

Appendix E – Federal Laws, Regulations, Policies, and Guidance

The following list of federal laws, regulations, policy, and guidance is not intended to be exhaustive, and just because a specific law, regulation, policy, or guidance is not listed does not mean it's not applicable.

Environmental Policy

National Environmental Policy Act of 1969

NEPA (42 United States Code [USC] 4321 et seq.) requires the preparation of EISs for federal projects that may have a significant effect on the environment. It requires systematic, interdisciplinary planning to ensure the integrated use of the natural and social sciences, and the environmental design arts in making decisions about major federal actions that may have a significant effect on the environment. The procedures required under NEPA are implemented through the CEQ regulations in 40 CFR §1500.

Federal Compliance with Pollution Control Standards (EO 12088)

Federal Compliance with Pollution Control Standards (EO 12088) states that federal agencies must comply with applicable pollution control standards.

Protection and Enhancement of Environmental Quality (EO 11514)

Protection and Enhancement of Environmental Quality (EO 11514, as amended by EO 11991) establishes the policy for federal agencies to provide leadership in environmental protection and enhancement.

Land Use and Natural Resources Management

Federal Land Policy and Management Act of 1976

The FLPMA, as amended (43 USC 1701, et seq.), provides for public lands to be generally retained in federal ownership for periodic and systematic inventory of the public lands and their resources; for a review of existing withdrawals and classifications; for establishment of comprehensive rules and regulations for administering public lands statutes; for multiple-use management on a sustained yield basis; for protection of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource and archeological values; for receiving fair market value for the use of the public lands and their resources; for establishment of uniform procedures for any disposal, acquisition or exchange; for identification and protection of areas of critical environmental concern; for recognition of the nation's need for domestic sources of minerals, food, timber and fiber from the public lands, including implementation of the Mining and Mineral Policy Act of 1970; and 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. The general land management regulations are provided in 43 CFR §2000, Subchapter B.

Bankhead-Jones Farm Tenant Act of 1937

Title III of this Act directs and authorizes the Secretary of Agriculture to develop programs of land conservation and use to protect, improve, develop, administer the land acquired, and construct structures thereon needed to adapt the land to beneficial use. Under the Act, the Department of Agriculture may issue leases, licenses, permits, term permits or easements for most uses, except ROWs.

Taylor Grazing Act of 1934

The Taylor Grazing Act of 1934, as amended (43 USC 315), provides authorization to the Secretary of the Interior to establish grazing districts from any part of the public domain of the United States (exclusive of Alaska) which, in the Secretary's opinion, are chiefly valuable for grazing and raising forage crops; to

regulate and administer grazing use of the public lands; and to improve the public rangelands. Regulations for grazing permits are provided in 43 CFR §4100.

Public Rangelands Improvement Act of 1978

The Public Rangelands Improvement Act of 1978 (43 USC 1901, et seq.) provides for the improvement of range conditions on public rangelands, research on wild horse and burro population dynamics, and other range management practices.

Federal Noxious Weed Act of 1974

The Federal Noxious Weed Act of 1974, as amended (7 USC 2814), provides for the designation of a lead office and a person trained in the management of undesirable plants, establishment and funding of a management program for undesirable plants, completion and implementation of cooperative agreements with state agencies, and establishment of integrated management systems to control undesirable plant species.

Healthy Forests Restoration Act of 2003

The Healthy Forests Restoration Act serves to further the Healthy Forests Initiative to reduce the threat of destructive wildfires while upholding environmental standards and encouraging early public input during review and planning processes. The Act strengthens public participation in developing high-priority forest health projects; reduces the complexity of environmental analysis, allowing federal land agencies to use the best science available to actively manage land under their protection; provides a more effective appeals process, encouraging early public participation in project planning; and issues clear guidance for court action against forest health projects.

Grazing Fees of 1986 (EO 12548)

EO 12548 provides for establishment of appropriate fees for the grazing of domestic livestock on public rangelands and directs that the fee shall not be less than \$1.35 per animal unit month.

Wilderness Act of 1964

The Wilderness Act of 1964 (16 USC 1131, et seq.) provides for the designation and preservation of wilderness areas.

Wild and Scenic Rivers Act of 1968, as amended (16 U.S.C. 1271-1287)

This Act establishes the National Wild and Scenic Rivers System, designates the rivers included in the system, establishes policy for managing designated rivers, and prescribes a process for designating additions to the system.

Federal Land Exchange Facilitation Act of 1988

The Federal Land Exchange Facilitation Act amended FLPMA with respect to BLM land exchanges. It was designed to streamline land exchange procedures.

Recreation and Public Purposes Act of 1926

In 1954, the Congress enacted the Recreation and Public Purposes Act (43 USC 869 et. seq.) as a complete revision of the Recreation Act of 1926 in response to the public need for a nationwide system of parks and other recreational and public purposes areas. This law is administered by the BLM. The Act authorizes the sale or lease of public lands for recreational or public purposes to state and local governments and to qualified nonprofit organizations. Examples of typical uses under the Act are historic monument sites,

campgrounds, schools, fire houses, law enforcement facilities, municipal facilities, landfills, hospitals, parks and fairgrounds.

National Trails System Act of 1968, as amended (16 U.S.C. 1241-1251)

In order to provide for the ever-increasing outdoor recreation needs of an expanding population and in order to promote the preservation of public access to travel within, and for the enjoyment and appreciation of the open-air, outdoor areas and historic resources of the Nation, trails should be established (i) primarily, near the urban areas of the Nation, and (ii) secondarily, within scenic areas and along historic travel routes of the Nation, often more remotely located.

The purpose of this Act is to provide the means for attaining these objectives by instituting a national system of recreation, scenic and historic trails, by designating the Appalachian Trail and the Pacific Crest Trail as the initial components of that system, and by prescribing the methods by which, and standards according to which, additional components may be added to the system.

Airport and Airway Improvement Act of 1982

The Airport and Airway Improvement Act established the Airport Improvement Program which provides grants to public agencies and, in some cases, to private owners and entities for the planning and development of public-use airports that are included in the National Plan of Integrated Airport Systems.

Air Quality

The Clean Air Act of 1990

The Clean Air Act of 1990, as amended (42 USC 7401, 7642), requires the BLM to protect air quality, maintain federal and state designated air quality standards, and abide by the requirements of the state implementation plans.

Wyoming Air Quality Standards and Regulations

Wyoming air quality standards and regulations, Chapters 1 to 11, specify the requirements for air permitting and monitoring to implement Clean Air Act and state ambient air quality standards.

Water Quality

The Clean Water Act of 1987

The Clean Water Act of 1987, as amended (33 USC 1251), establishes objectives to restore and maintain the chemical, physical and biological integrity of the Nation's water. The Act also requires permits for point source discharges to navigable waters of the United States and the protection of wetlands and includes monitoring and research provisions for protection of ambient water quality.

The Safe Drinking Water Act

The Safe Drinking Water Act (SDWA) was originally passed by Congress in 1974 to protect public health by regulating the nation's public drinking water supply. The law was amended in 1986 and 1996 and requires many actions to protect drinking water and its sources: rivers, lakes, reservoirs, springs and groundwater wells. SDWA authorizes the U.S. Environmental Protection Agency (EPA) to set national health-based standards for drinking water to protect against both naturally occurring and manmade contaminants that may be found in drinking water. The U.S. EPA, states and water systems work together to ensure that these standards are met.

Wyoming Water Quality Standards and Regulations

Wyoming water quality standards and regulations implement permitting and monitoring requirements for the National Pollutant Discharge Elimination System, operation of injection wells, ground water protection requirements, prevention and response requirements for spills, and salinity standards and criteria for the Colorado River Basin.

Colorado River Salinity Control Act

The 1974 Colorado River Basin Salinity Control Act, Public Law 93-320, authorizes the construction, operation and maintenance of works in the Colorado River Basin to control the salinity of water delivered to Mexico.

Protection of Wetlands (EO 11990)

Protection of Wetlands (EO 11990) requires federal agencies to take action to minimize the destruction, loss or degradation of wetlands, and preserve and enhance the natural and beneficial values of wetlands.

Floodplain Management (EO 11988)

Floodplain Management (EO 11988) provides for the restoration and preservation of national and beneficial floodplain values, and enhancement of the natural and beneficial values of wetlands in carrying out programs affecting land use.

Minerals

General Mining Law of 1872

The General Mining Law of 1872, as amended (30 USC 22, et seq.), provides for locating and patenting mining claims where a discovery has been made for locatable minerals on public lands in specified states. Regulations for staking and maintenance of claims on BLM-administered lands are listed in 43 CFR §3800. Regulations for staking and maintenance of claims on NFS lands are listed in 36 CFR Part 228.

Mineral Leasing Act of 1920

The Mineral Leasing Act of 1920, as amended (30 USC 181, et seq.), provides for the leasing of deposits of coal, phosphate, sodium, potassium, oil, oil shale, native asphalt, solid and semisolid bitumen, bituminous rock or gas, and lands containing such deposits owned by the United States, including those in national forests but excluding those acquired under other acts subsequent to February 25, 1920, and those lands within the national petroleum and oil shale reserves. Regulations for onshore oil and gas leasing are provided in 43 CFR §3100. Regulations concerning oil and gas leases on NFS lands are listed in 36 CFR Part 228.

Materials Act of 1947

The Materials Act of 1947, as amended (30 USC 601–604, et seq.), provides for the sale of common variety materials for personal, commercial or industrial uses and for free use for local, state, and federal governmental entities. The sales of mineral materials are controlled by the regulations listed in 43 CFR §3600 and 36 CFR Part 228.

Common Varieties of Mineral Materials Act of 1947

The Common Varieties of Mineral Materials Act of 1947 provides for the disposal of mineral materials on the public lands through bidding, negotiated contracts or free use.

Mineral Leasing Act for Acquired Lands of 1947

The Mineral Leasing Act for Acquired Lands of 1947 states that all deposits of coal, phosphate, oil, oil shale, gas, sodium, potassium and sulfur that are owned, may be acquired, and are within lands acquired by the United States, may be leased by the Secretary of the Interior under the same conditions as contained in the leasing provisions of the mineral leasing laws. No mineral deposits shall be leased without the consent of the head of the executive department having jurisdiction over the lands containing the deposit and subject to such conditions as that official may prescribe.

Multiple Use Mining Act of 1955

The Multiple Use Mining Act of 1955 allows the sale of mineral materials, such as sand and gravel, and provides direction for use of surface resources of mining claims.

Mining and Minerals Policy Act of 1970

The Mining and Minerals Policy Act of 1970 states that the continuing policy of the federal government is to foster and encourage private enterprise in the development of economically sound and stable domestic mining and minerals industries and the orderly and economic development of domestic mineral resources.

Federal Coal Leasing Amendments Act of 1976

The Federal Coal Leasing Amendments Act of 1976 (30 USC 201, et seq.) requires competitive leasing of coal on public lands and mandates a broad spectrum of coal operations requirements for lease management. Coal leasing regulations for BLM-administered and NFS lands are provided in 43 CFR §3400.

Federal Onshore Oil and Gas Leasing Reform Act of 1987

The Federal Onshore Oil and Gas Leasing Reform Act of 1987 authorized the Secretary of Agriculture the opportunity to object to leasing NFS lands reserved from the public domain and to regulate surface disturbing activities conducted pursuant to any lease issued under this Act. The BLM may issue oil and gas leases on NFS lands reserved for the public domain unless the Forest Service objects to the leasing.

Energy Policy and Conservation Act of 2000

The purposes of the Energy Policy and Conservation Act of 2000, as amended (42 USC 6217 et seq.), are to:

- Grant specific authority to the President to fulfill obligations of the United States under the international energy program,
- Provide for the creation of a Strategic Petroleum Reserve capable of reducing the impact of severe energy supply interruptions,
- Conserve energy supplies through energy conservation programs, and, where necessary, the regulation of certain energy uses,
- Provide for improved energy efficiency of motor vehicles, major appliances and certain other consumer products,
- Provide a means for verification of energy data to ensure the reliability of energy data,
- Conserve water by improving the water efficiency of certain plumbing products and appliances.

Actions to Expedite Energy-Related Projects (EO 13212)

EO 13212 of May 18, 2001, directs the federal agencies to expedite their review of permits for energy-related projects while maintaining safety, public health and environmental protections.

Energy Policy Act of 2005

The Energy Policy Act of 2005 requires the BLM and Forest Service to enter into a Memorandum of Understanding to establish joint BLM and Forest Service policies and procedures to managing oil and gas leasing and operational activities such that there is consistency in lease stipulations across jurisdictional boundaries.

Bureau of Land Management Energy and Non-Energy Mineral Policy

This statement sets forth BLM policy for the management of energy and non-energy mineral resources (mineral resources) on public lands. It reflects the provisions of five important acts of Congress relating to mineral resources: the Domestic Minerals Program Extension Act of 1953; the Mining and Minerals Policy Act of 1970; the Federal Land Policy and Management Act of 1976; the National Materials and Minerals Policy, Research and Development Act of 1980; and the Energy Policy Act of 2005. This policy represents a commitment by the BLM to implement the requirements of these statutes consistent with BLM's other statutory obligations, as follows:

The Domestic Minerals Program Extension Act of 1953 states that each department and agency of the Federal Government charged with responsibilities concerning the discovery, development, production, and acquisition of strategic or critical minerals and metals shall undertake to decrease further, and to eliminate where possible, the dependency of the United States on overseas sources of supply of each such material.

The Mining and Minerals Policy Act of 1970 declares that it is the continuing policy of the Federal Government to foster and encourage private enterprise in the development of a stable domestic minerals industry and the orderly and economic development of domestic mineral resources. This act includes all minerals, including sand and gravel, geothermal, coal, oil and gas.

The Federal Land Policy and Management Act of 1976 reiterates that the 1970 Mining and Minerals Policy Act shall be implemented and directs that public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals and other resources.

The National Materials and Minerals Policy, Research and Development Act of 1980 requires the Secretary of the Interior to improve the quality of minerals data in Federal land use decision-making.

The Energy Policy Act of 2005 encourages energy efficiency and conservation; promotes alternative and renewable energy sources; reduces dependence on foreign sources of energy; increases domestic production; modernizes the electrical grid; and encourages the expansion of nuclear energy.

The BLM recognizes that public lands are an important source of the Nation's energy and non-energy mineral resources, some of which are critical and strategic. The BLM is responsible for making public lands available for orderly and efficient development of these resources under principles of multiple use management, and the concept of sustainable development as was defined at the World Summit on Sustainable Development in 2002, in Johannesburg, South Africa.

The following principles will guide the BLM in managing mineral resources on public lands:

- Except for Congressional withdrawals, public lands shall remain open and available for mineral exploration and development unless withdrawal or other administrative actions are clearly justified in the national interest in accordance with the DOI Land Withdrawal Manual 603 DM 1, and BLM regulations at 43 CFR §2310. Petitions to the Secretary of the Interior for revocation of land withdrawals for mineral exploration and development will be evaluated through the land use planning process.
- The BLM endorses the Sustainable Development Plan of Implementation applicable to mineral resources signed by 193 countries, including the United States; in Johannesburg in 2002. This plan encourages social, environmental, and economic considerations before decisions are made on mineral operations. The BLM actively encourages development by private industry of public land mineral resources, and promotes practices and technology that least impact natural and human resources.
- The BLM will adjudicate and process mineral patent applications, permits, operating plans, mineral exchanges, leases and other mineral use authorizations for public lands in a manner to prevent unnecessary or undue degradation, in a timely and efficient manner, and will require financial assurances to provide for reclamation of the land and for other purposes authorized by law. Mine closure and reclamation considerations include alternative forms of use such as for landfills, wind farms, biomass facilities and other industrial uses, to attract partnerships to utilize the existing mine infrastructure for a future economic opportunity.
- The BLM land use planning and multiple-use management decisions will recognize that, with few exceptions, mineral exploration and development can occur concurrently or sequentially with other resource uses. The least restrictive stipulations that effectively accomplish the resource objectives or uses will be used. The BLM will coordinate with surface owners when the Federal minerals estate under their surface ownership is proposed for development.
- Land use plans will reflect geological assessments and mineral potential on public lands through existing geology and mineral resource data, and to the extent feasible, through new mineral assessments to determine mineral potential. Partnerships with State Geologists and the U.S. Geological Survey for obtaining existing and new data should be considered.
- The BLM will work closely with Federal, State and Tribal governments to reduce duplication of effort while processing mineral related permit applications.
- The BLM will monitor locatable, salable and leasable mineral operations to ensure proper resource recovery and evaluation, production verification, diligence and enforcement of terms and conditions. The BLM will ensure receipt of fair market value for mineral materials, and appropriate royalty rates for leasable commodities unless otherwise provided for by statute.
- The BLM will continue to develop e-Government solutions that will provide for electronic submission and tracking of applications for exploration and development of mineral resources. The BLM will continue to provide public access to mineral records, including spatial display of all types of authorizations and mineral resource data.
- The BLM will maintain and enhance the understanding, skills, and abilities of effective professional, technical, and managerial personnel knowledgeable in adjudication, geology, mineral exploration and development.

- To the extent provided by law, regulation, secretarial order, and written agreement with the Bureau of Indian Affairs, the BLM will apply the above principles to the management of mineral resources and operations on Indian Trust lands in order to comply with its Trust Responsibilities.

Cultural Resources

The Antiquities Act of 1906

The Antiquities Act of 1906 (16 USC 431-433) protects objects of historic and scientific interest on public lands. It authorizes the President to designate historic landmarks and structures as national monuments and provides penalties for people who damage these historic sites. The Act has two main components: (1) a criminal enforcement component, which provides for the prosecution of persons who appropriate, excavate, injure or destroy any historic or prehistoric ruin or monument, or any object of antiquity on lands owned or controlled by the United States, and (2) a component that authorizes a permit for the examination of ruins and archeological sites and the gathering of objects of antiquity on lands owned or controlled by the United States.

Historic Sites Act of 1935

The Historic Sites Act (16 USC 461) declares national policy to identify and preserve historic sites, buildings, objects, and antiquities of national significance, thereby providing a foundation for the National Register of Historic Places (NRHP).

National Historic Preservation Act of 1966

The National Historic Preservation Act of 1966 (NHPA), as amended (16 USC 470), expands protection of historic and archeological properties to include those of national, state, and local significance. The NHPA (in Section 106) requires federal agencies to take into account the potential effects of agency actions on properties listed on or eligible for the NRHP. Agencies are also required to consult with the State Historic Preservation Office (SHPO), and sometimes with the Advisory Council on Historic Preservation, concerning those effects. The SHPO is also sometimes consulted concerning applicable methods for determining whether there are NRHP-eligible properties in the area of potential effect of an agency undertaking, whether properties are eligible, and appropriate mitigation measures. The NHPA (in Section 110) also requires federal agencies to identify properties that may qualify for listing on the NRHP, to evaluate and nominate such places to the register, and to develop plans for their management. Section 110 of the NHPA requires federal agencies to develop proactive programs to interpret archeological resources for the benefit of the public. The 1992 amendments to the NHPA call for federal agencies to conduct Native American consultation on projects that may affect sites or resources that Tribes consider sensitive, sacred or culturally important.

Protection and Enhancement of the Cultural Environment of 1971 (EO 11593)

Protection and Enhancement of the Cultural Environment directs federal agencies to locate, inventory, nominate and protect federally owned cultural resources eligible for the NRHP, and to ensure that their plans and programs contribute to preservation and enhancement of non-federally owned resources.

American Indian Religious Freedom Act of 1978

The American Indian Religious Freedom Act (42 USC 1996) clarifies U.S. policy pertaining to the protection of Native Americans' religious freedom. The special nature of Native American religions has frequently resulted in conflicts between federal laws and policies and religious freedom. The Act establishes a policy of protecting and preserving the inherent right of individual Native Americans (including American Indians, Eskimos, Aleuts, and Native Hawaiians) to believe, express and exercise their traditional religions.

Archeological Resources Protection Act of 1979

The Archeological Resource Protection Act, as amended (16 USC 470a, 470cc, 470ee), requires permits for the excavation or removal of federally administered archeological resources, encourages increased cooperation among federal agencies and private individuals, provides stringent criminal and civil penalties for violations, and requires federal agencies to identify important resources vulnerable to looting and to develop a tracking system for violations. ARPA requires federal agencies to establish a program to increase public awareness of the significance of the archaeological resources located on public lands and Indian lands and the need to protect such resources.

Native American Graves Protection and Repatriation Act of 1990

The Native American Graves Protection and Repatriation Act (25 USC 3001) is a federal law passed in 1990 that provides a process for museums and federal agencies to return certain Native American cultural items—human remains, funerary objects, sacred objects, and objects of cultural patrimony—to lineal descendants, culturally affiliated Native American tribes and Native Hawaiian organizations. It also addresses consultation with Native Americans for the excavation and/or removal of cultural items, and the discovery of cultural items made during land use activities.

The NAGPRA requires: 1) that Federal Agencies consult with tribes in regards to the repatriation of human remains and four types of cultural objects held in their collections; 2) that they consult with Native Americans in regards to the protection of burial sites on Federal land, both those known/suspected and those inadvertently discovered; 3) that the agency consults with Tribes on disposition/control of cultural items and human remains found on federal lands [25 USC 3002(a)]; 4) that Federal agencies will only allow excavation and removal of Native American items and human remains from Federal lands with a permit which is issued only after consultation with tribes [25 USC 3002(c)]; and 5) provides penalties for illegal trafficking [18 USC 1170].

Indian Sacred Sites (EO 13007)

EO 13007, signed in 1996, requires each executive branch agency with statutory or administrative responsibility for the management of federal lands to accommodate access to and ceremonial use of Native American sacred sites by Native American religious practitioners and avoid adversely affecting the physical integrity of such sacred sites, whenever possible. Where appropriate, agencies shall maintain the confidentiality of sacred sites.

Indian Sacred Sites, as defined in Executive Order (EO) 13007, are “any specific, discrete, narrowly delineated location on federal land that is identified by an Indian tribe or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion.” Indian Sacred Sites are not always eligible for the NRHP; however, pursuant to the guidelines in EO 13007, they receive the same protective measures as NRHP-eligible historic properties. Indian Sacred Sites [EO 13007] also mandates that Federal agency permitted actions cannot block Tribal access to sacred sites. To protect traditional Native American cultural resources, the locations are often kept confidential and not released to the public (BLM 2003).

Consultation and Coordination with Indian Tribal Governments (EO 13175)

EO 13175, signed in 2000, required federal agencies to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes.

Trails for America in the 21st Century (EO 13195)

EO 13195, signed in 2001, requires federal agencies, to the extent permitted by law and where practicable—and in cooperation with tribes, states, local governments and interested citizen groups—to protect, connect, promote and assist trails of all types throughout the United States.

Preserve America (EO 13287)

EO 13287, signed in 2003, requires the Federal Government to lead the preservation of America’s heritage by actively advancing the protection, enhancement, and contemporary use of the historic properties owned by the government and by promoting intergovernmental cooperation and partnerships for the preservation and use of historic properties.

Hazardous Materials

Comprehensive Environmental Response, Compensation and Liability Act of 1980

The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 USC 9601–9673), provides for liability, risk assessment, compensation, emergency response and cleanup (including the cleanup of inactive sites) for hazardous substances. The Act requires federal agencies to report sites where hazardous wastes are or have been stored, treated, or disposed of and requires responsible parties, including federal agencies, to clean up releases of hazardous substances.

Resource Conservation and Recovery Act

The Resource Conservation and Recovery Act, as amended by the Federal Facility Compliance Act of 1992 (42 USC 6901–6992), authorizes the U.S. EPA to manage, by regulation, hazardous wastes on active disposal operations. The Act waives sovereign immunity for federal agencies with respect to all federal, state and local solid and hazardous waste laws and regulations. Federal agencies are subject to civil and administrative penalties for violations and to cost assessments for the administration of the enforcement.

Emergency Planning and Community Right-to-Know Act of 1986

The Emergency Planning and Community Right-to-Know Act of 1986 (42 USC 11001–11050) requires the private sector to inventory chemicals and chemical products, to report those in excess of threshold planning quantities, to inventory emergency response equipment, to provide annual reports and support to local and state emergency response organizations, and to maintain a liaison with the local and state emergency response organizations and the public.

Paleontological Resources

Paleontological Resources Preservation Act (summarized)

Significance of the Law:

This is the first legislation specifically addressing the management of paleontological resources on Federal lands. BLM’s management of paleontological resources was primarily authorized under the Federal Land Policy and Management Act (FLPMA) of 1976, the National Environmental Protection Act (NEPA) of 1969, and a host of lesser laws prior to enactment of this legislation.

As most of these existing laws did not specifically address paleontological resources directly, management was based on phrases such as “protect...the quality of scientific...and other values” (FLPMA) or that “important historic, cultural and natural aspects of our national heritage...” should be protected (NEPA). This left words like “quality,” “scientific,” “important” and “natural aspects” open for interpretation,

especially when dealing with issues of permitting requirements, theft, and mitigation; and these interpretations differed among agencies. Additionally, the broader implications of management were not considered, such as hobby collecting, commercial sales of non-scientific fossils, and just how far our management of the resource could legally extend. These FLPMA and NEPA statements were also focused solely on ‘protection’ rather than overall ‘management,’ therefore leaving unaddressed the opportunities for public interpretation, research, educational activities or other proactive efforts.

A Federal law addressing paleontological resources on Federal lands will eliminate or reduce most of these concerns. It will also recognize that paleontological resources are a legitimate, important resource that should be managed; beyond the vague ‘protect important public values’ principles. The mandates in the Paleontological Resources Preservation Act (PRPA) are actually quite similar to BLM’s current management policies and practices, therefore little shift in our present approaches will result. However, this now gives us firm, clear direction - with the weight of law - to manage in this manner.

In summation, most of our management of paleontological resources has been based on our interpretations of indirect legislation, regulations, and policies, therefore it’s been somewhat tenuous and subject to questioning. This Act will now provide us with firm legislative footing to properly manage all aspects of this resource.

Management Issues:

This law states that casual (hobby) collection of fossils will be allowed; limited to reasonable amounts of common invertebrate and plant fossils, for non-commercial personal use. BLM did allow hobby collection of common invertebrate and plant fossils previously, but this was authorized under regulation and therefore was potentially subject to change at any time.

There will now be stricter penalties for unlawful collection of paleontological resources. Because paleontological resources were not specifically identified in other laws, which would then bring them under any penalty sections those laws may contain, it was always difficult to charge offenders with anything more stringent than theft of government property and a \$500 fine, plus damages. Many of the more complete dinosaur skeletons sell for \$50,000 to several million dollars, so a \$500 fine was inconsequential and of little deterrent. The PRPA includes criminal and civil penalties for theft of paleontological resources, with possible penalties including up to five years in jail, and fines based on market or scientific value, costs of restoration, and any other factors considered relevant by the agency. Multiple offenses can be assessed for double the amount.

We will also have better consistency between agencies. This has not been a major issue; as most land managing agencies were similar in their overall approach, especially in recent years. But, there were a number of inconsistencies in the details of management approaches – the USGS, for example, has wanted to make specific locality data available to the public (primarily researchers) through written publications or web sites, but the BLM and other agencies treat this information as proprietary, and even exempt it from FOIA requests.

Significant points and details:

Although many of these points reflect current policy, these now carry the weight of law, rather than regulations, policy statements, Instruction Memoranda or simple guidance; all subject to agency modification.

- Casual collecting is defined as “the collecting of a reasonable amount of common invertebrate and plant paleontological resources for non-commercial personal use...resulting in only negligible

disturbance to the Earth's surface and other resources." It's further stated that "the terms 'reasonable amount', 'common invertebrate and plant paleontological resources' and 'negligible disturbance' shall be determined by the Secretary." Sec. 6301 ("Secretary" refers to the Secretary of the Interior [and all agencies])

- Paleontological Resource is defined as "any fossilized remains, traces, or imprints of organisms, preserved in or on the earth's crust, that are of paleontological interest and that provide information about the history of life on earth..." and goes on to specifically exclude archeological and cultural (human graves, mostly) resources. Sec. 6301
- "The Secretary shall manage and protect paleontological resources on Federal land **using scientific principles and expertise.**" (my emphasis) Sec. 6302 (a)
- Permits are required for collecting of paleontological resources, except:
- "The Secretary shall allow casual collecting without a permit..." on BLM, BOR, and National Forest System lands, consistent with other laws and policies. Sec. 6304 (a)(1) and (2)
- Criteria for issuance of a permit include: the applicant is qualified; the activity is undertaken to further paleontological knowledge or for public education; the activity is consistent with any management plans; the methods of collecting will not threaten significant natural or cultural resources. Sec. 6304 (b)
- Permits will contain such terms and conditions as necessary, and shall include requirements that: fossils collected from public lands remain the property of the United States; the paleontological resources and copies of associated records will be preserved in an approved repository; specific locality data will not be released by the permittee or repository without the written permission of the Secretary. Sec. 6304 (c)
- Areas may be closed to collecting or access restricted to protect paleontological resources. Sec. 6304 (e)
- Prohibited Acts include: trafficking or offering to traffic in paleontological resources, if the person knew or should have known they were illegally collected from public lands; sell or purchase, or offer for sale or purchase, any paleontological resource, if the person knew or should have known they were illegally collected from public lands. Sec. 6306 (a)
- No false labeling. Includes false records, accounts and identifications. Sec. 6306 (b)
- This would mean intentional false labeling; not honest mistakes or preliminary identifications.
- Penalties include fines based on value of the fossils and up to five years in jail; second or subsequent violations may result in doubling the penalties. Sec. 6306 (c)
- Amount of penalties should consider: the scientific or fair market value of the paleontological resource; the cost of restoration and repair of the resource and the locality; any other factors considered relevant by the agency. Sec. 6307 (a)
- Penalties collected can be used only to: protect, restore, or repair the paleontological resources and the sites they came from; provide educational materials to the public; payment of rewards. Sec. 6307 (d). Penalty fees do not go into the general fund or any other fund or activity.

- Rewards are authorized for furnishing information which leads to a conviction or violation, up to 1/2 the penalties assessed. Sec. 6308 (a)
- All paleontological resources associated with a violation or conviction is subject to forfeiture. Sec. 6308 (b) (the final legislation eliminated the draft provision that would have allowed seizure of equipment and vehicles used in connection with the violation)
- Seized paleontological resources may be transferred to Federal or non-Federal educational institutions. Sec. 6308 (c) (Will probably be limited to approved repositories)
- Information concerning the nature and specific location of a paleontological resource shall be exempt from FOIA, with a few key exemptions. Sec. 6309
- This law does not apply to, or require a permit for, casual collecting of a rock or mineral. Sec. 6311 (3)
- This law does not affect any land other than Federal land or affect the lawful collection or sale of paleontological resources from land other than Federal land. Sec. 6311 (4)

(These last two points are in contrast to much of the misinformation that was circulating among rock club websites and other communications prior to passage).

Next Steps:

The BLM (and other agencies) will develop formal regulations that will expand on these points, create the additional details needed for implementation, and assure consistency with all other laws, regulations, and policies. Because of the mandate for the DOI and DOA to coordinate (Sec. 6302 (b)), regulations may be cooperatively developed, to result in Uniform Regulations. Whether all the regulations will be developed in this manner, or whether some will be done within a specific agency, is unknown at this time. Uniform Regulations will probably be written initially by interagency paleontology staff, followed by reviews at each agency. For the BLM, this review will include all paleontology staff, other resource staff, the BLM solicitors (lawyers) and agency management people. At this time, time frames and procedures for this process have not been determined. It is expected that implementation of the provisions of the law will be accomplished in stages, with some PRPA sections enacted with little or no regulations needed, while other sections may not be fully implemented for several years.

Wildlife and Fisheries

Endangered Species Act of 1973

The purpose of the Endangered Species Act (ESA) is to protect and recover imperiled species and the ecosystems upon which they depend. It is administered by the USDI's USFWS and the Department of Commerce's National Marine Fisheries Service (NMFS). The USFWS has primary responsibility for terrestrial and freshwater organisms, while the responsibilities of NMFS are mainly marine species such as salmon and whales.

Bald and Golden Eagle Protection Act

The Bald Eagle Protection Act (16 USC 668) prohibits the take, possession, sale, purchase, barter, offer to sell, purchase, transport, export or import, of any bald eagle, alive or dead, or any part, nest, or egg thereof. "Take" includes pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb (50 CFR §22.3).

Fish and Wildlife Coordination Act

The Act of March 10, 1934, (16 USC 661 et seq.) as amended, authorizes the Secretaries of Agriculture and Commerce to provide assistance to and cooperate with federal and state agencies to protect, rear, stock, and increase the supply of game and fur-bearing animals, as well as to study the effects of domestic sewage, trade wastes, and other polluting substances on wildlife. The Act also directs the Bureau of Fisheries to use impounded waters for fish-culture stations and migratory-bird resting and nesting areas and requires consultation with the Bureau of Fisheries before the construction of any new dams to provide for fish migration. In addition, the Act authorizes the preparation of plans to protect wildlife resources, the completion of wildlife surveys on public lands, and the acceptance by the federal agencies of funds or lands for related purposes provided that land donations receive the consent of the state in which they are located.

The amendments enacted in 1946 require consultation with the USFWS and the fish and wildlife agencies of states where the “waters of any stream or other body of water are proposed or authorized, permitted or licensed to be impounded, diverted...or otherwise controlled or modified” by any agency under a federal permit or license. Consultation is to be undertaken for the purpose of “preventing loss of and damage to wildlife resources.”

Fish and Wildlife Improvement Act of 1978

The Fish and Wildlife Improvement Act of 1978 (16 USC 7421; 92 Stat. 3110), Public Law 95-616, authorizes the Secretaries of the Interior and Commerce to establish, conduct, and assist with national training programs for state fish and wildlife law enforcement personnel. It also authorized funding for research and development of new or improved methods to support fish and wildlife law enforcement. The law provides authority to the Secretaries to enter into law enforcement cooperative agreements with state or other federal agencies and authorizes the disposal of abandoned or forfeited items under the fish, wildlife, and plant jurisdictions of these Secretaries. Public Law 105-328, signed October 30, 1998, amended the Act to allow the USFWS to use the proceeds from the disposal of abandoned items derived from fish, wildlife, and plants to cover the costs of shipping, storing and disposing of those items.

Fish and Wildlife Conservation Act of 1980

The Fish and Wildlife Conservation Act (USC 2901–2911), commonly known as the Nongame Act, encourages states to develop conservation plans for nongame fish and wildlife of ecological, educational, aesthetic, cultural, recreational, economic or scientific value. The states may be reimbursed for a percentage of the costs of developing, revising, or implementing conservation plans approved by the Secretary of the Interior. Amendments adopted in 1988 and 1989 directed the Secretary to undertake research and conservation activities for migratory nongame birds.

Migratory Bird Treaty Act of 1918 and EO 13186

The Migratory Bird Treaty Act (16 USC 703–712. § 703) makes taking, killing, or possessing migratory birds unlawful. It shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export, any migratory bird, any part, nest, or eggs of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof, included in the terms of the conventions between the United States and Great Britain for the protection of migratory birds concluded August 16, 1916 (39 Stat. 1702); the United States and the United Mexican States for the protection of migratory birds and game mammals concluded February 7, 1936; the United States and the Government of Japan for the protection of migratory birds and birds in danger of extinction, and their environment concluded March 4, 1972 [1]; and the

convention between the United States and the Union of Soviet Socialist Republics for the conservation of migratory birds and their environments concluded November 19, 1976 (50 CFR §10.12). Under Executive Order 13186, federal agencies are responsible for implementing the provisions of the Migratory Bird Treaty Act by promoting conservation principles and management practices into agency activities. Federal agencies must ensure that federal actions are evaluated for potential impacts on migratory birds.

Sikes Act of 1960

The Sikes Act (16 USC 670a–670o, 74 Stat. 1052), as amended, Public Law 86-797, approved September 15, 1960, provides for cooperation by the Departments of the Interior and Defense with state agencies in planning, development, and maintenance of fish and wildlife resources on military reservations throughout the United States. Key amendments to the Act that affect this EIS are highlighted below:

- An amendment enacted August 8, 1968 (Public Law 90-465, 82 Stat. 661), authorized a program for development of outdoor recreation facilities.
- Public Law 93-452, signed October 18, 1974 (88 Stat. 1369), authorized conservation and rehabilitation programs on Department of Energy (DOE), National Aeronautics and Space Administration (NASA), Forest Service, and BLM lands. These programs are carried out in cooperation with the states by the Secretary of the Interior and on Forest Service lands by the Secretary of Agriculture.
- Public Law 97-396, approved December 31, 1982 (96 Stat. 2005), provided for the inclusion of endangered plants in conservation programs developed for BLM, Forest Service, NASA, and DOE lands.
- Public Law 105-85, approved November 18, 1997 (11 Stat. 2017, 2018, 2020, 2022), added that each integrated natural resources management plan (INRMP) prepared under this act should provide for the sustainable use by the public of natural resources, to the extent that the use is not inconsistent with the needs of fish and wildlife resources. Public Law 105-85 also requires that the Secretary of the Interior, in consultation with state fish and wildlife agencies, submit a report annually on the amounts expended by the USDI and state fish and wildlife agencies on activities conducted pursuant to INRMPs to respective congressional committees with oversight responsibilities.

Federal Cave Resources Protection Act of 1988

The purpose of the Federal Cave Resources Protection Act (16 USC 63) is to secure, protect and preserve significant caves on federal lands for the perpetual use, enjoyment, and benefit of all people and to foster increased cooperation and exchange of information between governmental authorities and those who use caves located on federal lands for scientific, education, or recreational purposes.

Wild Horses

Wild Free Roaming Horse and Burro Act of 1971

The Wild Free Roaming Horse and Burro Act of 1971 provides for the management, protection and control of wild horses and burros on public lands and authorizes “adoption” of wild horses and burros by private individuals. Regulations applicable to wild horse and burro management on BLM-administered lands are provided in 43 CFR §4700.

Other Policy

Regional Mitigation Manual Section (MS)-1794

Regional mitigation is a landscape-level approach to strategically planning and implementing mitigation, including pre-identifying potential mitigation project sites, projects and measures. The BLM uses or requires mitigation to ensure the agency achieves its resource and value objectives when authorizing land-uses, including BLM-initiated action, under the BLM's multiple-use mission.

The BLM cannot always mitigate the direct and indirect impacts from land-use authorizations to an acceptable level at the location of the impacts (onsite mitigation). In order to achieve the BLM's resource and value objectives, it may be appropriate to compensate for the direct and indirect impacts of a use-authorization by performing mitigation outside of the area of impact. Mitigation outside of the area of impact occurs by replacing or providing similar or substitute resources or values through restoration, enhancement, creation or preservation.

The BLM's policy is to consider mitigation outside the area of impact when it is not feasible or practical to mitigate impacts to an acceptable level in the same area as the use-authorization. In order to ensure an efficient process for identifying potential sites that would benefit from mitigation projects and measures, the BLM will take a regional approach. The regional approach involves anticipating future mitigation needs and strategically identifying mitigation sites, projects, and measures that can help the BLM achieve its resource and value objectives. This regional approach to mitigation planning will occur across the landscape, regardless of land ownership and proximity to the impacts.

A regional mitigation approach shifts the BLM's mitigation focus from permit-by-permit mitigation requirements to strategic, pre-planned efforts. Regional mitigation allows for the pooling of resources to help fully, rather than partially, restore or conserve strategic mitigation sites. Permit applicants, partners, stakeholders, and the public will benefit from the greater certainty afforded by pre-identifying mitigation needs and costs.

In addition to ensuring adequate onsite mitigation, the BLM will take a regional (i.e. landscape-level) approach to planning and implementing mitigation outside the area of impact. This will include identifying potential sites, projects, and measures that could be appropriate for the mitigation of impacts to resources and values caused by land-use authorizations. The BLM will accomplish this by the following:

- Anticipating future mitigation needs and identifying potential sites that could benefit from mitigation projects and measures, rather than managing mitigation on an unplanned or permit-by-permit basis. To the extent practical, regional mitigation sites will be selected through the land use planning process and/or regional mitigation strategies;
- Prioritizing mitigation sites, projects and measures with the potential for multiple, landscape-scale benefits rather than implementing mitigation at smaller scales without broader impact;
- Focusing mitigation sites, projects and measures where the impacts of the use-authorization can be best mitigated and BLM can achieve the most benefit to its resource and value objectives, regardless of land ownership;
- Selecting mitigation sites, projects and measures that will be effective, durable over time, and will be in addition to current management obligations;
- Selecting mitigation sites, projects and measures based on a scientifically sound understanding of the use-authorization's impacts, the landscape condition of the impacted resource or value, current trends affecting that condition, and potential for improving the condition. If available and appropriate, the BLM will use regional scientific assessments to inform this process (e.g., BLM's Rapid Ecoregional Assessments or the Western Governors Association's Crucial Habitat Assessment Tool);

- Considering sites where impacts to several resources or values can be mitigated at one location;
- Considering the direct and indirect, positive or negative, impacts to adjacent properties when evaluating the need for mitigation and identifying mitigation sites, projects and measures; and
- Coordinating early in the process with potentially affected landowners and agencies.

Regional Mitigation Strategies – Managing Large-scale Projects

Regional Mitigation Strategies are an effective tool for involving stakeholders in planning and efficiently managing Greater Sage-Grouse mitigation on a regional or landscape-level basis where the BLM anticipates large-scale projects and intensive, new development. The intent of Regional Mitigation Strategies, beyond fulfilling the concepts identified in §1.6(B)(1) includes the following:

- Increasing permitting efficiency and financial predictability for applicants by preplanning mitigation needs; and
- Enhancing the ability of Federal and State governments, Tribes, nongovernmental organizations, and resource users to invest in larger scale mitigation efforts through prioritization of investments and pooling of financial resources.

Regional Mitigation Strategies should include the following elements:

- A transparent stakeholder engagement process;
- A description of regional baseline conditions against which unavoidable impacts are assessed;
- The establishment and prioritization of regional mitigation objectives;
- The establishment of a method for calculating mitigation fees for unavoidable adverse impacts that warrant mitigation;
- The evaluation of appropriate mitigation sites, projects and/or measures;
- The identification and establishment of a structure to hold and apply mitigation investment funds; and
- The development of long-term monitoring and adaptive management requirements to evaluate and maximize the effectiveness of mitigation projects and measures.

A CCAA is a voluntary agreement whereby landowners agree to manage their lands to remove or reduce threats to species at risk of being listed under the ESA. In return for managing their lands to the benefit of a species at risk, landowners receive assurances against additional regulatory requirements should that species ever be listed under the ESA. Under a CCAA, the USFWS will issue enrolled landowners Enhancement of Survival permits pursuant to section 10(a)(1)(A) of the ESA for a period of 20 years. Since the agreement is voluntary, the landowner can end it at any point, although in doing so they would give up any assurances. Permits would be issued to participating landowners contingent on development of a site-specific sage-grouse conservation plan that is consistent with this CCAA.