

WYOMING

**Public Lands  
Handbook**

**THIRD EDITION**





## FOREWORD BY GOVERNOR MARK GORDON

Resource management decisions on public lands affect all of us, especially here in the great State of Wyoming. So much of our lifeblood is entwined with the resources that these lands hold. The health of our communities, our industries, and our economy are enriched by the opportunities our public lands offer, whether it's access to natural resources, recreation, livestock production, wildlife habitat, cultural legacies or general enjoyment of open space.

We all have a vested interest in how these lands are managed and how that management will impact our present and future needs. Today, Wyoming is at a crossroads: the landscape of our economy is changing. Although Wyoming will always depend on our traditional industries that intersect with our public lands, now more than ever we must keep an eye out for new opportunities that support and strengthen the Wyoming way of life while maintaining our natural and cultural resources.

The best way to do so is to promote a solid understanding of the laws, regulations, and policies that govern the use of, and participation in, the management of public lands. The Wyoming Public Lands Handbook details these complexities in a clear, digestible format. I applaud the Wyoming County Commissioners Association for continuing to refine this useful tool to help counties navigate the legal and procedural aspects of public land management.



## FOREWORD BY JERIMIAH RIEMAN, EXECUTIVE DIRECTOR, WYOMING COUNTY COMMISSIONERS ASSOCIATION

Big Wonderful Wyoming is world renowned for its scenic landscapes, varied topography, and deep history. Our public lands define our custom and culture and shape and influence our economy. And while we treasure our public lands, water and wildlife, most Wyomingites regard federal land and resource management agencies with doubt and suspicion. This distrust is not unique to Wyoming, but its roots are planted in our history and visible in the present. Nor is this wariness specific to one group – environmentalists, ranchers, miners, and others all have a complicated relationship with federal decision-makers.

What is the appropriate relationship of federal agencies to the communities around them? Often the view of the forest is obscured by that of the trees. Somewhere at the intersection of federal, state, and local government bodies, policies and politicians, and interest groups of all shapes and sizes is an answer. Unfortunately, land and resource management are infused with regional and national politics, values, and priorities. It makes for a difficult balancing act – for federal agencies and the public alike. At the Wyoming County Commissioners Association, we intend to improve our ability to make effective policy choices, while decreasing polarization of the issues.

First published in 2015, the Wyoming Public Lands Handbook is designed to inform the collaborative efforts of federal, state, local and tribal governments. This easy reference guide contains important insights intended to improve communication and understanding, identify common goals and objectives, and enhance the management of our public lands. I believe it will answer a question, connect you to a resource and elevate the conversation in Wyoming and beyond. Above all, I hope that you enjoy and use this updated publication.

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# Table of Acronyms

<b>APA:</b>	<b>Administrative Procedure Act</b>
<b>BLM:</b>	<b>Bureau of Land Management</b>
<b>BOR:</b>	<b>Bureau of Reclamation</b>
<b>CAA:</b>	<b>Clean Air Act</b>
<b>CEQ:</b>	<b>Council on Environmental Quality</b>
<b>CWA:</b>	<b>Clean Water Act</b>
<b>DOI:</b>	<b>Department of the Interior</b>
<b>EA:</b>	<b>Environmental Assessment</b>
<b>EIS:</b>	<b>Environmental Impact Statement</b>
<b>EPA:</b>	<b>Environmental Protection Agency</b>
<b>ESA:</b>	<b>Endangered Species Act</b>
<b>FACA:</b>	<b>Federal Advisory Committee Act</b>
<b>FLPMA:</b>	<b>Federal Land Policy and Management Act</b>
<b>FNRPA:</b>	<b>Federal Natural Resource Policy Account</b>
<b>FONSI:</b>	<b>Finding of No Significant Impact</b>
<b>MLA:</b>	<b>Mineral Leasing Act</b>
<b>MUSYA:</b>	<b>Multiple Use and Sustained Yield Act</b>
<b>NAAQS:</b>	<b>National Ambient Air Quality Standards</b>
<b>NEPA:</b>	<b>National Environmental Policy Act</b>
<b>NFMA:</b>	<b>National Forest Management Act</b>
<b>NPDES:</b>	<b>National Pollutant Discharge Elimination System</b>
<b>NPS:</b>	<b>National Park Service</b>
<b>NRA:</b>	<b>National Recreation Area</b>
<b>NWPS:</b>	<b>National Wilderness Preservation System</b>
<b>NWR:</b>	<b>National Wildlife Refuge</b>
<b>PILT:</b>	<b>Payments in Lieu of Taxes</b>
<b>ROW:</b>	<b>Right of Way</b>
<b>SIP:</b>	<b>State Implementation Plan</b>
<b>SMCRA:</b>	<b>Surface Mining Control and Reclamation Act</b>
<b>SRS:</b>	<b>Secure Rural Schools and Community Self-Determination Act</b>
<b>TGA:</b>	<b>Taylor Grazing Act</b>
<b>USDA:</b>	<b>United States Department of Agriculture</b>
<b>USFS:</b>	<b>United States Forest Service</b>
<b>WSA:</b>	<b>Wilderness Study Area</b>
<b>WSRA:</b>	<b>Wild and Scenic Rivers Act</b>



# Introduction

*This handbook serves as a guide for Wyoming county commissioners on Wyoming's public lands and the laws and policies that govern their management. It also provides best practices for Wyoming county commissioners interested in participating in the management of public lands, including an explanation of cooperating agencies and coordination and how best to develop and maintain relationships with federal land managers.*

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## FEDERAL LANDS IN WYOMING

The federal government owns and manages approximately 640 million acres—about twenty-eight percent—of the nation's total surface area.<sup>1</sup> In Wyoming, the percentage is higher—federal agencies manage just under forty-seven percent of the state's lands.<sup>2</sup>

Generally, federal lands and associated resources are administered by five agencies: the U.S. Forest Service (Forest Service), the National Park Service (Park Service), the Bureau of Land Management (BLM) and the U.S. Fish and Wildlife Service (Fish and Wildlife Service). These managing agencies fall under the U.S. Department of the Interior (the Interior), with the exception of the Forest Service, which is housed in the U.S. Department of Agriculture.

These agencies manage public lands for many purposes related to preservation, recreation, and development of natural resources. However, as discussed below, each agency has distinct statutory mandates, histories, policies and missions and, as a result, manage lands differently.

## WYOMING'S FEDERAL LAND



### WHAT IS AN AGENCY?

Generally defined, an administrative agency is a unit of government to which the legislative or executive branch has granted authority to exercise specific functions.<sup>3</sup> Typically, these functions include interpreting, implementing and administering legislation and investigation, prosecution and licensing.<sup>4</sup>

Agencies often carry out these tasks by developing regulations that interpret ambiguous or general provisions of the law. For example, the Environmental Protection Agency (EPA) has issued regulations interpreting the phrase “waters of the United States”—an ambiguous term that determines the Clean Water Act’s applicability and reach.<sup>5</sup> Agencies also enforce and adjudicate alleged statutory or regulatory violations. For example, if a Clean Water Act permit holder violates the terms of their permit, the EPA can issue an administrative compliance order and can assess penalties.<sup>6</sup>

Certain entities are, by law, not agencies, including Congress, federal courts and the President of the United States.

## NATIONAL FOREST SYSTEM

Wyoming is home to eight national forests—Ashley (Flaming Gorge National Recreation Area), Bighorn, Black Hills, Bridger-Teton, Caribou-Targhee, Medicine Bow-Routt, Shoshone and Uinta-Wasatch-Cache—and one grassland, Thunder Basin National Grassland. The Bridger-Teton, Caribou-Targhee and Uinta-Wasatch-Cache National Forests are in the Intermountain Region (Region 4) of the National Forest System. The remaining forests and grasslands are in the Rocky Mountain Region (Region 2).



## THE BUREAU OF LAND MANAGEMENT LANDS

The BLM manages more than 18.4 million surface acres of public lands and 42.9 million acres of mineral estate in Wyoming.<sup>7</sup> In Wyoming, the BLM is broken down into three districts, which are managed by ten field offices and overseen by the state BLM office in Cheyenne.



## NATIONAL PARKS AND THE PARK SYSTEM

The Park Service administers national parks as well as some other nationally significant resources. There are two national parks in Wyoming—Grand Teton National Park and Yellowstone National Park. The Park Service manages these parks as well as numerous other sites, including the Bighorn Canyon National Recreation Area, California National Historic Trail, Fort Laramie National Historic Site, John D. Rockefeller Jr. Memorial Parkway, Mormon Pioneer National Historic Trail, Oregon National Historic Trail and Pony Express National Historic Trail.<sup>8</sup>



The Park Service also manages national monuments, which are nationally significant lands and waters that are set aside for permanent protection. National parks and monuments are similar with one significant difference—Congress creates national parks while the President can create (and shrink and eliminate) a national monument. Wyoming's national monuments include the Devils Tower National Monument and Fossil Butte National Monument.

## NATIONAL WILDLIFE REFUGES

There are seven national wildlife refuges in Wyoming, each administered by the Fish and Wildlife Service: the Bamforth National Wildlife Refuge, the Cokeville Meadows National Wildlife Refuge, the Hutton Lake National Wildlife Refuge, the Mortenson Lake National Wildlife Refuge, the National Elk Refuge, the Seedskaadee National Wildlife Refuge and the Pathfinder National Wildlife Refuge.



### WHERE DOES AN AGENCY GET ITS POWER?

**Often, when Congress passes laws, it leaves some questions unanswered or room for interpretation. To fill these gaps, Congress may create an agency and empower it to interpret a statute and promulgate regulations with additional guidance to regulated entities. For example, agencies provide definitions for ambiguous terms, establish permitting processes and set enforcement guidelines. Agencies may only exercise authority granted to them by statute or constitution.<sup>9</sup> When an agency acts without authority, its action is said to be “ultra vires.”**

**Because agencies and agency personnel have experience, expertise and specialization on particular matters, agencies have broad discretion in exercising their regulatory authority.<sup>10</sup> As a result of this expertise, courts often give deference to agency decisions when challenged especially where the question is one of statutory interpretation.<sup>11</sup>**



# Part I: Federal Lands & Their Management

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In Wyoming, where nearly half of the lands are federally owned, public land management can have significant implications for state and local economies, the custom and culture of residents and public health and safety. An understanding of the laws and policies that guide the management of these resources is critical if elected officials, interested parties and residents of the state are to help federal agencies manage public lands to improve the economic and cultural well-being of Wyoming's residents and protect important natural resources. This section provides an overview of those laws and policies.





## NEPA and NHPA: Analyzing Impacts to Federal Lands & Resources

Certain federal laws require agencies to consider and disclose impacts to public lands before taking or permitting action. These laws—the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA)—require land managers to “look before they leap,” to collaborate and coordinate with state, tribal and local government in the process and afford the public opportunities to provide input on a proposed action.

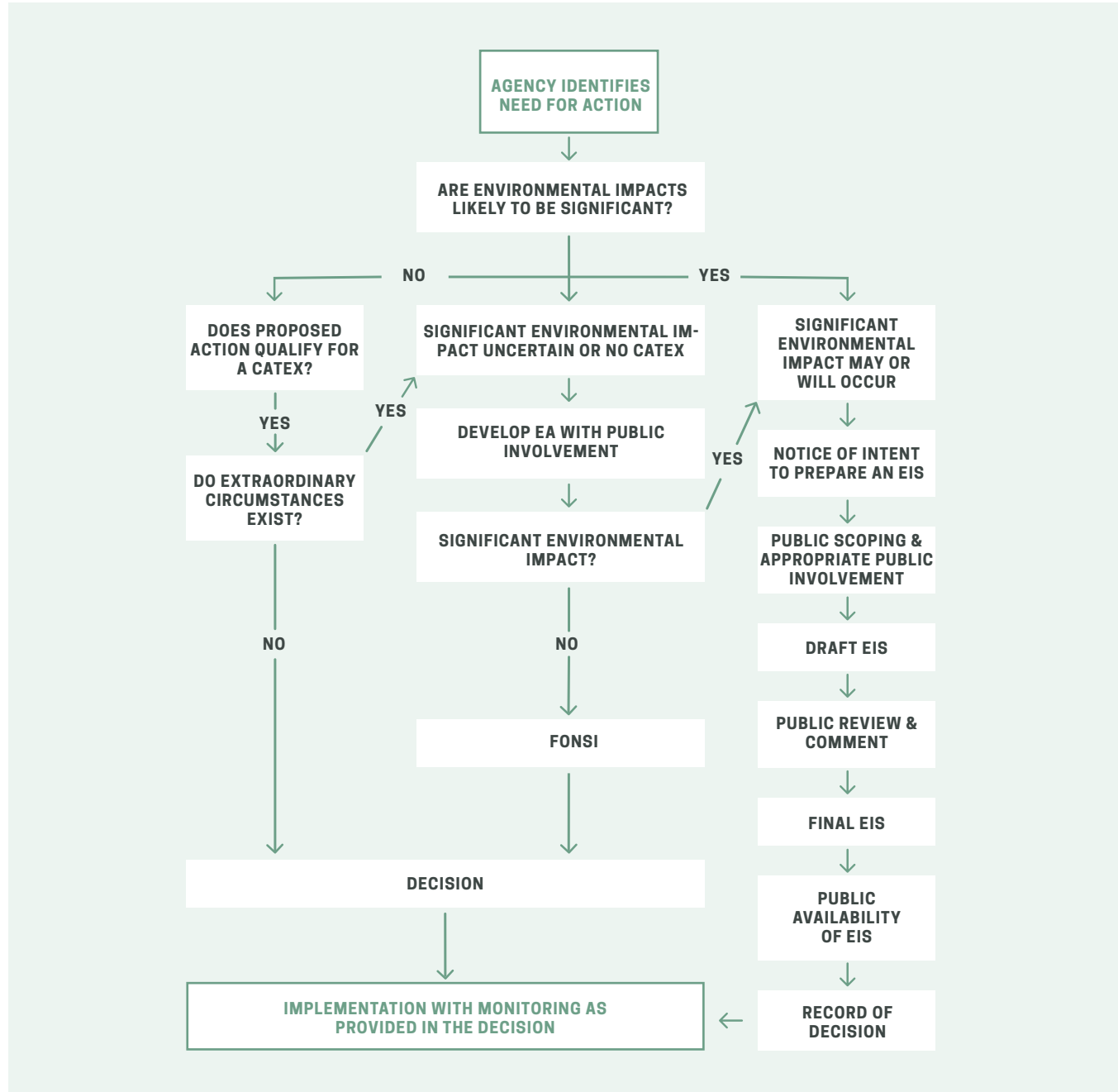
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### THE NATIONAL ENVIRONMENTAL POLICY ACT

NEPA, passed in 1969, declared as a national policy that the “Federal Government, in cooperation with State and local governments, and other concerned public and private organizations” will “use all practicable means and measures . . . 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.”<sup>12</sup>

To this end, NEPA requires federal agencies to consider a federal action’s potential impacts before permitting, approving or beginning a project.<sup>13</sup> NEPA does not, however, dictate any course of action. NEPA is purely a procedural statute, requiring agencies to follow a specific process without mandating particular outcome.<sup>14</sup>

## THE NEPA PROCESS



### ENVIRONMENTAL ANALYSES AND FINDINGS OF NO SIGNIFICANT IMPACT

When an agency is uncertain whether a project will cause significant impacts, it must prepare an environmental analysis (EA), a document that is simpler and shorter than an environmental impact statement (EIS). In an EA, a federal agency considers whether a federal action will significantly affect the environment. If the answer is no, the agency will issue a finding of no significant impact (FONSI) and proceed with the proposed project or permit. If the agency determines the environmental consequences of a proposed federal action may be significant, it must prepare an EIS.<sup>15</sup>



## ENVIRONMENTAL IMPACT STATEMENTS

Unless a project is categorically excluded (more below), a federal agency must prepare an EIS whenever a project may significantly affect the quality of the human environment.<sup>16</sup> An EIS must identify the purpose and need of the proposal, describe a reasonable range of alternatives in addition to the proposed action and consider potential environmental and unavoidable impacts. The document must also address any irreversible and irretrievable commitments of resources and the relationship between local short-term uses of the environment and maintenance and enhancement of long-term productivity.<sup>17</sup>

## CATEGORICAL EXCLUSIONS

Some federal actions are categorically excluded through statute or regulation from NEPA analysis and need not be analyzed through an EA or EIS for potential effects.<sup>18</sup> A categorical exclusion, also called a “CE” or “CATEX,” is a category of actions that an agency has determined do not individually or cumulatively have a significant effect on the quality of human environment.<sup>19</sup> CEs vary among agencies and are often listed in an agency’s regulations.<sup>20</sup>

## PUBLIC PARTICIPATION

The public has an important role in any NEPA analysis. During the process of developing an EIS, the public is encouraged to provide input regarding the issues a federal agency should address in an EIS and provide comment on an agency’s proposed action. To this end, NEPA requires federal agencies to accept public comment at multiple stages throughout EIS preparation—at a minimum, during the scoping process and after a draft EIS is prepared.

## LEAD AND COOPERATING AGENCIES

If only one federal agency is involved in the proposed project, that agency will automatically be the “lead agency,” which means it has the primary responsibility for compliance with NEPA.<sup>24</sup> Larger and more complex projects generally involve multiple federal agencies along with appropriate state, local and tribal agencies. On any proposed action, federal agencies and state, tribal or local governments may be cooperating agencies.

A cooperating agency is an agency that has jurisdiction by law or special expertise with respect to a proposal.<sup>25</sup> A cooperating agency typically will have some responsibilities for the analysis related to its jurisdiction or special expertise. The roles and responsibilities of cooperating agencies are discussed in greater detail in Part II of this handbook.

In Wyoming, when a county is serving as a cooperating agency, it is deemed under state law to have special expertise on “all subject matters for which it has statutory responsibility” including “all subject matters directly or indirectly related to the health, safety, welfare, custom, culture and socio-economic viability of a county.”<sup>26</sup> Conservation districts also have special expertise on subject matters for which they have statutory responsibility, including the agricultural industry and protection of natural resources.<sup>27</sup>

### WHAT IS THE DIFFERENCE BETWEEN A PROCEDURAL LAW AND A SUBSTANTIVE LAW?

**A substantive law creates, defines and regulates the rights, duties and powers of parties.<sup>21</sup> In the public lands context, a substantive law requires natural resources to be managed in a particular way or for a certain purpose. For example, the Federal Land Policy and Management Act (FLPMA) allows the BLM to grant rights-of-way to companies for wind energy development.<sup>22</sup>**

**A procedural law provides a process by which rights, duties and powers of parties are applied or enforced.<sup>23</sup> For example, while FLPMA allows the BLM to issue a right-of-way to a company to install wind turbines and associated infrastructure, NEPA establishes a process by which the BLM must consider potential impacts of that development. NEPA does not dictate whether the permit should be issued or not.**

## THE NATIONAL HISTORIC PRESERVATION ACT

In 1966, Congress passed NHPA and formally created the National Register of Historic Places.<sup>28</sup> Pursuant to this act, the federal government collaborates with states, local governments, tribes and private organizations to promote the preservation of historical places for present and future generations, encourages private and public citizens to take advantage of the nation’s architectural history and helps state and local governments and tribes preserve their culture and history.<sup>29</sup> Like NEPA, NHPA is a procedural statute, requiring federal agencies to consider impacts to cultural resources but nothing further.<sup>30</sup>

Section 106, one of the most important provisions of NHPA, ensures that federal agencies consider the natural, cultural and historic environment in federal project planning. NHPA requires the federal government to “stop, look, and listen” before making decisions that might affect historic properties.<sup>31</sup>

A federal agency must comply with Section 106 when there is a federal “undertaking”—a project, activity or program funded, permitted or carried out by or on behalf of the federal government.<sup>32</sup> If a project is not considered an undertaking, Section 106 does not apply. If the project is an undertaking, the federal agency must then begin the consultation process.

Consultation is the “process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising out of the section 106 process.”<sup>33</sup> The federal agency must identify potential consulting parties, including the state historic preservation office (SHPO), the tribal historic preservation office (THPO), representatives of local governments potentially affected by the project and the project proponent.<sup>34</sup> The agency must also consider public comment on the undertaking.<sup>35</sup>

Section 106 provides a specific process for tribal consultation. Where an undertaking may impact tribal lands, THPO takes the place of SHPO or, if there is no THPO, a tribal representative and SHPO serve as consulting parties. When undertakings are not on tribal lands, the agency must still consult with any tribe that “attaches religious and cultural significance to historic properties that may be affected by an undertaking.”<sup>36</sup> This requirement applies regardless of ownership or location of the historic property.<sup>37</sup> The agency must provide the tribe a “reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking’s effects on such properties, and participate in the resolution of adverse effects.”<sup>38</sup>



*Medicine Mountain National Historic Landmark in the Bighorn Mountains — Photo Courtesy of Richard Collier, Wyoming State Historic Preservation Office*



Section 106 only applies to impacts to historic properties, defined in NHPA as properties that are listed, or may be eligible for listing, in the National Register of Historic Places.<sup>39</sup> These may include prehistoric or historic districts, sites, buildings, structures, objects or properties of traditional religious and cultural importance to a tribe that meet the National Register criteria.<sup>40</sup> Even trails can be listed on the National Register. For example, the Upper Green River Drift, a 58-mile cattle trail in Sublette County that has been used by ranchers since 1890, was listed on the National Register in 2013.

To identify potentially historic properties, an agency must make a “reasonable and good faith effort to carry out appropriate identification efforts. . . [such as] background research, consultation, oral history interviews, sample field investigation, and field survey.”<sup>41</sup>

The federal agency, with consulting parties, considers whether the proposed project will adversely affect a historical property.<sup>42</sup> Adverse effects occur where a project “may alter, directly or indirectly, any of the characteristics of a historic property that allowed the structure to be included in the National Register in a manner that would taint the personality of the structure’s location, design, setting, materials, workmanship, feeling or association.”<sup>43</sup> When an agency finds that an undertaking may adversely affect historic properties the agency must, with the consulting parties, develop and consider alternatives or measures to avoid, minimize or mitigate such effects.<sup>44</sup>

*Photo courtesy of the Upper Green River Cattle Association*



## WHAT IS THE ADMINISTRATIVE PROCEDURE ACT?

The Administrative Procedure Act (APA) provides a process by which federal agencies develop and enforce regulations as well as circumstances and standards under which those regulations may be challenged in court.<sup>48</sup> The APA and administrative law play an important role in the management of public lands and resources.

One of the APA's central provisions is its rulemaking requirement. Under the APA, agencies must first provide notice to the public of a proposed regulation, usually through publication in the Federal Register.<sup>49</sup> Then, the agency must provide an opportunity to comment on proposed regulations and consider and respond to these comments.<sup>50</sup> Lastly, when the agency promulgates a final rule, it must include a "concise general statement of its basis and purpose."<sup>51</sup> Regulations that are promulgated pursuant to this process have the full force and effect of law, just like a statute.<sup>52</sup>

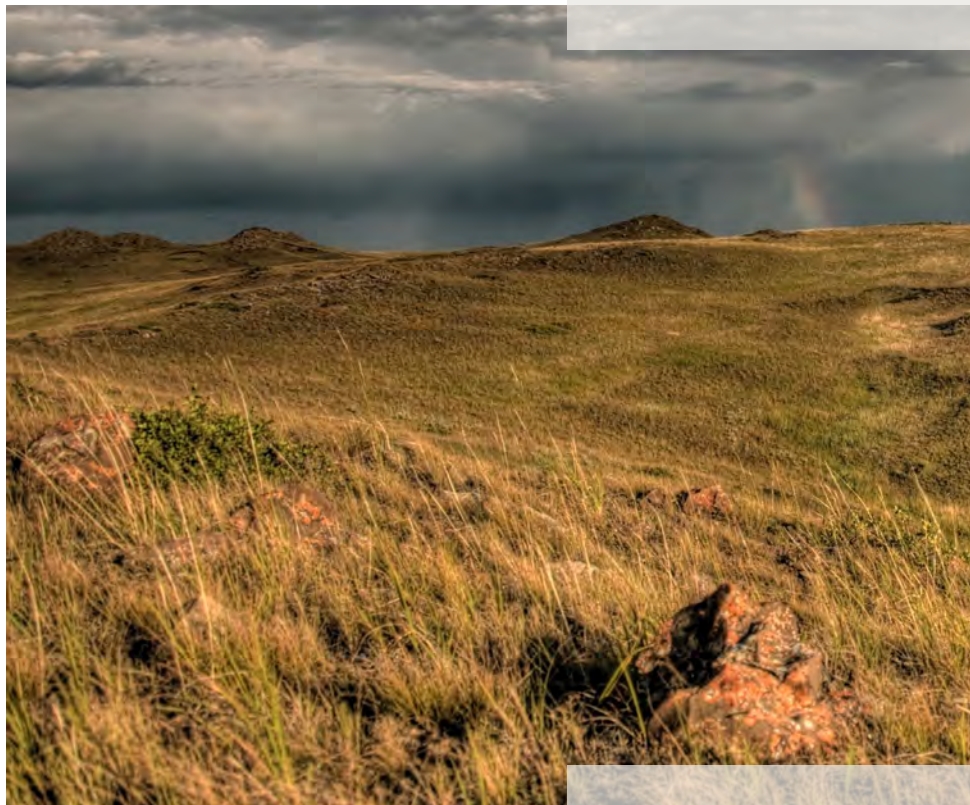
The APA's judicial review provisions are also a critical part of environmental regulation. Under the APA, only final agency actions are reviewable and a party must have been adversely affected or aggrieved by an agency action—also known as having "standing"—to bring a challenge.<sup>53</sup> The APA provides standards of review for a court considering an agency action, including the commonly invoked "arbitrary and capricious" standard: a reviewing court must set aside an agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."<sup>54</sup>

## Managing Federal Lands

Federal agencies manage public lands and resources pursuant to specific statutes and regulations and that management often varies depending on the type of public lands. The following sections describe how agencies manage public lands and pursuant to what laws.

### THE BLM AND THE FEDERAL LAND POLICY AND MANAGEMENT ACT

The Federal Land Policy and Management Act (FLPMA) requires the BLM to manage public lands "on the basis of multiple use and sustained yield" and "in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, atmospheric, water resource, and archeological values."<sup>45</sup> At the same time, public lands must provide for outdoor recreation and human occupancy and use, and be managed in a manner that recognizes the nation's need for domestic sources of minerals, food, timber and fiber.<sup>46</sup> Finally, the BLM must prevent "unnecessary or undue degradation" of public lands.<sup>47</sup>





## MULTIPLE USE AND SUSTAINED YIELD

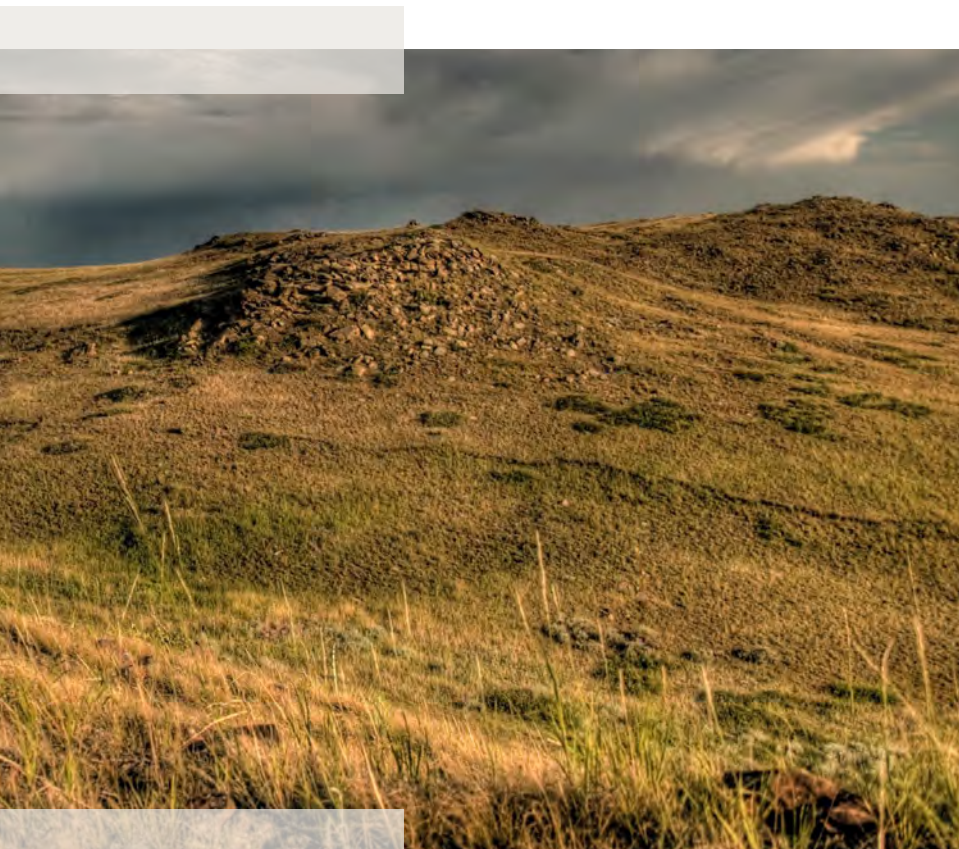
The U.S. Supreme Court has called “multiple use” a “deceptively simple term that describes the enormously complicated task of striking a balance among the many competing uses to which land can be put.”<sup>55</sup> Multiple use does not require the BLM to prioritize any particular use, nor does it preclude the agency from preserving natural and cultural resources.<sup>56</sup> Ultimately, the agency has broad discretion to manage public lands for multiple uses.

The BLM’s second management goal—sustained yield—requires the BLM to achieve and maintain in perpetuity a “high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use.”<sup>57</sup> To sustain yields, the BLM must manage “depleting resources over time, so as to ensure a high level of valuable uses in the future.”<sup>58</sup>

## INVENTORYING AND PLANNING

FLPMA requires the BLM to inventory public lands, resources and values, including outdoor recreation and scenic values, and develop, maintain and revise public land management plans (also called resource management plans or RMPs).<sup>65</sup> Such plans must be prepared consistent with the agency’s mandate of multiple use and sustained yield, give priority to the designation and protection of areas of critical environmental concern and weigh long-term and short-term benefits.

Per FLPMA, when preparing land management plans, the BLM must provide the public the opportunity to participate by hosting public meetings near affected lands and accepting comments. Moreover, the development of a plan is almost always considered a major federal action subject to NEPA review and NEPA’s public participation processes.



### WHAT IS THE DIFFERENCE BETWEEN A STATUTE, REGULATION AND GUIDANCE DOCUMENT?

A statute is a law passed by Congress.<sup>59</sup> Statutes carry the full force and effect of law and can only be changed through additional legislation. Examples of statutes include NEPA, the Clean Water Act and the Endangered Species Act.

A regulation is a rule that an agency issues to interpret and implement statutes.<sup>60</sup> Statutes authorize agencies to develop regulations, which carry the full force and effect of law when properly prepared.<sup>61</sup> Examples of regulations include the Roadless Area Conservation Rule, the Forest Service’s 2012 Planning Rule and the EPA’s and U.S. Army Corp of Engineers’ (Corps) rule defining the term “waters of the United States.”

A guidance document is any nonbinding pronouncement that an agency issues internally or externally to indicate policy decisions.<sup>62</sup> Often they include internal agency manuals or handbooks and memorandum providing specific instructions or interpretations to agency personnel.<sup>63</sup> Generally, because they were not promulgated pursuant to APA-required process, guidance documents are not binding on the public.<sup>64</sup> Guidance documents include the Forest Service’s Handbooks and Manuals and the BLM Instruction Memoranda, also called “IMs.”

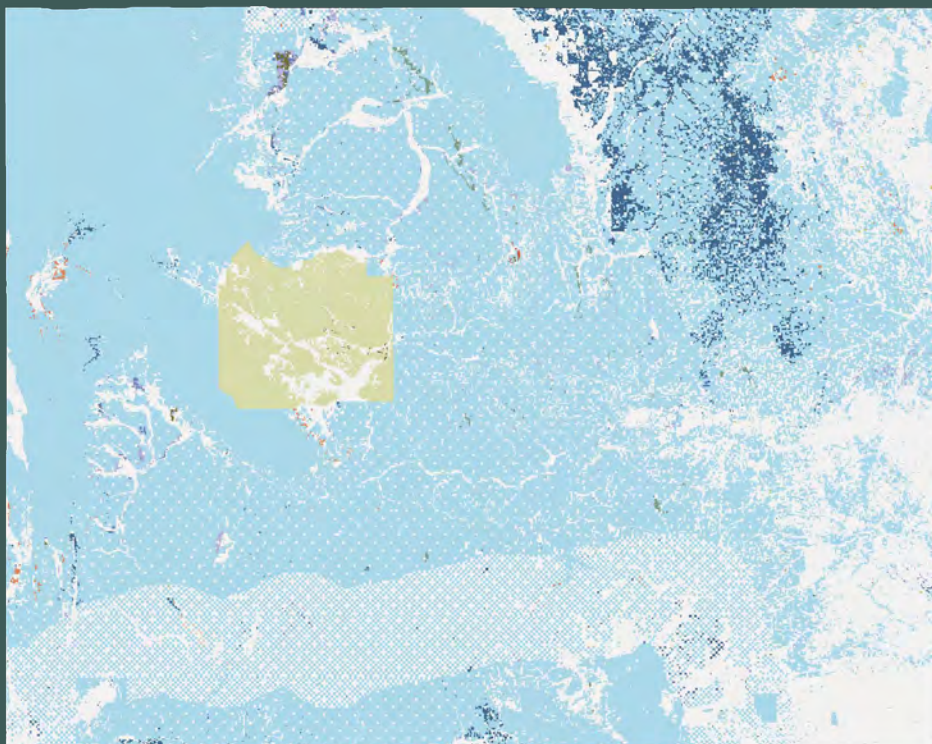
## MINERAL MANAGEMENT




Mineral development is an important public land use under the BLM's multiple use mandate. Nationally, the BLM manages over 700 million acres of subsurface mineral estate underlying both federal and non-federal lands, including minerals underlying lands managed by the Forest Service, Fish and Wildlife Service and the Park Service.<sup>66</sup> Minerals developed on public lands include locatable minerals, such as gold, silver, copper and other hard rock minerals, leasable minerals like oil, gas and coal, and saleable minerals, including sand and gravel.

In Wyoming, oil and gas development on BLM lands is common. The BLM determines what lands are suitable for oil and gas leasing, and any applicable stipulations, through the land use planning process.<sup>67</sup> The BLM state offices conduct quarterly lease sales whereby interested entities may nominate parcels to lease. Parcels are then sold to the highest bidder at auction. Operators must comply with applicable environmental and reclamation requirements as they develop resources.<sup>68</sup> The BLM collects oil and gas royalties, rental fees and bonus bid revenue from development, splitting half of the proceeds with states where development occurred.<sup>69</sup>

Coal mining is also common on Wyoming's BLM lands. As with oil and gas, the BLM must determine that lands are suitable for coal leasing.<sup>70</sup> Applicants may bid on coal lease sales and the developer with the highest bid that exceeds the BLM's estimate of the fair market value of the coal wins development rights.<sup>71</sup> Coal mining is subject to stringent environmental, reclamation and bonding standards and revenues are shared by the federal government and states where the lease is located.

**THIS MAP INDICATES WYOMING'S FEDERAL MINERAL ESTATE. TO VIEW IN MORE DETAIL, SEE [WYO-WCCA.ORG](http://WYO-WCCA.ORG).**



	All
	All Except Misc
	Coal
	Fissionable Materials
	Fractional
	Geothermal
	Indian
	Leasable
	Locatable
	None
	Oil & Gas
	Oil, Gas and Other
	Other Minerals



## THE NATIONAL FOREST MANAGEMENT ACT & MULTIPLE USE AND SUSTAINED YIELD ACT

The Forest Service manages the National Forest System pursuant to the Organic Act of 1897, the Multiple Use and Sustained Yield Act (MUSYA) and the National Forest Management Act (NFMA). Like the BLM, the Forest Service must manage National Forests for multiple use and sustained yield.

### MULTIPLE USE AND SUSTAINED YIELD

The Organic Act of 1897 directs the Forest Service to “improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flow, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States.”<sup>72</sup>

Under MUSYA, the Forest Service must manage National Forests for five “multiple uses”: recreation, grazing, timber, water and fish and wildlife.<sup>73</sup> However, the uses outlined in MUSYA are considered secondary to the purposes set out in the Organic Act.<sup>74</sup> MUSYA also requires that all Forest Service plans employ “sound and progressive principles of land conservation and multiple use.”<sup>75</sup>

### INVENTORYING AND PLANNING

Congress passed NFMA in 1976, expanding on the Forest Service planning process and further codifying multiple use in Forest Service planning. NFMA includes guidelines for reforestation, limitations on timber removal, renewable resource planning, steps to acquire Forest Service lands and how to handle funds received from timber sales.<sup>76</sup> Most importantly—and similar to FLPMA—it requires the Forest Service to inventory and develop resource management plans for each National Forest.<sup>77</sup> Relatedly, the NFMA requires the Forest Service to develop regulations governing the agency’s planning process.<sup>78</sup>

Pursuant to this mandate, the Forest Service develops, amends and revises its resource management plans pursuant to the 2012 Planning Rule. Under this regulation, the Forest Service must, with public engagement, develop plans that are scientifically driven and provide for social, economic and ecological sustainability.<sup>79</sup> As with BLM plans, development of National Forest plans is a federal action subject to NEPA analysis and, as a result, are almost always accompanied by an EIS.<sup>80</sup> All management, use and occupancy of the National Forest must be consistent with forest plans.<sup>81</sup>

The 2012 Planning Rule also emphasizes the Forest Service’s mandate to collaborate with local, state and tribal governments when creating land management plans. These opportunities are discussed in more detail in Part II below.



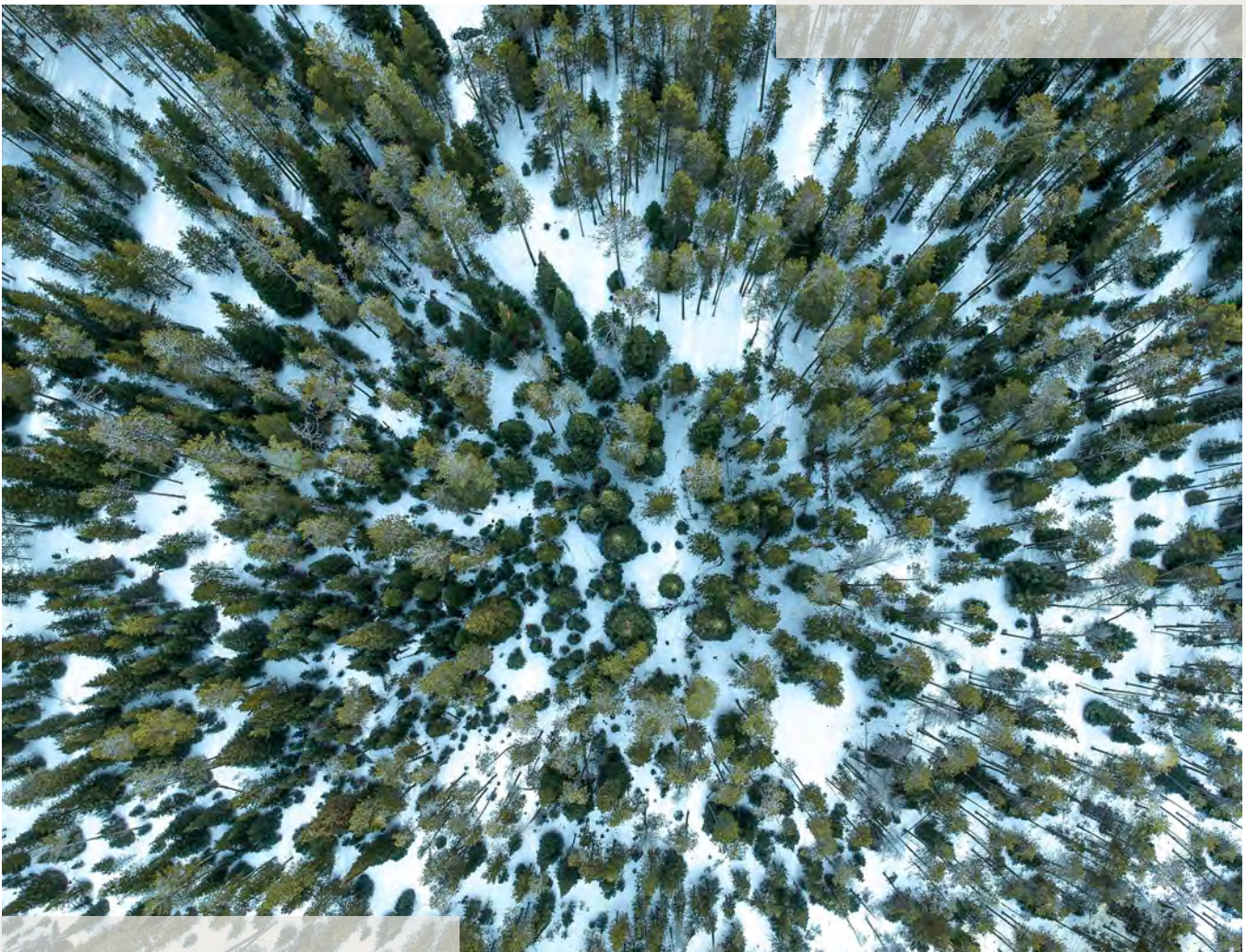


## TIMBER MANAGEMENT

In addition to a variety of other uses, the Forest Service manages National Forests for timber harvests. Up until the 1970s, timber harvest on National Forests was a priority for the agency and clearcutting was common practice.<sup>82</sup> Litigation, new legislation—like the Endangered Species Act (ESA), NEPA and NFMA—and public sentiment changed this approach. Today, most National Forest cannot be logged. In some places, this is because there is no timber or because there is insufficient annual growth to justify harvests.<sup>83</sup> In other areas, timber harvest is restricted by wilderness designations, roadless areas, land withdrawals and wild and scenic rivers.

NFMA itself restricts the location, quantity and means of logging on National Forests. In its land planning process, the Forest Service must “identify lands within the management area which are not suited to timber production, considering physical, economic, and other pertinent factors to the extent feasible, as determined by the Secretary.” No harvests can occur on these lands for at least ten years. NFMA also limits how much timber may be logged.<sup>84</sup>

When timber sales are permitted, the National Forest may sell trees, portions of trees or forest products for at least appraised value to a private entity.<sup>85</sup> Contracts for the sale of timber must “be designed to promote orderly harvesting consistent with” NFMA.<sup>86</sup> The Forest Service may also add terms and conditions to a contract relating to harvest methods, road construction and revegetation.<sup>87</sup>

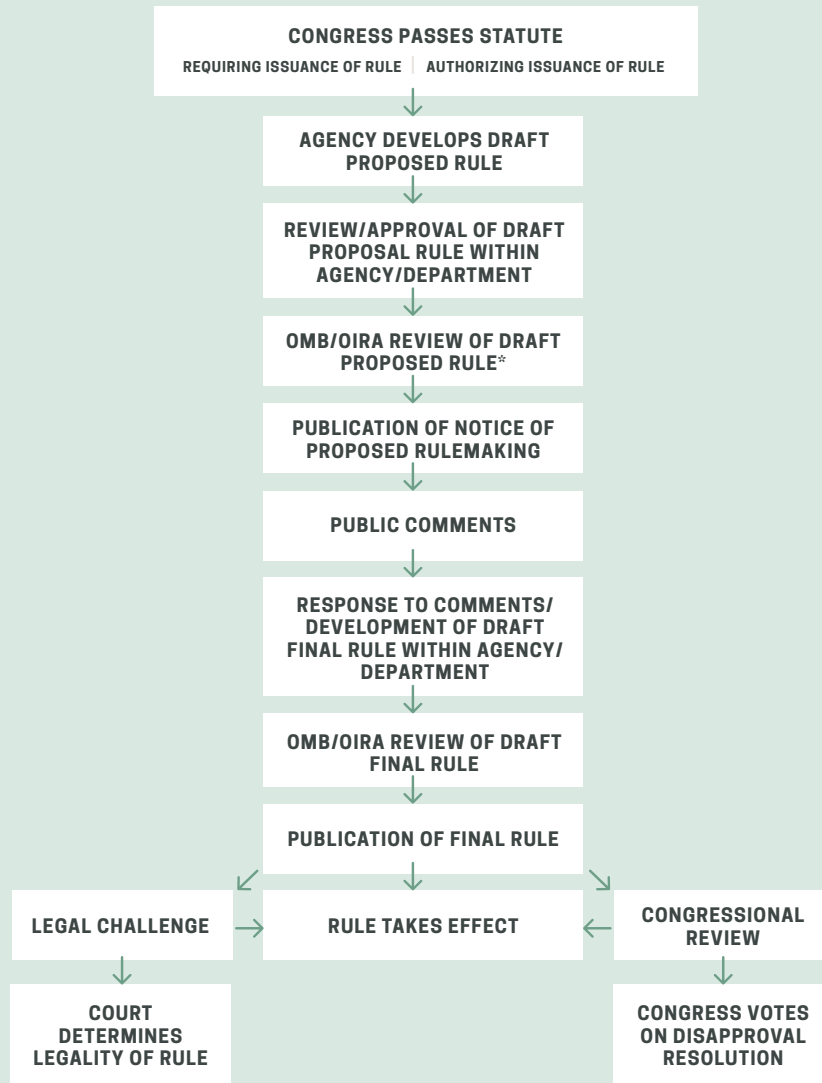




## HOW DOES AN AGENCY DEVELOP A REGULATION?

Many of the nation's natural resource and environmental laws are managed pursuant to agency regulations that implement federal statutes. Notably, there are opportunities for state and local government and the general public to play a role in the development and promulgation of these rules. Understanding the process is the first step to getting involved.

### Federal Rulemaking Process



SOURCE: CRS<sup>88</sup>

*\* The Office of Management and Budget's (OMB) office of Information and Regulatory Affairs (OIRA) reviews only significant rules, and does not review any rules submitted by independent regulatory agencies.*







## NATIONAL PARK LANDS AND THE NATIONAL PARK SERVICE

Wyoming is home to the nation’s first national park—Yellowstone National Park, established in 1872. Forty-four years after its creation, Congress passed the National Park Organic Act, providing the purpose for all national parks: “to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.”<sup>89</sup> This is a much narrower mission than MUSYA’s and FLPMA’s multiple-use standards by which the BLM and the Forest Service manage resources.

Generally, the Park Service manages national parks pursuant to the National Park Organic Act.<sup>90</sup> However, Congress may, either when creating a park or at a later date, provide management prescriptions for a specific park.<sup>91</sup> Usually such prescriptions allow for more access and use of a park, though they may also provide for conservation.<sup>92</sup>

The Park Service also oversees national monuments, which are created and managed pursuant to the Antiquities Act of 1906.<sup>93</sup> In 1906, President Theodore Roosevelt proclaimed Devils Tower, in northeast Wyoming, the nation’s first national monument. Roosevelt described Devils Tower as a “lofty and isolated rock . . . to be a natural wonder and an object of historic and great scientific interest.”<sup>94</sup>

Subsequent designations did not encounter much opposition until President Franklin D. Roosevelt created the Jackson Hole National Monument in 1943. Congress passed a bill abolishing the new monument but FDR vetoed it. Soon after, court challenges to the proclamation’s authority were mounted. To appease Wyoming officials, Congress and newly elected President Truman exempted Wyoming from the Antiquities Act as part of an agreement to incorporate the Jackson Hole National Monument into Grand Teton National Park.

The Park Service and its management decisions are subject to NEPA and must consider the impacts of their management decisions pursuant to this statute. The Park Service may include states and local governments as cooperating agencies in NEPA processes and must coordinate with state and local agencies.<sup>95</sup>

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## THE NATIONAL WILDLIFE REFUGE SYSTEM AND THE U.S. FISH AND WILDLIFE SERVICE

The Fish and Wildlife Service administers all national wildlife refuges as part of the National Wildlife Refuge System. The purpose of this system is to manage 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 . . . for the benefit of present and future generations of Americans.”<sup>96</sup> All human uses of refuges must be “compatible” and not “materially interfere” with this mission or an individual refuge’s purpose.<sup>97</sup>

For each refuge or refuge complex, the Fish and Wildlife Service must prepare a conservation plan. The agency must accept public comment on the proposed plan and, “to the extent practicable,” the plan must be “consistent with fish and wildlife conservation plans of the State in which the refuge is located.”<sup>98</sup> Regulation of hunting and fishing on refuges must be consistent with state fish and wildlife laws to the “extent practicable.”<sup>99</sup>



## WILDERNESS AREAS

Wilderness areas, which are scattered across public lands, must be administered to leave them unimpaired for future use and enjoyment as wilderness and to provide for the protection and preservation of the wilderness character of these areas.<sup>100</sup>

The Forest Service, the BLM, the Fish and Wildlife Service and the Park Service are the primary federal agencies charged with managing wilderness. Once an area is designated as wilderness, the lands continue to be managed by the agency having jurisdiction immediately prior to the area's designation. Wilderness areas cannot be designated except as provided for in the Wilderness Act or by a subsequent act of Congress.<sup>101</sup>

Except as otherwise provided in the Wilderness Act, wilderness must be devoted to recreational, scenic, scientific, educational, conservation and historical use.<sup>102</sup> Generally, no commercial enterprises or permanent roads are allowed in wilderness areas. Motorized vehicles, motorized equipment and mechanical transport (including bikes or pull carts) are only allowed in emergency situations involving the health and safety of persons within wilderness areas.<sup>103</sup>

Designated wilderness has grown significantly since the passage of the Wilderness Act in 1964. Nationwide, there are 803 wilderness units spanning over 111 million acres.<sup>104</sup> Wyoming is home to fifteen designated wilderness areas covering over three million acres.<sup>105</sup>

Although, the Wilderness Act did not address BLM lands, FLPMA required the Secretary of the Interior to complete studies and recommendations for roadless areas of BLM lands. FLPMA further requires that these wilderness study areas (WSAs) be managed so as not to impair the suitability of such areas for preservation as wilderness until Congress acts upon the proposals—either releases or designates the areas as wilderness.<sup>106</sup> The Forest Service also inventoried and now restricts activities in WSAs.<sup>107</sup> In Wyoming, the BLM manages forty-two WSAs encompassing 577,000 acres of public land, while the Forest Service manages three WSAs encompassing 130,000 acres.<sup>108</sup>

## FEDERAL COMPENSATION FOR TAX EXEMPT LANDS

Federal lands, which are exempt from state and local taxes, place a burden on state and local governments. Despite the lack of tax revenue, county governments still provide essential services to their residents, including federal agency personnel and visitors each year. These services include road and bridge maintenance, law enforcement, search and rescue, emergency medical assistance, solid waste disposal, education and environmental compliance.<sup>109</sup>

To compensate for the costs of these and other services, Congress created a number of programs, including the Payments in Lieu of Taxes (PILT) and the Secure Rural Schools (SRS) program.

### PAYMENTS IN LIEU OF TAXES

PILT was designed to compensate local governments for the loss of tax revenues resulting from tax-immune public land, including National Forests, National Parks and BLM lands, and for the cost of providing services and access associated with these lands.<sup>110</sup> Under PILT, the Secretary of the Interior must make annual payments to each county where federal tax-exempt lands are located.<sup>111</sup> PILT payments are reduced by other federal payments made under the Refuge Revenue Sharing Fund, the National Forest Fund, the Taylor Grazing Act, the Mineral Leasing Act and SRS. The formula used to compute PILT payments is based on population, receipt of sharing payments between the state and federal agency and the amount of federal land within an affected county.<sup>112</sup> In recent years, Wyoming has received about \$30 million in PILT payments annually.<sup>113</sup>

### SECURE RURAL SCHOOLS AND COMMUNITY SELF-DETERMINATION ACT OF 2000

In 1905, with the creation of the National Forest System, Congress transferred millions of acres of taxable lands to federal control. This directly affected the revenue of rural communities. In 1908, Congress passed the Twenty-Five Percent Fund Act, which provided that National Forest counties would receive twenty-five percent of revenue from timber harvests to fund schools and public works in affected communities.<sup>114</sup>



In the late 1980s, declines in timber sale receipts led to a significant drop in payments. In 2000, Congress passed the Secure Rural Schools and Community Self-Determination Act to offset these lost revenues. Wyoming's counties currently receive approximately \$4 million in SRS payments annually.



### TAYLOR GRAZING ACT

Local governments also support grazing activities on federal lands within their jurisdictions without compensation for related costs. To offset these costs, Congress provides for payments to counties under the Taylor Grazing Act (TGA). Fees are collected from permittees who graze livestock on public lands. The BLM retains half of the fees, called Range Betterment Funds, to improve the general condition of rangelands. The U.S. Treasury retains 37.5 percent of the fees and 12.5 percent of the remaining fees are distributed to the state.<sup>115</sup>

All monies the state receives from grazing fees are paid to the county treasurer of the county in which the grazing district is located, and, under Wyoming law, placed in a fund designated the Range Improvement Fund for each district.<sup>116</sup> Wyoming has five Wyoming District Grazing Boards that direct and guide the disposition of funds. The grazing board may use the money for rangeland improvement or any other purpose beneficial to the district, including administrative salaries and expenses of the board.<sup>117</sup> Payments to counties are based on the amount of federal lands grazed in that county.<sup>118</sup>

For fees collected from federal grazing leases (as opposed to permits), half become Range Betterment Funds and half are distributed to the state in which the lease is located.<sup>119</sup> In Wyoming, the portion returned to the state is distributed to the county general school fund and proportionately allocated by the county treasurer to the various school districts where the respective public lands are located.<sup>120</sup>

### MINERAL LEASING ACT

Mineral royalties collected by the federal government under mineral leases are disbursed to a variety of funds. Approximately fifty percent of revenues go back to the state where the lease is located, forty percent is disbursed to the National Reclamation Fund, and the remaining ten percent goes to the U.S. Treasury. Payments to states are intended to cover the cost of services the state provides to access and maintain federal mineral leases within the state. Wyoming historically received the highest amount of payments among states that receive royalty payments under the Mineral Leasing Act. In 2019, Wyoming received over a half billion dollars, or over forty-five percent of the total royalty revenues paid to all states.<sup>121</sup>

## Other Laws Affecting Public Lands

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### MINING ON PUBLIC LANDS

Mining, subject to certain restrictions, is a permitted use on BLM and Forest Service lands. Mineral development, including oil and gas production, is a source of substantial revenue for the federal government, states and counties. These resources also provide energy and fuel for the country.

Mining regulation and applicable laws depends on the type of mineral being extracted: “locatable” hard rock minerals, which include copper, gold, silver and uranium, or “leasable” minerals, such as oil, gas and coal. Citizens may obtain a right to mine hard rock minerals on open public lands by locating valuable deposits pursuant to the General Mining Law of 1872.<sup>122</sup> Leases for development of leasable minerals may be obtained from the government pursuant to other federal statutes.

### MINERAL LEASING ACT

The Mineral Leasing Act provides separate leasing systems for the different major fuel minerals, including oil and gas, though all federal leasing systems share some similarities. For example, a lessee may not unilaterally establish a right to prospecting, development or production. Instead, the federal government makes an area available for leasing and then awards a lease based on a competitive bidding process. Usually, production in paying quantities keeps the lease alive indefinitely, but violation of the law or lease conditions may result in early lease termination.

The BLM oversees leasing on all federal lands including National Forests. All leasing decisions are subject to FLPMA and NEPA regulations. The federal government collects royalties, rents and bonuses under the leasing system. The royalty rate, lease duration and development requirements vary by mineral.

### COAL MINING ON PUBLIC LANDS

Wyoming is the nation’s top coal producer, accounting for forty percent of all the coal mined in the United States.<sup>123</sup> In 2018, Wyoming’s 16 mines produced more coal than the next five top coal-producing states—combined.<sup>124</sup> Much of this mining occurs on public lands.

In Wyoming, coal is mined on the surface of public lands pursuant to the Surface Mining Control and Reclamation Act (SMCRA).<sup>125</sup> SMCRA requires the application of general regulatory standards, such as reclamation for mined lands and the consideration of any unique characteristics of federal lands. The statute also requires the Secretary of the Interior to withdraw federal lands that are unsuitable for surface mining or impose appropriate conditions on leasing. SMCRA outlaws mining in national parks, refuges, wilderness, and wild and scenic river segments.

Coal leasing on public lands generates substantial revenues. The BLM receives bonus payments, rental fees and production royalties from coal leases. By regulation, the BLM receives 12.5 percent of the value of the coal removed from a surface mine and not less than eight percent of the value of coal removed from a subsurface mine. All receipts from a lease are shared equally with the state in which the lease is located.<sup>126</sup> However, since 2009, Congress has annually deducted two percent from the royalty payment to cover the costs of administering the leasing and royalty program. Additionally, coal operators pay a reclamation fee on a per ton basis to fund the federal Abandoned Mine Land Program, under which revenue is shared equally with the states.<sup>127</sup>



## GENERAL MINING LAW OF 1872

Pursuant to the General Mining Law, whoever discovers and develops a valuable mineral deposit on unwithdrawn public lands is entitled to mine that deposit without charge.<sup>128</sup> The statute uses a simple location system setting forth several steps before a claim may be made: the public lands must be open to prospecting, the mineral discovered must be one the law covers, the prospector must diligently prospect before discovery, the claim must be “located” and the deposit must be both “discovered” and sufficiently “valuable” for the miner to acquire a valid unpatented claim.<sup>129</sup>

The claimant has ownership of the mineral deposit and has the right to use as much of the surface as needed to mine it but cannot restrict public access. Public use of the surface may not endanger or materially interfere with mining uses “reasonably incident thereto.” The miner generally does not pay royalties or fees other than administrative fees. The claim is subject to reasonable regulations of the federal government, and the government retains fee title to the underlying lands.<sup>130</sup> Congress placed a moratorium on patenting in 1994.<sup>131</sup>





## WILD FREE-ROAMING HORSES AND BURRO ACT

The Wild Free-Roaming Horses and Burros Act (Horses and Burro Act) was intended to protect wild horses and burros that compete with domestic cattle and sheep for grass on federal public lands.<sup>132</sup> It generally forbids the killing, capture, or harassment of wild horses and burros on BLM and Forest Service areas and on private lands when they stray onto them.<sup>133</sup>

However, the BLM may round up excess horses and burros and place them up for adoption or sell them in limited circumstances.<sup>134</sup> Excess wild horses and burros are animals that must be removed from an area in order to preserve and maintain a thriving natural ecological balance and multiple-use relationship in that area.<sup>135</sup> The Horses and Burro Act allows the Secretary of the Interior to assess whether overpopulation exists and to take appropriate action if it does.<sup>136</sup>

Litigation and legislative changes over the management of wild horses and burros have hampered the BLM's ability to appropriately manage populations. Wild horses removed from the range still outpace demand for adoption or purchase. As a result, the BLM expends significant resources to keep wild horses in long-term holding pens.



*Photo courtesy of the Wyoming Office of Tourism*



## ENDANGERED SPECIES ACT

The ESA has been described as the most comprehensive legislation for the preservation of endangered species ever enacted by any nation.<sup>137</sup> The ESA's goal is to conserve endangered and threatened species and the ecosystems upon which they depend.<sup>138</sup> The Fish and Wildlife Service and the U.S. Commerce Department's National Marine Fisheries Service (NMFS) administer the ESA. The Fish and Wildlife Service has primary responsibility for terrestrial and freshwater organisms, while NMFS is primarily responsible for sea life.

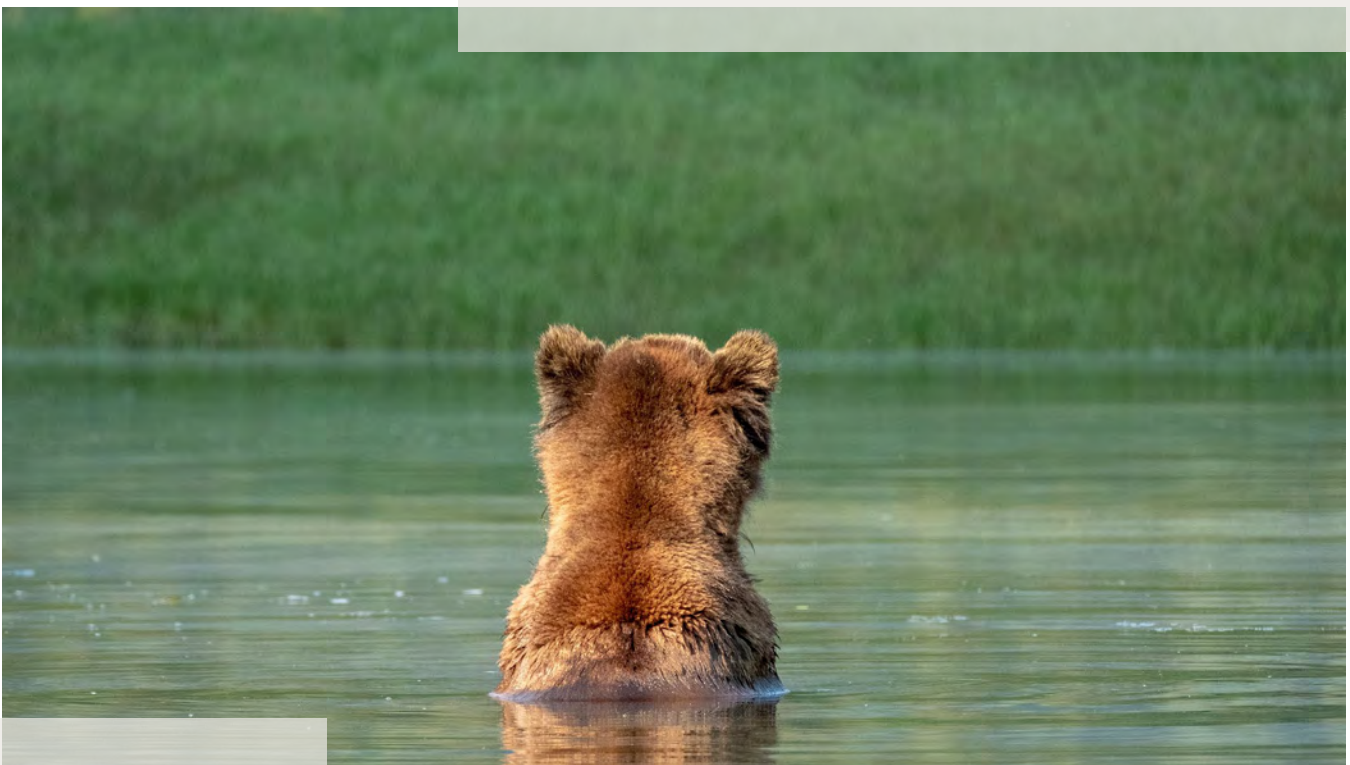
### WHEN EVALUATING A SPECIES FOR LISTING, THE FISH AND WILDLIFE SERVICE CONSIDERS FIVE FACTORS:

1. Damage to, or destruction of, a species' habitat
2. Overutilization of the species for commercial, recreational, scientific, or educational purposes
3. Disease or predation
4. Inadequacy of existing protection
5. Other natural or manmade factors that affect the continued existence of the species<sup>139</sup>

The Fish and Wildlife Service must use the "best scientific and commercial data available" when deciding to list a species and economic considerations are irrelevant in the listing determination.<sup>140</sup> All species of plants and animals, except pest insects, are eligible for listing as endangered or threatened.<sup>141</sup> A species is considered for delisting under similar factors considered for the initial listing.

The ESA imposes duties on all federal agencies. Section 7 of the ESA requires federal agencies to consult with the Fish and Wildlife Service or NMFS to ensure agency actions are not likely to jeopardize the continued existence of any listed species (threatened or endangered) or result in the destruction or adverse modification of its critical habitat.

Further, to promote recovery, it is illegal to take any threatened or endangered species. Take means to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct."<sup>142</sup> The Fish and Wildlife Service defines "harm" as an "act which actually kills or injures wildlife."<sup>143</sup>



## CLEAN WATER ACT

The Clean Water Act's (CWA) purpose is to “restore and maintain the chemical, physical, and biological integrity of the Nation's waters.”<sup>144</sup> To achieve this goal, the CWA establishes a framework by which state and federal agencies regulate the discharge of pollutants in to waters of the United States through permitting requirements.<sup>145</sup> This framework includes the National Pollutant Discharge Elimination System (NPDES) permit program, dredge and fill permits, state certification of federal projects, effluent limitations, effluent toxicity control, pre-treatment programs, storm water and non-point discharges and preventing, reporting and responding to spills.<sup>146</sup>

The CWA's jurisdictional reach—the extent to which it applies to waterbodies across the country—has long been a source of controversy and ambiguity. The CWA applies to “navigable waters” which is defined as “waters of the United States.”<sup>147</sup> The EPA and the U.S. Army Corps of Engineers (Corps) have issued regulations interpreting these terms over the decades, many of which have been challenged in court. Without dispute, waters of the United States include rivers, consistently flowing streams, lakes, oceans and most wetlands. It is unsettled whether ephemeral or small streams and isolated wetlands and waterbodies are waters of the United States.

### SECTION 401 - STATE CERTIFICATIONS

Section 401 requires project proponents to provide a certificate of approval from the state in which the project will be located stating that the project will comply with CWA and any other state-established water quality standards.<sup>148</sup> If the state determines that the project will not comply with existing standards, it may propose conditions which must become part of the license. The state can also deny certification. States may waive the right to certify a project, in which case the project may move forward.<sup>149</sup>

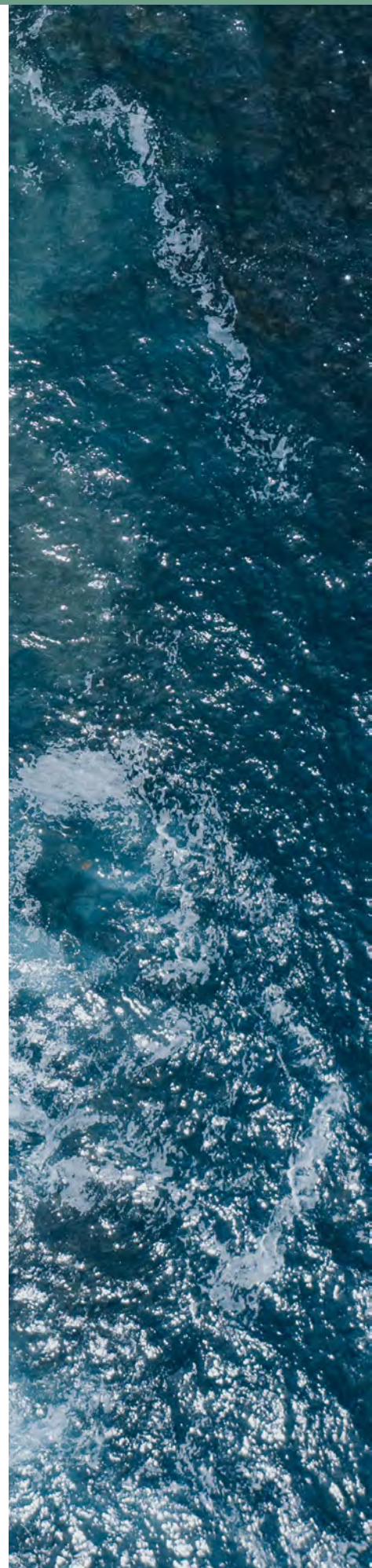
Wyoming participates in Section 401 certification through the Wyoming Department of Environmental Quality Water Quality Division.

### SECTION 402 - NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Section 402 of the CWA created the “NPDES” permit program.<sup>150</sup> A Section 402 permit must be obtained if there will be a discharge of a pollutant into waters of the United States. Section 402 allows the EPA to administer the permit program or to authorize states to administer their own permit programs.

### SECTION 404 - DREDGE AND FILL MATERIALS

Under Section 404, a permit must be obtained prior to discharging dredged or fill material into waters of the United States.<sup>151</sup> The Corps oversees the dredge and fill permit program. Some of the activities that may impact waters of the United States could include road construction, mining site development or construction and dam construction.





## CLEAN AIR ACT

The Clean Air Act (CAA), the purpose of which is to “protect and enhance the quality of the Nation’s air resources so as to promote public health and welfare and the productive capacity of its population,” regulates air emissions from stationary and mobile sources.<sup>152</sup> The CAA also authorizes EPA to establish National Ambient Air Quality Standards (NAAQS) and regulate issues such as federal ozone layers, hazardous air pollutants, global climate change, acid deposit control and strategies for international pollution control.<sup>153</sup> The CAA is a complex statute. Two of its most important statutory provisions are discussed below.

### AMBIENT AIR QUALITY STANDARDS

Under the CAA, the EPA identifies air pollutants that “may reasonably be anticipated to endanger public health or welfare” and then establishes air quality criteria and national ambient air quality standards.<sup>154</sup> The EPA and states collect air quality data to test the level of each pollutant recognized and set by the NAAQS.<sup>155</sup> This data is then used to identify regions that have and have not attained satisfactory air quality.<sup>156</sup> Where a region fails to satisfy the NAAQS, it is up to the states to create state implementation plans (SIPs) that describe actions needed to achieve and sustain NAAQS compliance.<sup>157</sup>

IMPACT is the Wyoming Air Quality Division online Inventory, Monitoring, Permitting and Compliance Tracking, which serves as a system that tracks a facility’s NAAQS compliance.<sup>158</sup> IMPACT has two components: The IMPACT portal, used by industry to submit reports and permit applications electronically, and the Open-Air website, used by members of the public seeking air quality related information.<sup>159</sup>

### TITLE V PERMITTING

Title V of the CAA requires that all facilities that are considered a “major source” obtain facility-wide permits from the EPA. To obtain a permit, a facility must comply with all federal and state air regulations. Upon receiving a Title V air permit, the facility must monitor its compliance with applicable regulations and report the monitored data results once a year to the EPA.

## TAYLOR GRAZING ACT

The BLM manages grazing on public lands pursuant to the TGA, which allocates grazing privileges on those lands by a preference permit system. The purpose of the TGA is to 1) stop injury to the public grazing lands by preventing overgrazing and soil deterioration; 2) to provide for their orderly use, improvement, and development; and 3) to stabilize the livestock industry dependent upon the public range.<sup>160</sup> The TGA authorizes the Secretary of the Interior to establish grazing districts in the public domain.<sup>161</sup>

Livestock graze on approximately 155 million acres of the 250 million acres of lands the BLM administers. Currently, there are 18,000 grazing permits and leases on 21,000 allotments.<sup>162</sup> In Wyoming, the BLM administers 17.4 million acres of land for livestock grazing on over 3,000 allotments through 2,884 grazing permits or leases that provide almost two million animal unit months of use.<sup>163</sup>



# Part II: Navigating the Process - Best Practices for Participation

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From formal processes, like serving as a cooperating agency, to more informal collaboration, such as monthly breakfasts among federal, state and county partners, there are numerous and creative ways counties work and maintain relationships with federal land managers. Part II of this handbook first discusses the formal means of engagement—cooperating, coordination and consistency. The second half of Part II provides practical advice on how to develop and maintain relationships with federal land managers, communicate your county’s interests and participate in the process.



## SERVING AS A COOPERATING AGENCY

Under NEPA, federal agencies must consider the impacts of major federal actions significantly affecting the human environment before permitting, funding or beginning a project.<sup>164</sup> For more discussion on NEPA generally, see Part I. There is a role for counties in this process.

IT IS THE *“continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, . . . 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.”*<sup>165</sup>

To satisfy this policy, states and local governments may participate in the NEPA process as cooperating agencies. According to the Council on Environmental Quality, the agency overseeing NEPA implementation, “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[.]”<sup>166</sup>

Counties and other governmental entities may serve as cooperating agencies if they have jurisdiction by law or special expertise with respect to potential impacts analyzed in an environmental impact statement.<sup>167</sup> Jurisdiction by law is the “agency authority to approve, veto, or finance all or part of the proposal” and special expertise is a “statutory responsibility, agency mission, or related program experience.”<sup>168</sup>

Federal agencies with jurisdiction by law must be granted cooperating agency status upon request.<sup>169</sup> This is not the case for all state, tribal and local governments and federal agencies with special expertise, which *may* be granted cooperating agency status at a lead agency’s discretion.<sup>170</sup> If a lead agency denies a state or local government the opportunity to serve as a cooperating agency, it must explain that decision in writing.<sup>171</sup>

In Wyoming, counties and conservation districts are deemed, per state statute, to have special expertise on subject matters for which they have statutory responsibility.<sup>172</sup> For counties, this includes all matters related to the health, safety, welfare, custom, culture and socio-economic viability of a county.<sup>173</sup> Conservation districts have special expertise on a variety of resource-related issues, including the agricultural industry and natural resource protection.<sup>174</sup>

## WHAT CAN BE EXPECTED OF A LEAD AGENCY?

Lead agencies are encouraged to:<sup>175</sup>

- Solicit state, tribal and local governments as cooperating agencies as soon as practicable
- Utilize the analyses and proposals of a cooperating agency to the maximum extent possible
- Meet with a cooperating agency at the cooperating agency's request
- Provide a cooperating agency with an opportunity for meaningful participation and delegation of duty<sup>176</sup>

## WHAT CAN BE EXPECTED OF A COOPERATING AGENCY?

Cooperating agencies may be expected to:<sup>177</sup>

- Participate in preparing NEPA analyses
- Develop information and prepare portions of an EIS upon request
- Make staff available if needed
- Use its own funds
- Attend cooperator meetings
- Review and comment on pre-decisional documents
- Maintain confidentiality of non-public information

When counties serve as cooperating agencies they can make significant contributions to the process, including providing relevant information, technical expertise and additional capacity.<sup>178</sup> Counties often have special expertise on socioeconomic issues, including how a project will affect jobs and the tax base. Counties can also help identify duplication between federal projects and local plans and policies—a requirement under NEPA regulations and other laws, discussed more below.<sup>179</sup>

Additionally, counties contribute a different perspective on local natural resource issues. For example, county commissioners may have concerns about threats wildfire poses to public health and safety in their communities, witness the creep of noxious weeds across the landscape or hear from the community about the need for better access to BLM lands and National Forests.<sup>180</sup> Counties, along with other state and local partners, help federal agencies take a hard look at potential impacts of a project or plan at the local level.

If a county is interested in serving as a cooperating agency, it should submit a request to the lead agency as early as possible. Often, to memorialize the relationship between a lead agency and cooperator, the agencies will develop a memorandum of understanding (MOU). While an MOU is not necessary, it provides an opportunity for the entities to consider timelines, ways a cooperator might contribute and the various roles and responsibilities of each entity.

## COUNTIES, COORDINATION AND CONSISTENCY

Several laws, including NEPA, NFMA and FLPMA, require federal agencies to coordinate their own plans and policies with those of states and local governments—a requirement which includes addressing inconsistencies between federal plans and local government plans. These coordination and consistency requirements apply regardless of whether a county is serving as a cooperating agency.

### CONSISTENCY UNDER NEPA

NEPA and its implementing regulations require that a federal agency “cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements.”<sup>181</sup> Federal agencies must discuss any inconsistencies between a proposed action and state and local plans and include in an EIS a description of the extent to which the agency would harmonize its proposed action with the local law or plan.<sup>182</sup>



## THE NATIONAL FOREST, NFMA AND COORDINATION

NFMA requires the Forest Service to develop its own land management plans in coordination with state and local land planning processes.<sup>183</sup> The 2012 Planning Rule emphasizes this requirement:

“The responsible official shall coordinate land management planning with the equivalent and related planning efforts of federally recognized Indian Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments.”<sup>189</sup>

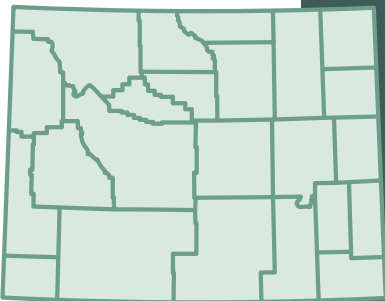
While the Forest Service is not required to comply with these plans, a final EIS must contain results of this review, including consideration of objectives, the compatibility and interrelated impacts of the Forest Service plan and local government policies, opportunities to contribute to common objectives and ways to reduce conflicts between a Forest Service plan and local policies.<sup>184</sup>

## THE BLM, FLPMA AND COORDINATION

Similarly, FLPMA requires the BLM to coordinate its land use plans with state and local government land use plans. The BLM’s plans must “be consistent with State and local plans to the maximum extent [the agency] finds consistent with Federal law and the purposes of this Act.”<sup>185</sup> Additionally, the BLM must “provide for meaningful public involvement of State and local government officials . . . 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.”<sup>186</sup>

As part of this process, the BLM must provide for a “Governor’s Consistency Review.” Pursuant to this review, a governor has sixty days to review a proposed land management plan for inconsistencies between it and state law and policies and provide recommendations to the state BLM director on how to address differences.<sup>187</sup> The public then has the opportunity to comment on the governor’s recommendations before the state BLM director either accepts or rejects them.<sup>188</sup>

There is no formal consistency review for counties or other local governments. Governors may include local plans and policies in a Governor’s Consistency Review, though they are not required to do so. However, counties can certainly provide their own consistency reviews in the course of cooperating agency communication or through written comment.



## THE FEDERAL NATURAL RESOURCE POLICY ACCOUNT: A RESOURCE FOR COUNTIES

The Federal Natural Resource Policy Account (FNRPA), a fund appropriated by the Wyoming Legislature, provides state and local governments with financial resources to engage with federal agencies on public lands and natural resource related issues. FNRPA funds may be expended, at the Governor’s discretion, for a variety of uses including:

- Costs associated with serving as a cooperating agency
- Funds to develop or assist in the development of environmental impact statements, environmental assessments and federal land use plans
- Litigation costs of natural resource related issues
- Monitoring of federal natural resource conditions
- Development of rangeland health assessments

Requests for FNRPA funds must be made in writing to the Governor’s office. For additional details on when and how to apply for FNRPA funds, please reach out to the WCCA or the Governor’s office.

## COUNTY NATURAL RESOURCE PLANS

For coordination between federal agencies and local government to be effective, there must be local planning and land use policies in place for federal agencies to consider and review. These policies often take shape in the form of a county natural resource plan, also called a resource management plan. Many counties in Wyoming and across the West have developed natural resource plans for their jurisdictions to guide federal oversight of public lands and resources.

A county natural resource plan is a thorough and accessible document based on and supported by credible data and science. A plan's recommendations should be consistent with federal law—an agency cannot take an action that violates existing statutory and regulatory mandates. However, a county may use a plan to express dissatisfaction with the current legal lay of the land. For example, a county may believe that a community's custom and culture and other factors suggest a roadless area designation is not appropriate even though it may be legally designated as such.

A plan should provide a county's management objectives and priorities in concrete terms for a variety of resources, including:

- Forest and fire management
- Energy and mineral resources
- Air quality
- Soils
- Water quality
- Wild and scenic rivers
- Wildlife and fisheries
- Wild horses and burros
- Invasive species
- Socioeconomics
- Recreation and tourism
- Law enforcement
- Cultural, historical, geological, and paleontological resources
- Agriculture

A natural resource plan provides county commissioners and their constituents an opportunity to reflect on how they would like to see public lands and resources managed. It also serves as a guide and a tool for commissioners when they are working with federal land managers.

## SOCIOECONOMIC PROFILES

Federal land managers do not always have the expertise or resources to understand a decision's potential impacts on the local economy, custom and culture. Counties can help provide this background and analysis.

The WCCA, with the Governor's office, the Wyoming Economic Analysis Division, the University of Wyoming and federal partners, has been working with counties to develop socioeconomic profiles. These profiles discuss a county's socioeconomic attributes such as land characteristics, natural resource-based industry profiles, demographics and county government finances. While socioeconomic profiles contain essential data, it is important that they are updated regularly.

These profiles provide counties another tool when working with federal land managers. The data and information they present can help inform how a proposed decision may affect a county's economy, tax base, employment and housing situation. If your county does not currently have a profile and would like one, or if your county would like to update an existing profile, please reach out to the WCCA.

### USING A COUNTY NATURAL RESOURCE PLAN

- **Ensure each county commissioner has a copy of the plan, especially new commissioners**
- **Share your plan with local and regional federal land managers in digital and hard copy form**
- **Post your plan to your county website**
- **Refer to your plan when serving as a cooperating agency**
- **Incorporate priorities and objectives from your plan into comments on federal plans or projects**
- **In comments to federal land managers, identify inconsistencies between their proposed action and your county's plan**





## WORKING TOGETHER ON PUBLIC LAND MANAGEMENT

If county commissioners want to effectively participate in the management of federal lands in their counties, they must have more than just an understanding of the laws and policies that guide federal land management. In addition, commissioners must have the willingness, time and resources to participate in the process, an understanding of their county's expertise, strengths and limitations and—perhaps most importantly—a desire to develop and maintain relationships with federal land managers based on open communication, respect, trust and credibility.

During the summer of 2019, the WCCA hosted a training on NEPA and federal land management in Lander, Wyoming. Much of the advice and insight outlined below is derived from discussions had during that training among county commissioners, federal and state agency leaders, the Governor's office, conservation district representatives and others interested in public lands. These best practices are grounded in decades of experience from those who have participated in the management of public lands and resources.

### MAINTAINING COMMUNICATION

Perhaps the most important step in effectively participating in the decision-making process is developing and maintaining consistent, clear and continuous communication between county commissioners and federal land managers, including Forest Service supervisors and district rangers, Park Service superintendents, wildlife refuge directors and the BLM field and district office staff.

Open communication should be ongoing and not limited to times of federal planning or permitting. Regular conversation and discussion, especially when there are not difficult decisions to be made, will make working together easier and more productive under challenging circumstances.

Here are ways to maintain consistent communication:

- Set up regular and recurring meetings between commissioners and federal partners
- Schedule a monthly breakfast where federal, state and local partners can discuss ongoing projects, concerns and victories
- Invite federal agency representatives to board of county commissioner meetings to provide updates
- Pick up the phone—give agency personnel a call with questions or concerns

### BUILDING TRUST

Developing and maintaining trust between county commissioners and federal partners is critical. Building trust takes time and energy but is often a necessary component of working together successfully. The best natural resources decisions are made by people working together on the ground at the local level.

Here are some ways to develop and maintain trusting relationships with federal land managers:

- Get to know your federal, state and local partners
- Treat partners with respect, the way you would want to be treated
- Be credible—if you make a mistake, admit it
- Listen with the goal of understanding what matters to each other and why
- Be prepared and willing to compromise
- Practice objectivity
- Identify shared interests, such as responsible stewardship of public lands and resources

## PARTICIPATING IN THE PROCESS

When it comes to working with federal agencies to manage public lands, there are best practices that can help lead to more substantial involvement, meaningful county contributions and better management overall.

It is important that commissioners not overcommit time or resources to participating in a decision-making process. Serving as a cooperating agency in a NEPA process may require the dedication of significant amounts of time and money over several years.

Counties should consider whether such a commitment of resources is appropriate. Counties might also prioritize some federal actions over others. For example, a county could serve as a cooperating agency on a BLM resource management plan revision—a decision that will determine management into the future—but not participate on project-level analysis, like a gas pipeline or grazing permit renewals. Define what level of participation your county can offer and let that be part of your relationship with federal agencies.

When a county does commit, county commissioners should:

- Attend most, if not all, meetings on the subject
- Be prepared for a lot of reading; draft and final EISs can be hundreds of pages long
- Familiarize yourself with the relevant laws, policies and terminology—much of which is discussed in Part I of this handbook—but don't be afraid to propose creative solutions
- To inform the final decision, consider a field trip to the land and resource in question and invite federal, state and local partners
- Do not assume that the federal agency has considered an issue that is important to your county—raise it during meetings and again in written comments
- Rely on county personnel with expertise on relevant topics, including the county assessor and sheriff, the road and bridge department and county planning
- For complex topics, consider hiring a consultant if funding allows
- Partner with state agencies, other counties and conservation districts where appropriate
- Be proactive and objective—it will result in a better product for everyone

## MANAGING TRANSITIONS

Change in leadership—within federal agencies and at the county level—poses a perennial challenge to county engagement in public land management. As noted above, this engagement depends on developing and maintaining relationships. When personnel turnover is common, this can be difficult.

Here are some suggestions on how to manage transitions.

- Ensure new commissioners receive a copy of the county's natural resource plan and are introduced to federal land managers
- Introduce yourself to new agency personnel and invite them to commissioner meetings
- Share a copy of the county's natural resource plan with incoming federal land managers
- Work with fellow commissioners and federal partners ahead of retirements to identify a succession plan—who will participate on natural resource issues and maintain relationships with agencies?





## SERVING AS A CONVENER

As leaders in the community, county commissioners are uniquely situated to bring together individuals with varying perspectives to address natural resource concerns. Often these groups take the form of a collaborative or a working group that gathers to address a specific topic. The suggestions and solutions these groups develop can be useful for federal land managers managing the problem. In addition, when commissioners serve as conveners, the group avoids the restrictions found in the Federal Advisory Committee Act (FACA) and can meet with more flexibility.

### WHAT IS THE FEDERAL ADVISORY COMMITTEE ACT?

**FACA establishes a legal limit to a federal agency's ability to use collaborative processes to inform federal decision-making. FACA applies when a federal agency does each the following at the same time:**<sup>190</sup>

- Establishes, utilizes, controls or manages a group
- The group has non-governmental members
- The group provides the agency with consensus advice or recommendations

**When it applies, FACA requires a federal agency to establish a federal advisory committee, which can be a difficult and lengthy process, sometimes taking years.<sup>191</sup> FACA requires advisory committees to keep detailed minutes from their meetings and provide transcripts upon request, among other obligations.**

**There are three ways for a collaborative to avoid FACA requirements:**

1. Identify a non-federal convener, like a county, state agency or non-profit group
2. Limit participation to federal, state, local and tribal governmental entities
3. Host open meetings limited to the exchange of facts and information

Counties across Wyoming have convened groups to try to address problems on public lands. Lincoln and Sublette Counties have collaborative groups that provide recommendations to the Forest Service on how to manage National Forests. Additionally, on the Bighorn National Forest, commissioners from neighboring counties convened a group of stakeholders to address issues associated with dispersed camping.

When faced with natural resource-related challenges, commissioners should consider bringing interested stakeholders together to collectively find working solutions.





*Wyoming county commissioners meet with Department of the Interior Secretary David Bernhardt in 2019.*

## SEEKING PARTNERSHIP AND SUPPORT

As county commissioners navigate their way through this process, they should keep in mind they are not alone. There are numerous resources available to commissioners and plenty of opportunities for partnerships.

### THE WCCA AND ITS NATURAL RESOURCE COUNSEL

The WCCA is an association that represents the boards of county commissioners for all twenty-three of Wyoming's counties, providing a unified voice on issues affecting counties before the legislature, the Governor, state agencies and the federal government. Wyoming's counties are stronger when they speak with one voice. This is true in the natural resource context as well.

The WCCA has an attorney on staff—the Natural Resource Counsel—who specializes in federal natural resource related issues. The Natural Resource Counsel serves as a resource to county commissioners on issues relating to public land management and use, including federal land management decisions, mineral development, oil and gas leasing, grazing and recreation on public lands and other federal resource issues.

The Natural Resource Counsel, among other tasks, prepares and submits comments on proposed federal actions, such as rulemakings and NEPA processes, answers commissioner questions about federal laws and policies, maintains open communication with federal agencies on a local and regional level, updates commissioners on changing federal natural resource policies, helps counties serve as cooperating agencies, advocates for federal coordination with local plans and policies, participates in litigation when necessary and advocates for county interests before federal agencies in Wyoming and Washington, DC.

The WCCA's current Natural Resource Counsel is Bailey K. Brennan ([bbrennan@wyo-wcca.org](mailto:bbrennan@wyo-wcca.org)). Please feel free to reach out to her with any natural resource-related questions or concerns.

### THE GOVERNOR'S OFFICE

Counties often find a strong ally in Governor Gordon and his staff on public lands and natural resource issues. The interests of the counties and state are regularly aligned and the WCCA often works hand in hand with the Governor's policy staff in advocating for Wyoming's interests on public lands issues. Counties are encouraged to reach out to the Governor's office on important matters related to public lands and natural resource management.

### STATE AGENCIES

State agencies, such as the Wyoming Oil and Gas Conservation Commission, the Wyoming Game and Fish Department, the Wyoming Department of Transportation and the Wyoming Department of Environmental Quality, can serve as powerful partners for counties when it comes to federal land management. Often these agencies and their staff have expertise in areas related to public land management. They can help counties understand an issue and effectively advocate a county's position.





## ACKNOWLEDGEMENTS

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## AGENCY INFORMATION

## WYOMING'S FEDERAL DELEGATION

**Senator John Barrasso**  
307 Dirksen Senate Office Building  
Washington, DC 20510  
202-224-6441

**Senator Mike Enzi**  
379A Senate Russell Office Building  
Washington, DC 20510  
202-224-3424

**Representative Liz Cheney**  
416 Cannon House Office Building  
Washington, DC 20515  
202-225-2311

## NATIONAL FOREST SYSTEM

**Ashley National Forest**  
355 North Vernal Avenue  
Vernal, UT 84078  
435-789-1181

Flaming Gorge/Vernal Ranger District  
355 North Vernal Avenue  
Vernal, UT 84078  
435-789-1181

Duchesne/Roosevelt Ranger District  
85 West Main / PO Box 981  
Duchesne, UT 84021  
435-738-2482

Caribou-Targhee National Forest  
1405 Hollipark Drive  
Idaho Falls, ID 83401  
208-557-5900

**Black Hills National Forest**  
1019 N. 5th Street  
Custer, SD 57730  
605-673-9200

Bearlodge Ranger District  
101 S. 21st Street / PO Box 680  
Sundance, WY 82729  
307-283-1361

Hell Canyon Ranger District  
1225 Washington Street  
Newcastle, WY 82701  
Phone: 307-746-2782  
Fax: 307-746-2870

**Caribou-Targhee National Forest**  
1405 Hollipark Drive  
Idaho Falls, ID 83401  
208-557-5900

Palisades Ranger District  
3659 East Ririe Highway  
Idaho Falls, ID 83401  
208-523-1412

Teton Basin Ranger District  
495 South Main / PO Box 777  
Driggs, ID 83422  
208-354-2312

Ashton / Island Park Ranger District  
Ashton Office  
46 South Highway 20 / PO Box 858  
Ashton, ID 83420  
208-652-7442

Island Park Office  
3726 Highway 20  
Island Park, Idaho 83429  
208-558-7301

**Uinta-Wasatch-Cache National Forest**  
857 West South Jordan Parkway  
South Jordan, UT 84095  
801-999-2103

Evanston-Mountain View Ranger District  
Evanston Office  
1565 Highway 150, Suite A / PO Box 1880  
Evanston, WY 82930  
307-789-3194

Mountain View Office  
321 Highway 414 / PO Box 129  
Mountain View, WY 82939  
307-782-6555

**Bighorn National Forest**  
2013 Eastside 2nd St.  
Sheridan, WY 82801  
307-674-2600

Powder River Ranger District  
1415 Fort St.  
Buffalo, WY 82834  
307-684-7806

Tongue Ranger District  
2013 Eastside 2nd St.  
Sheridan, WY 82801  
307-674-2600

Medicine Wheel / Paintrock Ranger District  
604 East Main  
Lovell, WY 82431  
307-548-6541

**Shoshone National Forest**  
808 Meadow Lane Avenue  
Cody, WY 824140

Washakie Ranger District  
333 Hwy 789  
Lander, WY 82520  
307-332-5460

Wind River Ranger District  
1403 West Ramshorn  
Dubois, WY 82513  
307-455-2466

**Bridger-Teton National Forest**  
340 N. Cache / PO Box 1888  
Jackson, WY 83001  
307-739-5500

Big Piney Ranger District  
10418 South US Hwy 189 / PO Box 218  
Big Piney, WY 83113  
307-276-3375

Blackrock Ranger District  
Hwy 26/287  
PO Box 278  
Moran, WY 83013  
307-543-2386

Kemmerer Ranger District  
308 Hwy 189 North  
Kemmerer, WY 83101  
307-828-5100

Greys River Ranger District  
671 North Washiangton St.  
Afton, WY 83110  
307-886-5300

Jackson Ranger District  
25 Rosencrans Lane  
PO Box 1689  
Jackson, WY 83001  
307-739-5400

Pinedale Ranger District  
29 East Fremont Lake Rd.  
PO Box 220  
Pinedale, WY 82941  
307-367-4326

**Medicine Bow-Routt National Forests & Thunder Basin National Grassland**  
2468 Jackson St.  
Laramie, WY 82070  
307-745-2300

Brush Creek/Hayden Ranger District  
2171 Hwy 130 / PO Box 249  
Saratoga, WY 82331  
307-326-5258

Douglas Ranger District  
2250 East Richards St.  
Douglas, WY 82633  
307-358-4690

## NATIONAL PARKS &amp; THE PARK SYSTEM

**Yellowstone National Park**  
PO Box 168  
Yellowstone National Park, WY 82190  
307-344-7381

**Grand Teton National Park**  
PO Drawer 170  
Moose, WY 83012  
307-739-3300

**National Historic Trails Interpretive Center**  
1501 N Poplar St.  
Casper, WY 82601  
307-261-7700

**Devils Tower National Monument**  
PO Box 10  
Devils Tower, WY 82714  
307-467-5283

**Fossil Butte National Monument**  
PO Box 592  
Kemmerer, WY 83101  
307-877-4455

**Bighorn Canyon National Recreation Area**  
Visitor Center  
20 Highway 14A East  
Lovell, WY 82431  
307-548-5406

**Flaming Gorge National Recreation Area**  
Ashley National Forest  
355 North Vernal Avenue  
Vernal, UT 84078  
435-789-1181



**THE BUREAU OF LAND MANAGEMENT****The BLM District Offices in Wyoming**

High Desert District  
280 Highway 191 North  
Rock Springs, WY 82901  
307-352-0256

High Plains District  
2987 Prospector Drive  
Casper, WY 82604  
307-261-7600

Wind River/Bighorn  
Basin District  
101 South 23rd Street  
Worland, WY 82401  
307-347-5100

**The BLM Field Offices in Wyoming**

Kemmerer Field Office  
430 North Hwy 189  
Kemmerer, WY 83101  
307-828-4500

Pinedale Field Office  
1625 West Pine Street / PO Box 768  
Pinedale, WY 82941  
307-367-5300

Rawlins Field Office  
1300 North Third  
PO Box 2407  
Rawlins, WY 82301  
307-328-4200

Rock Springs Field Office  
280 Highway 191 North  
Rock Springs, WY 82901  
307-352-0256

Buffalo Field Office  
1425 Fort Street  
Buffalo, WY 82834  
307-684-1100

Casper Field Office  
2987 Prospector Drive  
Casper, WY 82604  
307-261-7600

Newcastle Field Office  
1101 Washington Boulevard  
Newcastle, WY 82701  
307-746-6600

Cody Field Office  
1002 Blackburn Street  
Cody, WY 82414  
307-578-5900

Lander Field Office  
1335 Main Street  
Lander, WY 82520  
307-332-8400

Worland Field Office  
101 South 23rd Street  
Worland, WY 82401  
307-347-5100

**U.S. FISH & WILDLIFE****National Elk Refuge**

675 E Broadway  
PO Box 510  
Jackson, WY 83001  
307-733-9212

**Seedskadee National Wildlife Refuge**

PO Box 700  
Green River, WY 82935  
307-875-2187

**Arapahoe National Wildlife Refuge**

**Complex**  
953 JC Road #32  
Walden, CO 80480  
970-723-8202

**BUREAU OF RECLAMATION****Bureau of Reclamation Regional Offices**

Great Plains Regional Office  
Wyoming Area Office  
PO Box 1630  
Mills, WY 82644  
307-261-5671

Pacific Northwest Regional Office  
1150 North Curtis Road, Ste 100  
Boise, ID 83706  
208-378-5012

Upper Colorado Regional Office  
125 South State Street, Room 8100  
Salt Lake City, UT 84138  
801-524-3600

**STATE AGENCIES****Wyoming Governor Mark Gordon**

State Capitol  
200 West 24th Street  
Cheyenne, WY 82002  
307-777-7434

**Office of State Lands and Investments**

122 W. 25th St. 3W  
Cheyenne, WY 82002  
307-777-7333

**Wyoming State Forestry Division**

**Headquarters**  
5500 Bishop Boulevard  
Cheyenne, WY 82002  
307-777-7586

**Wyoming State Forestry Division District Offices**

Newcastle (District 1)  
Wyoming State Forestry Division  
431 Delaware Ave / PO Box 639  
Newcastle, WY 82701  
307-746-4261

Laramie (District 2)  
Wyoming State Forestry Division  
710 E. Garfield Street  
Laramie, WY 82070  
307-631-2352

Casper (District 2)  
Wyoming State Forestry Division  
2020 Fairgrounds Road, Ste 101  
Casper, WY 82604  
307-234-6116

Riverton (District 3)  
Wyoming State Forestry Division  
2500 Academy Court  
Riverton, WY 82501  
307-856-8655

Lyman (District 4)  
Wyoming State Forestry Division  
100 Sage Street / PO Box 1497  
Lyman, WY 82937  
307-787-6148

Pinedale (District 4)  
Wyoming State Forestry Division  
145 S. Fremont / PO Box 1678  
Pinedale, WY 82941  
307-367-2119

Buffalo (District 5)  
Wyoming State Forestry Division  
600 Veterans Lane  
Buffalo, WY 82834  
307-684-2752

**Wyoming State Parks, Historic Sites & Trails**

Barrett Building  
4th Floor, 2301 Central Avenue  
Cheyenne, WY 82002  
307-777-6323

**Wyoming Game & Fish Department**

**Headquarters**  
5400 Bishop Blvd.  
Cheyenne, WY 82006  
307-777-4600

**Wyoming Game & Fish District Offices**

Cody Regional Office  
2820 State Highway 120  
Cody, WY 82414  
307-527-7125

Green River Regional Office  
351 Astle Ave  
Green River, WY 82935  
307-875-3223

Jackson Regional Office  
360 N. Cache  
Jackson, WY 83001  
307-733-2321

Pinedale Sub-Regional Office  
432 East Mill Street / PO Box 850  
Pinedale, WY 82941  
307-367-4353

Sheridan Regional Office & Visitor Center  
700 Valley View Drive / PO Box 6249  
Sheridan, WY 82801  
307-672-7418

Lander Regional Office  
260 Buena Vista  
Lander, WY 82520  
307-332-2688

Laramie Regional Office  
528 S. Adams  
Laramie, WY 82070  
307-745-4046

## ENDNOTES

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3. Soucie v. David, 448 F.2d 1067, 1073 (D.C. Cir. 1971); BLACK'S LAW DICTIONARY (11th ed. 2019).
4. *Id.*
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7. Bureau of Land Mgmt., *2018 Annual Report*, available at [https://www.blm.gov/sites/blm.gov/files/documents/files/BLM\\_WY\\_2018\\_Annual%20Report\\_FINAL.pdf](https://www.blm.gov/sites/blm.gov/files/documents/files/BLM_WY_2018_Annual%20Report_FINAL.pdf)
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9. 2 AM. JUR. 2d *Administrative Law* § 47 (2020).
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11. *Id.* 468.
12. 42 U.S.C. § 4331(a).
13. *Id.* § 4332(C).
14. Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 350 (1989).
15. Council on Envtl. Quality, *A Citizen's Guide to NEPA*, 11-12 (2005), available at [https://ceq.doc.gov/get-involved/citizens\\_guide\\_to\\_nepa.html](https://ceq.doc.gov/get-involved/citizens_guide_to_nepa.html); see 40 C.F.R. §§ 1501.3 & 1501.3.
16. 42 U.S.C. § 4332(C).
17. *Id.*; 40 C.F.R. Part 1502.
18. 40 C.F.R. § 1508.4.
19. *Id.*
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22. 43 U.S.C. § 1763; 43 C.F.R. § 2801.9.
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24. 40 C.F.R. § 1501.5(a).
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26. Wyo. Stat. § 18-5-208(a).
27. Wyo. Stat. § 11-16-135.
28. 16 U.S.C. § 470.
29. 54 USCS § 300101.
30. See e.g. Dine Citizens Against Ruining Our Env't v. Bernhardt, 923 F.3d 831, 846 (10th Cir. 2019), reh'g denied (June 24, 2019).
31. Council on Envtl. Quality, NEPA and NHPA, A Handbook for Integrating NEPA and Section 106, 6 (Mar. 2013).
32. David Lewis, *Between Historic Preservation and the Development of Renewable Energy*, 22 N.Y.U. ENVTL. L.J. 274, 299 (2015); 36 C.F.R. § 800.16(y).
33. 36 C.F.R. § 800.16(f).
34. *Id.* § 800.2(c).
35. *Id.* § 800.2(d).
36. *Id.* § 800.2(c)(2)(ii)(A).
37. *Id.*
38. *Id.*
39. *Id.* § 800.16(l).
40. *Id.*
41. *Id.* § 800.4 (b)(1).
42. *Id.* §§ 800.4, 800.5.
43. *Id.* § 800.5(a)(1).
44. *Id.* § 800.6.
45. 43 U.S.C. § 1701(a)(7), (8).
46. *Id.* § 1701(a)(8 & 12).
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50. 5 U.S.C. § 553(c); Perez, 575 U.S. at 96.
51. 5 U.S.C. § 553(c).
52. Perez, 575 U.S. at 96.
53. 5 U.S.C. §§ 702, 704.
54. 5 U.S.C. § 706(2)(A).
55. *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 58 (2004).
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