment by SCS, the Corps, EPA, or FWS for the expenditure of funds except as authorized in specific appropriations.

D. This MOA will take effect on the date of the last signature below and will continue in effect until modified or revoked by agreement of all signatory agencies, or revoked by any of the signatory agencies alone upon 90 days written notice. Modifications to this MOA may be made by mutual agreement and Headquarters level approval by all the signatory agencies. Such modifications will take effect upon signature of the modified document by all the signatory agencies.

E. The signatory agencies will refer delineation requests to the appropriate agency pursuant to this MOA.

Dated: January 6, 1994.
James R. Lyons, Assistant Secretary for Natural Resources and Environment, Department of Agriculture.
Robert Perciasepe, Assistant Administrator for Water, Environmental Protection Agency.

G. Edward Dickey, Acting Assistant Secretary of the Army for Civil Works, Department of the Army.
George T. Frampton, Jr., Assistant Secretary for Fish, Wildlife and Parks, Department of the Interior.

53. Executive Order 13112 Invasive Species, 64 Fed. Reg. 6183 (Feb. 3, 1999)

Executive Order 13112

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, as amended (16 U.S.C. 4701 et seq.), Lacey Act, as amended (18 U.S.C. 42), Federal Plant Pest Act (7 U.S.C. 150aa et seq.), Federal Noxious Weed Act of 1974, as amended (7 U.S.C. 2801 et seq.), Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), and other pertinent statutes, to prevent the introduction of invasive species and provide for their control and to minimize the economic, ecological, and human health impacts that invasive species cause, it is ordered as follows:

Section 1. Definitions
Section 2. Federal Agency Duties
Section 3. Invasive Species Council
Section 4. Duties of the Invasive Species Council
Section 5. Invasive Species Management Plan
Section 6. Judicial Review and Administration

Section 1. Definitions.
(a) "Alien species" means, with respect to a particular ecosystem, any species, including its seeds, eggs, spores, or other biological material capable of propagating that species, that is not native to that ecosystem.
(b) "Control" means, as appropriate, eradicating, suppressing, reducing, or managing invasive species populations, preventing spread of invasive species from areas where they are present, and taking steps such as restoration of native species and habitats to reduce the effects of invasive species and to prevent further invasions.
(c) "Ecosystem" means the complex of a community of organisms and its environment.
(d) "Federal agency" means an executive department or agency, but does not include independent establishments as defined by 5 U.S.C. 104.
(e) "Introduction" means the intentional or unintentional escape, release, dissemination, or placement of a species into an ecosystem as a result of human activity.
(f) "Invasive species" means an alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health.

(g) "Native species" means, with respect to a particular ecosystem, a species that, other than as a result of an introduction, historically occurred or currently occurs in that ecosystem.
(h) "Species" means a group of organisms all of which have a high degree of physical and genetic similarity, generally interbreed only among themselves, and show persistent differences from members of allied groups of organisms.
(i) "Stakeholders" means, but is not limited to, State, tribal, and local government agencies, academic institutions, the scientific community, nongovernmental entities including environmental, agricultural, and conservation organizations, trade groups, commercial interests, and private landowners.
(j) "United States" means the 50 States, the District of Columbia, Puerto Rico, Guam, and all possessions, territories, and the territorial sea of the United States.

Section 2. Federal Agency Duties.
(a) Each Federal agency whose actions may affect the status of invasive species shall, to the extent practicable and permitted by law,
(1) identify such actions;
(2) subject to the availability of appropriations, and within Administration budgetary limits, use relevant programs and authorities to: (i) prevent the introduction of invasive species; (ii) detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner; (iii) monitor invasive species populations accurately and reliably; (iv) provide for restoration of native species and habitat conditions in ecosystems that have been invaded; (v) conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species; and (vi) promote public education on invasive species and the means to address them; and
(3) not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere unless, pursuant to guidelines that it has prescribed, the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species; and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions.
(b) Federal agencies shall pursue the duties set forth in this section in consultation with the Invasive Species Council, consistent with the Invasive Species Management Plan and in cooperation with stakeholders, as appropriate, and, as approved by the Department of State, when Federal agencies are working with international organizations and foreign nations.

Section 3. Invasive Species Council.
(a) An Invasive Species Council (Council) is hereby established whose members shall include the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Transportation, and the Administrator of the

Environmental Protection Agency. The Council shall be Co-Chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The Council may invite additional Federal agency representatives to be members, including representatives from subcabinet bureaus or offices with significant responsibilities concerning invasive species, and may prescribe special procedures for their participation. The Secretary of the Interior shall, with concurrence of the Co-Chairs, appoint an Executive Director of the Council and shall provide the staff and administrative support for the Council. (b) The Secretary of the Interior shall establish an advisory committee under the Federal Advisory Committee Act, 5 U.S.C. App., to provide information and advice for consideration by the Council, and shall, after consultation with other members of the Council, appoint members of the advisory committee representing stakeholders. Among other things, the advisory committee shall recommend plans and actions at local, tribal, State, regional, and ecosystem-based levels to achieve the goals and objectives of the Management Plan in section 5 of this order. The advisory committee shall act in cooperation with stakeholders and existing organizations addressing invasive species. The Department of the Interior shall provide the administrative and financial support for the advisory committee.

Section 4. Duties of the Invasive Species Council. The Invasive Species Council shall provide national leadership regarding invasive species, and shall:
(a) oversee the implementation of this order and see that the Federal agency activities concerning invasive species are coordinated, complementary, cost-efficient, and effective, relying to the extent feasible and appropriate on existing organizations addressing invasive species, such as the Aquatic Nuisance Species Task Force, the Federal Interagency Committee for the Management of Noxious and Exotic Weeds, and the Committee on Environment and Natural Resources;
(b) encourage planning and action at local, tribal, State, regional, and ecosystem-based levels to achieve the goals and objectives of the Management Plan in section 5 of this order, in cooperation with stakeholders and existing organizations addressing invasive species;
(c) develop recommendations for international cooperation in addressing invasive species;
(d) develop, in consultation with the Council on Environmental Quality, guidance to Federal agencies pursuant to the National Environmental Policy Act on prevention and control of invasive species, including the procurement, use, and maintenance of native species as they affect invasive species;
(e) facilitate development of a coordinated network among Federal agencies to document, evaluate, and monitor impacts from invasive species on the economy, the environment, and human health;
(f) facilitate establishment of a coordinated, up-to-date information-sharing system that utilizes, to the greatest extent practicable, the Internet; this system shall facilitate access to and exchange of information concerning invasive species, including, but not limited to, information on distribution and abundance of invasive

species; life histories of such species and invasive characteristics; economic, environmental, and human health impacts; management techniques, and laws and programs for management, research, and public education; and
(g) prepare and issue a national Invasive Species Management Plan as set forth in section 5 of this order.

Section 5. Invasive Species Management Plan.
(a) Within 18 months after issuance of this order, the Council shall prepare and issue the first edition of a National Invasive Species Management Plan (Management Plan), which shall detail and recommend performance-oriented goals and objectives and specific measures of success for Federal agency efforts concerning invasive species. The Management Plan shall recommend specific objectives and measures for carrying out each of the Federal agency duties established in section 2(a) of this order and shall set forth steps to be taken by the Council to carry out the duties assigned to it under section 4 of this order. The Management Plan shall be developed through a public process and in consultation with Federal agencies and stakeholders.
(b) The first edition of the Management Plan shall include a review of existing and prospective approaches and authorities for preventing the introduction and spread of invasive species, including those for identifying pathways by which invasive species are introduced and for minimizing the risk of introductions via those pathways, and shall identify research needs and recommend measures to minimize the risk that introductions will occur. Such recommended measures shall provide for a science-based process to evaluate risks associated with introduction and spread of invasive species and a coordinated and systematic risk-based process to identify, monitor, and interdict pathways that may be involved in the introduction of invasive species. If recommended measures are not authorized by current law, the Council shall develop and recommend to the President through its Co-Chairs legislative proposals for necessary changes in authority.
(c) The Council shall update the Management Plan biennially and shall concurrently evaluate and report on success in achieving the goals and objectives set forth in the Management Plan. The Management Plan shall identify the personnel, other resources, and additional levels of coordination needed to achieve the Management Plan's identified goals and objectives, and the Council shall provide each edition of the Management Plan and each report on it to the Office of Management and Budget. Within 18 months after measures have been recommended by the Council in any edition of the Management Plan, each Federal agency whose action is required to implement such measures shall either take the action recommended or shall provide the Council with an explanation of why the action is not feasible. The Council shall assess the effectiveness of this order no less than once each 5 years after the order is issued and shall report to the Office of Management and Budget on whether the order should be revised.

Section 6. Judicial Review and Administration.
(a) This order is intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any other person.
(b) Executive Order 11987 of May 24, 1977, is hereby revoked.
(c) The requirements of this order do not affect the obligations of Federal agencies under 16 U.S.C. 4713 with respect to ballast water programs.
(d) The requirements of section 2(a)(3) of this order shall not apply to any action of the Department of State or Department of Defense if the Secretary of State or the Secretary of Defense finds that exemption from such requirements is necessary for foreign policy or national security reasons.

WILLIAM J. CLINTON
THE WHITE HOUSE,
February 3, 1999.