



Stock Water Rights for Grazing Livestock on Federal Lands

Western States Water Council

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Executive Summary

The Non-Tribal Federal Water Rights Workgroup (Workgroup) comprised of members of the Western States Water Council (WSWC)¹ and Western Federal Agency Support Team (WestFAST)² has held workshops over the past several years focused on stock water rights for grazing livestock on federal lands. The workgroup's primary purpose is to facilitate state-federal communication and to share perspectives, constraints, and opportunities to work together to resolve concerns over federal water rights in western states. Litigation may not always be avoidable since it can serve a useful purpose, to clarify laws and to bring the right parties to the table to resolve ongoing problems. However, to the extent that alternative means of resolving conflicts exist, the Workgroup participants are interesting in pursuing those opportunities as appropriate.

In October 2018 (Coeur d'Alene, Idaho) and October 2019 (Breckenridge, Colorado), the workgroup held workshops on stock water rights. The first workshop focused on state and federal laws, policies, perspectives, and approaches to stock water rights for grazing on federal lands. These vary from one state to another, from one federal agency to another, and sometimes from one district to another within the same agency. Speakers included representatives from the Idaho Department of Water Resources, the Utah and Wyoming Attorneys General Offices, the New Mexico State Engineer Office, the U.S. Forest Service, and the Bureau of Land Management. The second workshop included representative organizations for stock owners who use water rights and grazing permits on federal lands. This workshop was a Collaborative Action and Dispute Resolution (CADR)-facilitated discussion to improve understanding of the different perspectives (state agencies, federal agencies, stockowner associations and organizations) and identify areas where the Workgroup can potentially work together to reduce conflicts. Pat O'Toole from the Ladder Ranch and President of the Family Farm Alliance offered introductory remarks at both meetings, providing a valuable perspective as a western stock owner.

In addition to benefit of sharing different perspectives on grazing water rights, the workshop participants identified some key issues that lead to conflicts and misunderstandings, such as federal or private ownership of stock water rights, the value of personal relationships, and the constraints imposed by state and federal laws that can impact the ability to work together. Participants also discussed some more collaborative ways of approaching the underlying issues that lead to conflicts.

¹ <https://westernstateswater.org/>

² <https://westernstateswater.org/westfast/>

Key Issues

Grazing and water rights are inextricably linked, because grazing stock must have accessible water to drink. Many conflicts over grazing on federal land—and any associated water rights—stem from who controls the right to access and use the water. One critical issue is how western states define water rights. Many states require the water right holder to put the water to beneficial use. Generally speaking, a landowner will hold a right to divert water and will put it to beneficial use at some specific location on the land. Providing drinking water for grazing stock raises complex questions when the landowner and the stock owner are not the same. Is the landowner putting the water to beneficial use by leasing the land for the use of grazing stock, or is the stock owner? Which party should obtain the water right for purposes of demonstrating beneficial use?

Ownership of the Stock Water Right

- Beneficial use
- Prior appropriation
- Access to water
- Changes to permits

Western states also have a system of prior appropriation, where water rights with the earliest or most senior dates will be fulfilled first, before later or more junior water rights. This priority system becomes critically important during times of drought, when the most junior water users in the system may not have a right to any water at all. Maintaining valuable senior water rights requires that the water right holder continuously put that water to beneficial use. If the water is not put to beneficial use for a certain period of time (usually defined by statute, and which varies from one state to another), the water right may be lost through non-use, and along with it, the value of the early priority date. Any subsequent water right application would then have a more junior priority date assigned. In the context of grazing, this raises the question of which party should hold the water right in order to preserve the priority date: the landowner with the access to the water who may or may not continue to allow grazing, or the stock owner with the animals using the water, who may or may not continue to graze animals on that land?

Other issues arise related to the ownership of stock water rights. In some states, water is appurtenant to the land specified in the water right, which can mean that if grazing occurs on other land, the water right may require a change in the point of diversion or place of use. Federal agencies sometimes make changes to grazing allotment permits, and this can affect water rights. Changes in ownership of land, stock, grazing permits, and water rights can lead to inaccurate information about water rights that accumulates over time.

When it comes to grazing and water, relationships are almost more important than the law. Good relationships enable good things to get done. Complex projects requiring collaboration across multiple government agencies, for example, can be quickly facilitated when those making decisions already know the people involved and are already aware of the problems the project is seeking to solve. Similarly, when simple changes need to be made to permits to ensure that stock have water this season, having those personal relationships seems to cut down on wasteful delays.

The high turnover in agencies means the need to develop new relationships is ongoing. Putting a personal face to what seems like a “black box” of bureaucracy helps relationships stay positive. Some provisions of law can be ambiguous and subject to interpretation, and may be applied differently from time to time depending on the perspectives of those interpreting and applying the law. Management

perspectives can change along with agency personnel. Avoiding conflicts can depend on the ability to understand diverse perspectives, and longstanding relationships can help those other perspectives to feel more familiar and accessible. On the other hand, bad relationships can create long-lasting damage and result in reactive demands for changes in the law.

Relationships

- Personal face to bureaucracy
- Simple changes so stock get water
- Project collaboration
- High turnover
- Ambiguous laws and rules

Collaborative efforts and understanding perspectives can greatly improve relationships and reduce conflict, but state and federal agencies also operate under the constraints of state and federal law, including statutes, regulations, and the decisions of various courts as lawsuits are decided. As state and federal administrations change over time, so do policies and priorities. Agencies are directed to implement those policies and priorities, while still complying with other laws. Court decisions may interpret or re-interpret laws from time to time. Regional variations also occur within the same agency, sometimes due to an effort to apply laws in a way that makes the most sense given the unique features of that region, and other times simply because different regions operate as separate siloes. Serious consequences can develop with such a haphazard approach that keeps changing over time. The historical development of the law can have a strong impact on whether new changes can be effectively implemented, particularly where existing property rights must still be protected.

Legal Constraints

- Statutes and regulations
- Case law
- Policies and priorities
- Regional variations

Next Steps

Recommendations for next steps included regular communications and educational workshops and webinars to facilitate perspective sharing, opportunities to build trust, and improving understanding of complex laws. This could include state-hosted workshops on state and federal law, with Colorado and Wyoming as examples, and WSWC-WestFAST-hosted webinars and workshops. Several states and federal agencies expressed interest in developing state-federal MOUs in each state, having a co-applicant process that involves both the grazing allotment permittee and the federal landowner. Participants expressed interest in engaging through dispute resolution programs such as DOI and BLM’s Collaborative Action and Dispute Resolution programs. Work can be done on multiple fronts to ensure more accurate data on water rights and points of diversion. Having an ombudsman or single point of contact to address conflicts may be helpful as well.

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Perspectives from States

The following perspectives come from State Engineer, Water Resources, and Attorney General Offices in Utah, Idaho, New Mexico, and Wyoming.

Utah

Utah's history includes three eras of stock water rights.³ The first era included "dipping rights." Under old case law, stock that came upon water had the right to drink it. The water wasn't diverted, so there was no associated water right or priority date. This left stock water rights unprotected until about the 1940s.

In the second era, during the 1940s and 1950s, Utah started its adjudication process. The adjudication process is still not complete, but when it first started there were no stock water rights. The State Engineer began to recognize two ways of obtaining a stock water right: (1) file a diligence claim showing use that was continuous since before 1903, when the water code passed giving the State Engineer authority to approve appropriations based on water rights applications; and (2) file a water use claim in the general adjudication process. There were some private owners who filed claims, but the federal government filed for the majority of grazing uses on all streams. For the most part, no one at the time objected to these claims and the federal government still holds those rights.

³ Summarized from a presentation given at the Coeur d'Alene workshop by Norman Johnson, Division Director, Utah Attorney General's Office.

⁴ Utah Code §73-3-31.

⁵ Utah Code §73-3-31(4) and §73-1-4(4). Additionally, if a federal land management agency reduces AUMs (animal unit month, the amount of

In the third era, beginning about the year 2000, some stock owners became frustrated by decreases in federal grazing allotments. There have been no recent court cases in Utah to address the situation, but the legislature has passed some bills. In 2008, the legislature required the State Engineer to issue grazing water rights certificates, which recognize that the stock owner has a right to water the stock grazing on an allotment.⁴ Also, the State Engineer is prohibited from approving a water right change application on water rights for grazing purposes without the stock owner's consent. The federal government was also prohibited from acquiring a new grazing water right if the federal government itself was not raising stock, unless the application was jointly filed with the stock owner. In 2009, the legislature allowed stock owners to file a non-use application to protect water rights from forfeiture based on lack of water use by stock.⁵ In 2013-2014 a couple of other bills were passed. One purportedly provided grazers the right to access and improve allotments to maintain water rights.⁶ Another statute prevents the federal government from seeking to acquire individually-held water rights as a condition of renewing a federal grazing permit.⁷

Utah's system of administering grazing water rights may be somewhat out of balance, and efforts to fix the system have raised more questions than answers so far, although there has been little litigation concerning some of the remedial efforts

forage needed to sustain a cow and calf for one month) on federal grazing allotments, any appropriated water that might otherwise be subject to forfeiture as a result for nonuse by stock "shall be held in trust by the state engineer." §73-3-31(8).

⁶ Utah Code §73-3-31(7).

⁷ Utah Code §73-3-31(2).

New Mexico

made by the legislature. The primary issues are often between the stock owners and the federal agencies over the grazing allotments, but water right issues often get mixed in and become a point of great controversy. As described above, the federal government followed state law, filed for grazing water rights, and now in many instances holds valid water rights for grazing purposes on federal lands. However, there is a valid argument that it is the stock owners that are putting the water to beneficial use and therefore the stockowner should hold the water right.

Utah also has private landowners that will lease their property to ranchers for cattle to graze and use the water, and the private landowners hold the water rights similar to the federal government. In instances when the federal government chooses not to lease its property for grazing purposes for whatever reason, it becomes a special case for stock owners who want a state water law to be applied differently. In each instance, however, great care must be taken with respect to valid property interests, including water rights, that belong to the federal government.

Utah also has man-made guzzlers built for wildlife in the driest parts of the State. Both cattle and big game drink the water, and the ranching community and sportsman industry have different perspectives on the basis of the beneficial use for those guzzlers.

New Mexico has many stock water rights that predate the establishment of many of our National Forests, leading to over a century of disputes over uses of water on those lands.⁸ New Mexico's water code was enacted in 1907, and many pre-1907 surface water rights have been established through evidence of historical diversion and beneficial use. The national forests were created in the early 1900s,⁹ after many years of uses by the Native American groups, Hispanic settlers, and later by Anglo settlers, and ranchers. One area of national forests in northern New Mexico is comprised of lands that were formerly land grants to Hispanic settlers under the king, either the Spanish or Mexican sovereigns. This has raised questions about the right of access to those forest lands for the successors-in-interest to those land grants.

New Mexico's Gila National Forest is the site of the seminal *U.S. v. New Mexico* decision on federal reserved water rights. That case established the important principle that federal reserved water rights on National Forest System lands are restricted to the primary purposes of the federal reservation, which for National Forests is limited to two purposes: "to preserve the timber or to secure favorable water flows." The New Mexico State Engineer, Steve Reynolds at the time, interpreted the case to mean that all other purposes require a water right obtained from the State under state processes. The Forest Service applied for and was granted many grazing water rights. This raised the

⁸ Summarized from a presentation given at the Coeur d'Alene workshop by Greg Ridgley, General Counsel, New Mexico Office of State Engineer.

⁹ Many of these national forest reservations have multiple creation dates. For example, the Santa Fe National Forest was established in 1915 by combining the Jemez (1905) and Pecos (1908)

National Forests. The Lincoln National Forest was established in 1902, and the Gallinas (1906) and Alamo (1908) were later combined with the Lincoln in 1908 and 1917, respectively. The Alamo, in turn, was initially established by the consolidation of the Guadalupe (1907) and Sacramento (1907). Each of these dates are important when considering priority dates of any reserved water rights.

question, that other States have raised, of whether the federal government is actually putting the water to beneficial use. The Forest Service makes a good argument in favor of continuity of water rights, and there is value in allowing the Forest Service to hold the rights so that stockowner successors-in-interest can benefit from the same water right with an earlier priority date.

New Mexico also has a long history of recognizing individual stock water rights on federal public lands. The Gila National Forest mostly has stock ponds with established licenses rather than water rights. A recent application by a private party with a federal grazing permit was able to show continuous title and beneficial use to establish a private stock watering right (under limited conditions) in the Lincoln National Forest.

Ownership of stock water rights is a complex issue, and New Mexico tries to address it in a practical way. However, polarized public opinion can make it difficult for state and federal agencies to find workable solutions. Adjudications – which are complex due to the large number of pre-1907 surface water rights – have recognized stock water rights in either the name of the federal agencies or private parties. The legislature has recently attempted to address some of these issues, but none of the proposed bills have been enacted.

Idaho

In the Snake River Basin Adjudication (1990s), nearly 18,000 federal water rights for stock were decreed to the Bureau of Land Management (BLM), the

Forest Service (USFS), and other federal agencies.¹⁰

In 2007, after most of the federal stock water rights were already decreed, the Idaho Supreme Court¹¹ held that, in the case of instream stock watering, the federal government could not perfect a water right unless it owned livestock and put the water to beneficial use. Land ownership was not enough. Under Idaho law, a landowner does not own a water right obtained by an appropriator using the land with the landowner's permission unless the appropriator was acting as agent of the landowner in obtaining that water right. The stock owners lawfully grazing livestock on federal land, however, could perfect a water right through beneficial use. It's important to recognize that the Idaho Supreme Court decision was limited to the instream stock watering uses at issue before the court, and is not applicable to stock watering developments off stream.

While some stockowners were euphoric, others were frustrated by the decision, and the vast majority of federal land grazing permittees evidenced no interest in the question and exhibited no desire to claim stock watering rights on federal lands. For years following the decision, the State didn't take any specific action. Then in the 2017 legislative session, Idaho Code §42-1414 was amended to limit the filing fees and costs of deferred stock water claims filed in the adjudication, and non-federal applicants were prohibited from becoming agents of the federal government. The legislation was supposed to invite stockowner water claims that would compete with the federal government, and the Idaho Department of Water Resources (IDWR) did receive a few

¹⁰ Summarized from a presentation given at the Coeur d'Alene workshop by Gary Spackman, Director, Idaho Department of Water Resources.

¹¹ *Joyce Livestock Company v. United States of America*, 156 P.3d 502 (Idaho 2007).

claims over the next 18 months, none of which were located on federal lands.

In the 2018 legislative session, Idaho's legislature enacted a bill that directed IDWR to compile a list of all stock water rights held by any federal agency and submit the list to each appropriate federal agency. The legislation also directed that, upon approval from the Governor, IDWR would issue an order to show cause to each federal agency to show why the stock water rights should not be lost or forfeited pursuant to Idaho Code §42-222(2) for non-use. IDWR created the lists and sent the notices to the federal government, but the Governor never approved issuance of a show cause order.

In 2020, Idaho's legislature enacted amendments to the 2018 legislation, Idaho Code §42-502 and §42-504. The provisions remove the prohibitions on stockowners acting as agents of the federal government, and add language stating that IDWR shall not issue an order to show cause where a holder of a grazing permit asserts a principal/agent relationship (see §42-224(10)). The legislation includes recognition that a landowner (i.e., the federal agencies) can own a water right if the permittee is acting as an agent. The new legislation also authorized IDWR to commence forfeiture actions for any stock water right where (1) a petitioner demonstrates; or (2) the Director discovers sufficient information to warrant forfeiture.

During the summer of 2020, the BLM and Forest Service sent permittees a voluntary Agency Agreement for their consideration. The federal agencies asserted

that, if signed, the agreements would allow the agencies to continue to own and manage the stock water rights. Hundreds of permittees signed the agreements, while others did not. Negotiations continue between the State and federal agencies to resolve their concerns.

Wyoming

Wyoming hasn't experienced the same stock water ownership problems on federal lands as some of the other states.¹² Generally, anyone may apply for and receive a permit for stock water use.¹³ You do not need to be the landowner or the stock owner. You do not have to be the person who is actually going to put the water to beneficial use to apply for a permit to appropriate water. The water permit does not grant the right to use or cross the property of another, so the applicant must obtain access to the land separately. The water permit holder can transfer or assign the permit to another, which should then be recorded with the State Engineer's Office (SEO) using an assignment form. There is no separate statutory process in Wyoming to recognize federal reserved rights claims for stock water rights, or any other federal reserved water right, except the general stream adjudication statute.

All federal and state water rights in Wyoming's Big Horn River Basin were adjudicated in the Big Horn General Adjudication. All non-tribal federal rights were quantified as part of the Phase II settlement (1983, final in 2005). The settlement recognizes numerous stock watering rights on federal land: (1) stock driveway¹⁴ rights including stock reservoirs;

¹² Summarized from a presentation given at the Coeur d'Alene workshop by Christopher Brown, Senior Assistant Attorney General, Wyoming.

¹³ See Appendix A for a more complete description of the permit process in Wyoming.

¹⁴ There are specifically defined stock driveways over federal BLM lands, historical routes for driving cattle from one place to another. The general adjudication identified a certain amount of flow that could be kept in that stream to satisfy the associated stock watering

(2) numerous stock rights on BLM lands, specifically described; (3) discrete and general stock watering rights on Forest Service land; (4) a 1960 right to water stock in any stream, lake, or other source in the Shoshone National Forest/Big Horn National Forest; (5) lengthy tabulations of stock water rights with descriptions and adjudicated quantities; and (6) water uses that can be changed by action of the Board of Control.

The Wyoming SEO, the U.S. Department of the Interior, and BLM have Memoranda of Understanding (MOUs)¹⁵ on stock water rights as well. Wyoming had a similar MOU with BLM in 1973, and correspondence with U.S. Forest Service in the late 1970s. In the current MOU, the Wyoming SEO agrees to provide notice of permit applications or petitions filed regarding water uses on or derived from federal land,¹⁶ and allows 30 days for comment. The SEO also provides notice if a permit holder intends to abandon their permit. The SEO generally identifies when and whether a stock water permit will be issued to the federal agency, the stock owner, or both as co-applicants (which is most common). The federal agencies agree to seek the consent of the grazing lease holder before seeking a change or abandonment of a water right on a grazing allotment. Wyoming has a decision matrix for processing applications where USFS or BLM lands are involved.¹⁷

General State Comments

It's important to remember the long history and the legal context under which all these issues and conflicts arose. States have a role in educating others on the fairly

nuanced principles of state water law that are part of that history, and communicating better about how those laws developed and the water rights that already exist. One of the biggest problems is that a lot of people think that any proposed solutions to water problems start with a blank slate. They do not. Solutions are going to require some thinking outside the box and building better relationships and trust.

The grazing community has considerable political influence, impacting the laws that are passed. The stock growers should also support stable funding at the state level, as changes in state budgets affect the resources available to process water rights and resolve conflicts.

State agencies are not always in the best position to resolve the conflicts. The animosity of the stock growers toward the federal agencies can be very personal, and state agencies do not always understand the history of those conflicts. It would be helpful to include stock water rights holders and those with large grazing interests in conversations about the issues that affect them. States may need a process to help navigate and work through the concerns, and look to examples where things are working well.

One consideration may be how to head off future conflicts, enabling a smoother path to conflict resolution. The *Joyce* decision in Idaho said there could be an agency relationship that results in the federal government actually holding the water right because the permit holder was an agent of the

right. There are restrictions on proving stock are there.

¹⁵ See Appendix B

¹⁶ The USFS MOU covers water rights and uses on or derived from all "National Forest System" land in

Wyoming. The BLM MOU covers "BLM Administered Public Land" in Wyoming.

¹⁷ See Appendix C

federal government. The initial legislation prohibited the creation of that agency relationship, but it was restored in the most recent modifications. State lands have built that agency relationship into their leases.

Grazing presents some unique challenges for administering water rights. In some states, the water right is appurtenant to the land. In other states, the water right may be severed from the land, which enables things like interbasin transfers. With grazing, the owner of the stock who puts the water to beneficial use is not necessarily the owner of the land (private or federal), and the water may or may not be located on the same land as the grazing allotment. In some states (e.g., Washington, Oregon), the landowner is required to sign off on any changes to water uses appurtenant to their land. In the prior appropriations system, water rights with earlier priority dates are more valuable, because they are protected in times of water shortage against junior water users, and there is an incentive for both the stockowners and the federal agencies to maintain the continuity of water rights with specific priority dates. This creates fertile ground for conflict.

Interesting questions arise if the relationship between the grazing permittee and the federal landowner changes. What if the permittee with a water right no longer runs stock on that grazing allotment? Do they assign their water rights to the new permittee? If they don't, what water can the new permittee's stock use? What if the federal government does not renew or revokes the grazing permit and the former permittee with the water right can no longer put it to beneficial use? Does the stock water right holder forfeit the water right due to non-

use? If the federal agency holds the water right but has no permittees putting the water to beneficial use, does the agency forfeit the water right due to non-use? From a larger perspective, private ownership of water rights on federal grazing allotments, and a prohibition on ownership of such rights by the government, inevitably raises the possibility of a private owner controlling the water on federal lands to the detriment of other and future federal land permittees and puts the viability of grazing on federal lands at risk. Any solutions need to consider the availability of water to all present and future grazing permittees.

Stock Owner Perspectives

Pat O'Toole¹⁸ noted that he has been President of the Family Farm Alliance (FFA) for 15 years. The FFA represents irrigators in certain western states. They have worked on federal legislation and testified before Congress; been involved in the Colorado River and the Drought Contingency Plans; and they are writing a paper on their perspective on water rights issues. O'Toole is an irrigator and rancher himself. His family owns the Ladder Ranch, and they are stock owners and permittees. His family lives on a river that crosses state lines 31 times, requiring them to get permits from both the U.S. Forest Service (USFS) and the Bureau of Land Management (BLM) in both Colorado and Wyoming, doubling every regulatory agency action by being on the border of two states.

One thing he has learned through a lifetime of being permitted in multiple offices, where the government employees

¹⁸ Summarized from introductory remarks given at the Coeur d'Alene and Breckenridge workshops by Pat O'Toole.

change so often, is that consistently positive relationships matter a great deal. Relationships with individuals are almost more important than the law. How the office is run and how the law is interpreted (or misinterpreted) at the local level is very often dependent on the personality of the person in the office. He worked with several range conservationists that were not very good over the 45 years he has been in this system.

The federal system is not designed for quick action and often serves as an obstacle for good ideas. O'Toole's ranch had a major irrigation project that started on a national forest, and the project needed a relatively simple upgrade. The upgrades enhanced the river, the irrigation, and the value to wildlife. It took years to get the partnerships all put together with conservation groups, USFS, the Natural Resources Conservation Service (NRCS), and with the U.S. Fish and Wildlife (USFWS). Then the USFS office would not do the National Environmental Policy Act (NEPA) review. The project was delayed for years due to one office, until they were finally able to put a National Coalition together. It can take 15 years to get even simple things done, and ranching operations don't have that kind of time. Stakeholders and government agencies need to find a way to accelerate the processes.

In addition to the pressures of population growth on water resources, stock owners know the climate is getting drier. The FFA wrote papers on the changing climate in 2007, acknowledging that stock owners need to innovate now to meet future water needs. Runoff is earlier, and springs are drying up. Drought is brutal for stock and wildlife. Every cow, sheep, and horse needs to drink water every day. Storage at the watershed level is the future for irrigators and stockowners. Transferring federal ownership of land when States or irrigation districts

build reservoirs should be an automatic part of a storage project to resolve many of the current problems. Infrastructure is aging, in some places more than a century old, and it needs to be updated.

Farmers and ranchers, and the state and federal governments, need a more collaborative effort and an education process. State and federal governments understand their own policies and the importance of them. From a stockowner perspective, we need to learn to tell our stories better. Stock owners need enough water to do what we do, and we worry about what happens when the stream dries up. Individual water right permittees can easily feel manipulated or intimidated by federal agencies about how their water rights work. It seems like there is a persistent effort to federalize everything.

Some states are also making changes to water rights requirements. In Wyoming and Colorado, it is becoming clear that stock owners are going to have to deal with measuring devices, which is something new stock owners never had to worry about before. Our family did conservation easements on some of our riparian areas. It was interesting that the State Engineers really did not want to touch the implications of the water rights on the boundaries of the two states. Stock owners need to educate the grazing community about what their rights are, and how to navigate this complex system. Reinforcing how the system works through some meetings with government entities would be very useful. Stock owners want to help the next generation keep doing what we do, and we want to make the water part of it much easier. We don't want to dismantle the great success of this nation, the productive agricultural lands and livestock grazing.

General Stock Owner Comments

Fundamentally, stock owners all deal with the permittees distrust of the federal agencies over water rights. States and state associations that work on water resource issues need to communicate more with stockowners and grazing associations and wool growers. The effects of state and federal laws and policies trickle down to the grazing community, and it would be helpful to understand those impacts and be able to communicate them back to the state and federal governments.

Government agencies really need to streamline the bureaucratic processes to get things done in a more timely and efficient manner. The Historic Preservation Act impacts the ability to implement changes. Federal laws and policies should be reviewed to see if there are changes that could be made to them to facilitate things working.

It might be helpful to have some stock owner case studies. There are good ideas that can be adopted at local levels.

Perspectives from the U.S. Forest Service and Bureau of Land Management

The USFS¹⁹ is very interested in ensuring water is available for livestock grazing. There may be multiple ways that can be accomplished, and the agency is open to working with the states to figure out how to best accomplish our mutual goals. Grazing is one of the statutory multiple uses of the national forests and grasslands. The goal of

the USFS is to maintain long-term sustainable livestock grazing on national forests and grasslands. Sustainable grazing requires access to legally available water. In partnership with ranchers, the USFS manages approximately 8,000 grazing allotments on 97 Forest Service units used by about 6,000 different permittees. About 98% of that is in the 17 Western states. There are only a few scattered allotments in the East. The USFS works hard to manage those allotments and the associated permits in accordance with applicable laws and land management plans. With an allotment management plan, grazing permit terms and conditions and annual operating instructions are often developed in partnership with the permittees.

The Forest Service is committed to working with the States under state law to address water rights for livestock on grazing allotments. Recent changes in state law in Nevada, Utah, and Idaho particularly restrict the ability of the USFS to file for stock water rights for grazing. The USFS is working to figure out how best to respond to these newer requirements, which will take some time. The agency believes that open engagement between the federal agencies, states, permittees, and the other interests is vital to resolve all parties' interests fairly and responsibly.

BLM faces similar challenges as they issue permits for grazing on federal lands.²⁰ Water rights are needed for multiple uses on federal lands, including grazing water rights. BLM is working on cooperative range improvements, and have concerns about preparing for the future in a changing climate. The agency wants to cooperate with the States and other entities on water rights.

¹⁹ Summarized from comments given at the Coeur d'Alene workshop by Chris Carlson, U.S. Forest Service.

²⁰ Summarized from comments given at the Coeur d'Alene workshop by Doug Curtis, Bureau of Land Management.

Being able to sit down and communicate clearly seems like the easiest way to get through these important issues. BLM would like to be at the table to discuss water rights with the States and find a way to make things work more smoothly.

General Federal Comments

The federal agencies are mandated by federal law to file and maintain water rights for all their multiple uses, one of which is grazing. The federal agencies file claims (or applications) for stock water rights to help ensure the continuity of that grazing use on the federal landscape. They are also required to follow the States' laws to obtain and protect those water rights. One of the challenges of the state adjudication processes is that federal agencies must file claims or protest the conflicting claims of others to protect federal interests. If they do not, they have no options for future discussions about the water rights necessary to fulfill their statutory requirements. This approach creates conflict (and the perception of conflict) with stockowners and others, but the agencies don't presently have any alternatives to address their water needs in most States. Filing their claims and objecting to the conflicting claims of others is the only way to get a seat at the table.

Another challenge for federal agencies is that the water laws are different in every state. For example, in Oregon, no private citizen is allowed to file for water rights on BLM lands, so every single private citizen claim has to be protested by the federal government because those claims are illegal in that State. In Wyoming, the permittee and federal agency files jointly for the grazing water right, and in Nevada the permittee is supposed to file. In Montana, the agencies have a compact with the state that outlines the state process for agencies to use,

and it is not a collaborative process. As sub-basins are adjudicated and claims are filed with inaccurate points of diversion, the only way for the federal agencies to make sure those claims are accurate before they are decreed is to file protests on the claims. New concerns arise when States change their laws in a way that affects federal water rights already obtained through the State's process. Whatever the laws of the State, the agencies will follow those laws. They are willing to sit down and work through issues with the permittees as needed, and to help them file the water rights claims for grazing, if that is the process for that State.

Are there practical alternatives for federal agencies to meet federal mandates, follow state processes, and avoid conflicts with the grazing community? Is there any context where the federal agencies don't need to file those protests to conflicting or inaccurate claims? Is there a mechanism that can be put in place (such as an MOU) that outlines how the federal agencies can engage in dialogue with the States and the grazing community ahead of the legal deadlines to protect federal interests? Can agencies change the rules of engagement and still meet their needs and obligations?

Grazing in general, apart from the water rights, is a challenging issue for the agencies that issue grazing permits. The agencies want to be able to work together as we use these public lands. The federal agencies want to address the correct concerns. Are they really water-related or more land management concerns? Understanding the different perspectives can help us deal with conflicts at the right place and time, and ensure that we are not unnecessarily at cross purposes over water. Often, we have shared interests, but not necessarily shared positions. As explained above, private ownership of water rights on

federal grazing allotments, and a prohibition on ownership of such rights by the government, inevitably raises the possibility of a private owner controlling the water on federal lands to the detriment of other and future federal land permittees, and puts the viability of grazing on federal lands at risk. Any solutions need to consider the availability of water to all present and future grazing permittees.

Cooperative Efforts to Resolve Conflicts

Forum for Education and Ongoing Communication

The workshop participants found the personal engagement between states, federal agencies, and representatives from the grazing community to be very beneficial and were interested in finding ways to continue the engagement. The participants raised common issues and made suggestions for some workable solutions.

Colorado and Wyoming, for example, have hosted state-specific workshops and roundtables to help educate participants on their water laws. This kind of state-specific education and shared learning experience would be useful on a continuing basis. States and federal agencies need to include more stakeholders from the grazing community in this effort, as well. Interested parties need more opportunities to find common ground, and to better understand not only the different positions on legal and practical issues, but also what the interests and objectives are. The interested parties may have more common interests than we are perhaps willing to acknowledge in public forums.

Collectively, we need to break down barriers and the perception that the government agencies operate in a “black box,” without opportunities for stakeholder input. For example, the USFS planning processes happen on multiple scales with very different timeframes. Some are supposed to happen approximately every 12 to 15 years. Every year, Congress passes a stay to that requirement because they recognize the agency does not have the capability of planning on that time frame. Where grazing is identified as a multiple use,

an allotment management plan would be developed for that allotment, which would set out the operating framework under which permits would be granted and annual operating instruction would be developed. The public is involved in that process. The intention is to have regular communications with the stakeholders impacted by those plans.

The grazing community needs opportunities to be able to better understand the laws and how they impact their everyday work and how to instigate changes to statutes as appropriate and necessary. In many cases, the grazing community has been around since before the lands were transferred to the USFS or BLM, and they may understand complex things at the local level that are easily overlooked in bureaucratic processes. Grazers must also understand the implications of situations where grazing water rights have been established as property rights held by the federal government, and cannot simply be taken away without potentially grave consequences for all water rights holders.

It may be useful to have a single federal point of contact, such as an ombudsman, who could help direct people with grazing concerns to the right place so they can resolve conflicts, and elevate the matter to the correct people if the local efforts are not working.

The Workgroup expressed interest in pursuing these ideas further to help resolve the many conflicts that exist now and will continue to arise in the future. WSWC and WestFAST could offer some training/education webinars or workshops to work toward more positive changes and could work on addressing the question of state and federal interests more fully. They could also see if there is a way to ensure more

accurate data on water rights and points of diversion, reducing the need for federal agencies to protest claims due to inaccurate data. The agencies would need to have confidence in the accuracy of the data. Federal agencies have lost water rights in the past due to lack of good data.

Memoranda of Understanding

MOUs are generally designed to strengthen cooperative working relationships. Wyoming's MOU seems to work well from both the state perspective as well as the federal perspective. It was not painless to get those MOUs developed, but the conversations that led to those MOUs really improved the collective understanding of what the opportunities and challenges are on both sides of the conversation. The USFS also had some MOUs with Oregon, Washington, and Colorado, but at the time of the workshop the current status of those MOUs was uncertain.

There was interest from both state and federal agencies in looking more closely at these MOUs, to see if they could provide more workable solutions in other states. The MOUs can be tailored to meet each states' needs, and could help avoid or break down the walls that divide the state and federal agencies and the grazing community.

Dispute Resolution

During the Coeur d'Alene workshop some of the federal agency attendees raised awareness of DOI's Collaborative Action Dispute Resolution (CADR) program and other federal programs available upon request, including a BLM-specific CADR program, and the federal Environmental Collaboration and Conflict Resolution (ECCR) Centers, to help resolve a variety of

disputes, including grazing issues. The States expressed interest in the dispute resolution mechanisms available through the federal agencies. Sometimes the water management issues get conflated with underlying land management and grazing allottee issues, or there is a lack of understanding of the requirements that must be met under state or federal law. It would be helpful to have a resource available to address the nuances of conflicts, which are complex due to the needs and constraints of all the different parties. Sometimes litigation is important to solve problems, but it would be helpful to have a mechanism that enables us to better define the underlying causes of conflict and focus on what needs to be (or what can be) fixed.

The federal agencies prefer to address the conflict as close to the affected parties as possible, and try to resolve problems at the local level first. If that is not working, however, the conflict may need to be elevated to higher levels of government where cooler heads may be able to prevail. Sometimes the affected parties need help to figure out how to take the emotions out of the conversation. Sometimes local relationships get frayed, and those need to be repaired before working to improve understanding of legal requirements or policy decisions. The States also expressed interest in who to contact to move the awareness of the conflict to the right levels of the federal government. This varies by federal agency and by region. The Department of Justice welcomes alternative dispute resolution and opportunities for settling conflicts without prolonged litigation.

The Department of the Interior's CADR Program²¹ was implemented in 1996 and its resources are available to any group where a DOI entity is involved. The employees work collaboratively to prevent, manage, and resolve conflict at the earliest opportunity to achieve organizational health, gain trust, maximize productivity, and improve efficiency in accomplishing their mission. Their key goal is to promote collaborative approaches to manage conflict and resolve disputes within DOI and with external stakeholders including federal, state, local and tribal governments, non-governmental organizations, industry, and the public.

The DOI Dispute Resolution Council has dispute resolution specialists to coordinate and implement policies in all bureaus and offices. They have a network of internal mediators and facilitators throughout the department. DOI bureaus and offices work collaboratively to prevent, manage, and resolve conflict, promoting trust and sustainable decisions. CADR leads the department's conflict management and dispute resolution programs to support all DOI bureaus and offices. They work collaboratively with DOI employees and external stakeholders to: (1) establish and implement department-wide conflict management and collaboration policies and procedures; (2) provide education, coaching and training; (3) ensure timely access to expert impartial assistance through mediators and facilitators; and (4) track and evaluate results for continuous improvements. They promote collaborative approaches to manage conflict and resolve disputes within DOI and with external stakeholders including federal,

state, local and tribal governments, non-governmental organizations, industry, and the public.

DOI CADR provides services three different ways: (1) direct assistance; (2) network of in-house trained neutral mediators; and (3) ECCR contracts available to all DOI bureaus that provide an expedited and economical way to use private sector third party neutral mediators.

To access the Bureau of Land Management's CADR Program, the matter must involve the BLM and must involve the BLM's mission to manage public lands. Washington Office-funded projects must be consistent with the current Administration's priorities. More complex, broader-scope issues are typically contracted out.

The federal Environmental Collaboration and Conflict Resolution (ECCR) Centers can assist when parties are at an impasse related to environmental, public lands, or natural resources issues, and the parties cannot make progress without some conflict resolution. The ECCR Centers were created by Congress as a neutral and impartial federal alternative. They focus on improving government processes and decision-making, and support work between federal, state, and local agencies, tribes, stakeholders, and the public through direct engagement. The staff is comprised of thirteen people, with a program that includes training neutral mediators and facilitators to assist with negotiations or dialogue. ECCR has a range of assisted collaboration, negotiation, and facilitated dialogue processes. The mission is straightforward:

²¹ Summarized from presentations given at the WSWC Legal Committee Meeting in Arizona in 2019 by Brian Manwaring, U.S. Institute for Environmental Conflict Resolution, Cathy Humphry, Bureau of Land Management Collaborative Action

and Dispute Resolution (CADR) Collaboration Specialist, and Sarah Palmer, Department of the Interior CADR; and at the Breckenridge workshop by Eva Bauer, mediator and facilitator, DOI Office of Collaborative Action and Dispute Resolution.

(1) assess the challenge; (2) create a collaborative environment; and (3) facilitate a solution.

ECCR encompasses collaborative policy-making, conflict prevention and management, and conflict resolution. Facilitators may be appropriate where: (1) parties are re-visiting the same topics again and again; (2) communication has slowed or ceased; (3) tensions are escalating; and (4) those in leadership roles find themselves torn between conveying substantive or policy information and managing communications among the parties. An impartial facilitator can help by managing process communications, serving as a confidential sounding board for parties, and designing a process that is acceptable to all.

The facilitator works for all parties in a process to ensure all stakeholders are heard

and considered. The focus and emphasis are on the process. The facilitator has no stake in the substantive aspects of the outcome. The facilitator is a process expert. His or her role is to help develop an appropriate decision-making process, guide the process, and help participants reach outcomes. When reaching a consensus is the goal, the facilitator ensures the outcomes are supported by those engaged in the process.

They have a Native American and Alaska Native Program that provides collaboration and conflict resolution services across a range of environmental, natural resources, public lands and trust land issues involving Native American and Alaska Native communities and agencies or interests.

Appendix A: Wyoming Stock Water Permit Process

Water in Wyoming is administered in accordance with the Prior Appropriation Doctrine: “Priority of appropriation for beneficial uses shall give the better right.” Water in Wyoming is the property of the State. A water right is a “usufructuary” right and also a real property right. Beneficial use is the basis, the measure, and the limit of the right. The State Engineer is charged with general supervision of waters of the State, which includes the responsibility for permitting water use and administering interstate and intrastate streams and rivers. The Board of Control, made up of the State Engineer and four Division Superintendents, primarily acts on adjudications,²² changes in point of diversion, changes in use or place of use, and transfers of adjudicated rights.

A permit must be obtained from the State Engineer prior to building a facility, drilling a well, or putting water to use. There are no exceptions. Once water is put to beneficial use, proof (via field inspection) is verified by the State Engineer’s Office (SEO) staff. Use must be made in accordance with the permit. Then the proof goes to the Board of Control for adjudication and then a certificate of adjudication issued to the landowner where the use is made.

For surface water, stock water is defined as the normal watering of livestock. It excludes feedlots which are classified as a miscellaneous use. Generally, the expected acre-feet of water use for beef cattle is 0.0168 acre-feet per head per year (15 gallons per day). Stock reservoirs have special rules. The capacity cannot exceed 20 acre-feet and the height of a dam cannot exceed 20 feet. The regular rules are somewhat relaxed for a stock reservoir. There is no requirement for a licensed land surveyor or engineer. The construction and putting the water to beneficial use must be completed within five years, although the State Engineer may extend that time for good cause. A water right is not required for domesticated stock animals that drink out of a natural stream or natural lake, but the stock owner cannot make a call to satisfy a water use without the priority water right. In the administration of water rights on any stream and consideration of any applications for permits, the State Engineer may require that water be provided to meet reasonable demands for instream stock use.

For groundwater, stock and domestic uses are a preferred right over all other uses, regardless of priority. The preference is limited to flows of .056 cubic feet per second (cfs) or 25 gallons per minute (gpm). The preference does not include municipal use or if the water is held for sale. All springs where use is for stock watering and the yield is under 25 gpm are permitted and considered as groundwater. Any springs with a yield over 25 gpm is considered surface water. Other wells interfering with stock wells can be ordered to be shut off unless the interference is mitigated. The maximum time period allowed by statute for the completion of construction and the completion of application of water to beneficial use from a groundwater well is three years.

When a water right is adjudicated, it is adjudicated in the name of the landowner where the use is made. If the use is made on multiple lands (using stock pipelines and tanks), the adjudication

²² In Wyoming, the “adjudication” of a water right is a determination by the Board of Control that water has been and is being beneficially applied to the land to the extent and by the means set in the permit. It finalizes the priority date, point of diversion location, the area(s) or point(s) of use, use(s) and rate (cfs or gpm). This should not be confused with a general stream adjudication.

is made in the names of the multiple landowners. The water right is attached to the land or place of use. For surface water, stock reservoirs are not typically adjudicated unless requested by the landowner. They will be inspected to ensure that they are constructed within the terms of the permit and then incorporated into a tabulation of water rights. If the reservoir provides for more than just stock use, it must be adjudicated. Other direct flow diversions like ditches are adjudicated, but they are typically associated with additional uses. Groundwater stock rights are not required to be adjudicated, although the appropriator or the State Engineer can initiate adjudication, with relaxed adjudication requirements, such as not requiring a map prepared by a licensed surveyor or engineer. Both surface and groundwater rights are subject to abandonment after five years of non-use.

The State Engineer can grant changes to stock water permits in limited situations upon petition by the permit holder (limited to the area of the original permit). If a change involves use of the property of another, consent of the property owner is required. Otherwise, it is the Board of Control who can grant changes to adjudicated water rights regarding the place of use, type of use, point of diversion or means of conveyance upon petition by the water right owner. Petitions require proof of land ownership.

Appendix B: Wyoming MOU with USFS

FS Agreement No. 17-MU-11020000-001

Cooperator Agreement No. _____

MEMORANDUM OF UNDERSTANDING
Between The
STATE OF WYOMING STATE ENGINEER'S OFFICE
And The
USDA, FOREST SERVICE
ROCKY MOUNTAIN REGION AND INTERMOUNTAIN REGION

This MEMORANDUM OF UNDERSTANDING (MOU) is hereby made and entered into by and between the Wyoming State Engineer's Office, hereinafter referred to as "the SEO," and the United States Department of Agriculture (USDA), Forest Service, Rocky Mountain Region and Intermountain Region, hereinafter referred to as the "U.S. Forest Service."

Title: Wyoming State Engineer's Office MOU

- I. PURPOSE:** The purpose of this MOU is to document and strengthen the existing cooperative working relationship between the SEO and the U.S. Forest Service with respect to permits under state law for water rights and uses on or derived from U.S. National Forest System (NFS) land in Wyoming.

II. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

Approval of this MOU will strengthen the partnership and recognize the cooperative working relationship and benefits between the State of Wyoming and the U.S. Forest Service as it relates to water rights and uses on NFS land in Wyoming. In consideration of the above premises, the parties agree as follows:

III. THE SEO SHALL:

- A. Recognize and respect the authority of the U.S. Forest Service, under the constitution and laws of the United States, to manage NFS land throughout the State of Wyoming in accordance with applicable federal and state laws, regulations, and policies.
- B. Inform applicants proposing to divert, convey, use, or store water on NFS land of the potential need to obtain a land use authorization from the U.S. Forest Service concurrent with securing a water right from the SEO.
- C. Notify the appropriate Regional Office contact and allow 30 days for comments on water rights applications and petitions for new uses and changes to existing



uses by others that propose to abandon, divert, convey, use, or store water on NFS land. Notification shall include use of email notification.

- D. When proper under state law, approve applications and issue permits according to state law, for water rights and facilities proposed to be located on NFS land as follows:
- a. When the U.S. Forest Service is the sole applicant for a water right to use water on NFS land, a permit will be issued solely to the U.S. Forest Service.
 - b. When an application for new development proposes to divert water on NFS land and the use is proposed on NFS land, the SEO will notify the U.S. Forest Service as described in III (C). Permits issued under this scenario will generally be issued in the name of the applicant, unless the U.S. Forest Service, after being notified by the SEO, elects to be a co-applicant.
 - c. When an application proposes to divert and/or use water on a combination of NFS land and non-NFS land, the SEO will notify the U.S. Forest Service as described in III (C). Permits issued under this scenario will be determined on a case by case basis and may list the U.S. Forest Service as a co-applicant.
 - d. When an application for a time limited use is made, such as temporary water use agreements for road construction or pipelines, a permit will be issued solely to the applicant and a courtesy notice will be provided to the U.S. Forest Service of the water right issued to ensure that appropriate Federal land use authorizations are in place.
 - e. The SEO agrees to use reasonable efforts to conform to the requirement of this Section III. Failure to conform to this section does not invalidate any permit, adjudication, or other action taken by the SEO or Wyoming Board of Control.
- E. Provide a primary contact in the SEO to address water rights policy and procedural issues that are relevant to both the U.S. Forest Service and the SEO.

IV. THE U.S. FOREST SERVICE SHALL:

- A. Recognize and respect the authority of the SEO under the constitution and laws of the State of Wyoming.
- B. Manage land, water, and other natural resources located on NFS land within the State of Wyoming in accordance with applicable federal and state laws, regulations, and policies.
- C. Apply for permits and acquire water rights under state law as sole applicant for water used directly by the U.S. Forest Service for administrative purposes on NFS land.



- D. Apply for and acquire water rights under state law, as sole applicant, for water used by permittees, contractors, and other authorized users of the NFS to carry out activities related to multiple use objectives when both water use(s) and point(s) of diversion are located on NFS land. An exception to this policy could apply to certain permitted ski areas.
- E. Inform and require applicants seeking to acquire water rights where points of diversion and use are on NFS land of the requirement to obtain water rights under state law. An exception to this policy could apply to certain ski areas.
- F. Protest water rights applications made by users if the water right(s), in the opinion of the U.S. Forest Service, should be held in the name of the United States. All protests shall be made under state law.
- G. Inform applicants seeking to divert, convey and/or store water on NFS land of the need to obtain water rights under state law while concurrently pursuing authorization to occupy NFS land.
- H. Seek the consent of affected grazing permit holders when the U.S. Forest Service petitions the SEO or Wyoming Board of Control to change or abandon an unadjudicated or adjudicated water right on a grazing allotment. An affected grazing permit holder is an individual or entity holding a grazing permit for an allotment in which a point of use for the subject water right is located.
- I. Provide the SEO with an electronic copy, or three hard copies, of National Forest Visitor Information Maps for each National Forest in Wyoming and the most recent land status maps as available to assist SEO staff in ascertaining legal descriptions of water rights applications that may involve the use of NFS land.
- J. Provide a primary contact in the appropriate Regional Office to collaboratively address water rights policy and procedural issues that are relevant to both the Forest Service and the SEO.
- K. Provide a Forest Hydrologist contact list for each National Forest and Grassland within Wyoming to address any questions related to an individual water right on a specific Forest or Grassland.

V. IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT:

- A. PRINCIPAL CONTACTS. Individuals listed below are authorized to act in their respective areas for matters related to this agreement.



Principal SEO Contacts:

Cooperator Program Contact	Cooperator Administrative Contact
Name: Patrick Tyrrell Wyoming State Engineer Address: 122 West 25 th Street Herschler Building, 1st Floor West City, State, Zip: Cheyenne, WY 82002 Telephone: (307) 777-6150 FAX: None Email: patrick.tyrrell@wyo.gov	Name: Rick Deuell, Assistant State Engineer Address: 122 West 25 th Street Herschler Building, 1 st Floor West City, State, Zip: Cheyenne, WY 82002 Telephone: (307) 777-6475 FAX: None Email: rick.deuell@wyo.gov

Principal U.S. Forest Service Contacts:

U.S. Forest Service Program Manager Contact	U.S. Forest Service Administrative Contact
Name: Andrea Rogers Region 2 – Rocky Mountain Region Address: 740 Simms Street City, State, Zip: Golden, CO 80401 Telephone: (303) 275-5153 FAX: (303) 275-5075 Email: aerogers@fs.fed.us	Name: Rebecca Cuthbertson Region 2 – Rocky Mountain Region Address: 740 Simms Street City, State, Zip: Golden, CO 80401 Telephone: (303) 275-5068 FAX: (303) 275-5453 Email: rcuthbertson@fs.fed.us

U.S. Forest Service Regional Program Manager Contact	U.S. Forest Service Administrative Contact
Name: Jamie Gough Region 4 -Intermountain Region Address: 324 25th St. City, State, Zip: Ogden, UT 84401 Telephone : (801) 625-5809 FAX: (801) 625- 5378 Email: jgough@fs.fed.us	Name: Carla Pickering Region 4 -Intermountain Region Address: 342 25th St. City, State, Zip: Ogden, UT 84401 Telephone: (801) 625-5812 FAX: (801) 625-5365 Email: carlapickering@fs.fed.us

B. NOTICES. Any communications affecting the operations covered by this agreement given by the U.S. Forest Service or the SEO is sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

To the U.S. Forest Service Program Manager, at the address specified in the MOU.

To the SEO, at the SEO’s address shown in the MOU or such other address designated within the MOU.



Notices are effective when delivered in accordance with this provision, or on the effective date of the notice, whichever is later.

- C. PARTICIPATION IN SIMILAR ACTIVITIES. This MOU in no way restricts the U.S. Forest Service or the SEO from participating in similar activities with other public or private agencies, organizations, and individuals.
- D. ENDORSEMENT. Any of the SEO's contributions made under this MOU do not by direct reference or implication convey U.S. Forest Service endorsement of the SEO's products or activities.
- E. NONBINDING AGREEMENT. This MOU creates no right, benefit, or trust responsibility, substantive or procedural, enforceable by law or equity. The parties shall manage their respective resources and activities in a separate, coordinated and mutually beneficial manner to meet the purpose(s) of this MOU. Nothing in this MOU authorizes any of the parties to obligate or transfer anything of value.

Specific, prospective projects or activities that involve the transfer of funds, services, property, and/or anything of value to a party requires the execution of separate agreements and are contingent upon numerous factors, including, as applicable, but not limited to: agency availability of appropriated funds and other resources; cooperator availability of funds and other resources; agency and cooperator administrative and legal requirements (including agency authorization by statute); etc. This MOU neither provides, nor meets these criteria. If the parties elect to enter into an obligation agreement that involves the transfer of funds, services, property, and/or anything of value to a party, then the applicable criteria must be met. Additionally, under a prospective agreement, each party operates under its own laws, regulations, and/or policies, and any Forest Service obligation is subject to the availability of appropriated funds and other resources. The negotiation, execution, and administration of these prospective agreements must comply with all applicable law.

Nothing in this MOU is intended to alter, limit, or expand the agencies' statutory and regulatory authority.

- F. MEMBERS OF U.S. CONGRESS. Pursuant to 41 U.S.C. 22, no U.S. member of, or U.S. delegate to, Congress shall be admitted to any share or part of this agreement, or benefits that may arise therefrom, either directly or indirectly.
- G. FREEDOM OF INFORMATION ACT (FOIA). Public access to MOU or agreement records must not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to Freedom of Information regulations (5 U.S.C. 552).



- H. TEXT MESSAGING WHILE DRIVING. In accordance with Executive Order (EO) 13513, "Federal Leadership on Reducing Text Messaging While Driving," any and all text messaging by Federal employees is banned: a) while driving a Government owned vehicle (GOV) or driving a privately owned vehicle (POV) while on official Government business; or b) using any electronic equipment supplied by the Government when driving any vehicle at any time. All cooperators, their employees, volunteers, and contractors are encouraged to adopt and enforce policies that ban text messaging when driving company owned, leased or rented vehicles, POVs or GOVs when driving while on official Government business or when performing any work for or on behalf of the Government.
- I. PUBLIC NOTICES. It is the U.S. Forest Service's policy to inform the public as fully as possible of its programs and activities. The SEO is encouraged to give public notice of the receipt of this agreement and, from time to time, to announce progress and accomplishments. Press releases or other public notices should include a statement substantially as follows:
- "The U.S. Forest Service, Department of Agriculture, acquires water rights to support permitted and programmatic uses of National Forest System land in accordance with applicable U.S. Forest Service policies."
- The SEO may call on the U.S. Forest Service's Office of Communication for advice regarding public notices. The SEO is requested to provide copies of notices or announcements to the U.S. Forest Service Program Manager and to The U.S. Forest Service's Office of Communications as far in advance of release as possible.
- J. TERMINATION. Any of the parties, in writing, may terminate this MOU in whole, or in part, at any time before the date of expiration.
- K. DEBARMENT AND SUSPENSION. The SEO shall immediately inform the U.S. Forest Service if they or any of their principals are presently excluded, debarred, or suspended from entering into covered transactions with the federal government according to the terms of 2 CFR Part 180. Additionally, should the SEO or any of their principals receive a transmittal letter or other official Federal notice of debarment or suspension, then they shall notify the U.S. Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.
- L. MODIFICATIONS. Modifications within the scope of this MOU must be made by mutual consent of the parties, by the issuance of a written modification signed and dated by all properly authorized, signatory officials, prior to any changes being performed. Requests for modification should be made, in writing, at least 30 days prior to implementation of the requested change.



The authority and format of this agreement have been reviewed and approved for signature.

REBECCA CUTHBERTSON
U.S. Forest Service Grants Management Specialist

11/28/14

Date

CHRISTOPHER M. BROWN, Senior Assistant
Attorney General
Office of the Wyoming Attorney General

12/2/14

Date

Burden Statement

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0217. The time required to complete this information collection is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.

Appendix C: Wyoming MOU with BLM

MEMORANDUM OF UNDERSTANDING

between the

STATE OF WYOMING STATE ENGINEER'S OFFICE

and the

USDI, BUREAU OF LAND MANAGEMENT, WYOMING STATE OFFICE

This MEMORANDUM OF UNDERSTANDING (MOU) is hereby made and entered into by and between the Wyoming State Engineer's Office, hereinafter referred to as "SEO" and the United States Department of the Interior, Bureau of Land Management, Wyoming State Office, hereinafter referred to as the "BLM."

Title: Wyoming State Engineer's Office/Bureau of Land Management MOU

- I. **PURPOSE:** The purpose of this MOU is to document and strengthen the existing cooperative working relationship between the SEO and the BLM with respect to permits under state law for water rights and uses on or derived from BLM Administered Public Land in Wyoming. Further, it will provide additional clarification regarding the agencies' relative roles and responsibilities and water right permitting procedures.
- II. **STATEMENT OF MUTUAL BENEFIT AND INTERESTS:** Approval of this MOU will strengthen the partnership and recognize the cooperative working relationship and benefits between the State of Wyoming and the BLM as it relates to water rights and uses on BLM Administered Public Lands in Wyoming.

In consideration of the above premises, the parties agree as follows:

- III. **THE SEO SHALL:**
 - A. Recognize and respect the authority of the BLM, under the constitution and laws of the United States, to manage BLM Administered Public Lands throughout the State of Wyoming in accordance with applicable federal and state laws, regulations, and policies.
 - B. Use reasonable efforts to inform applicants proposing to divert, convey, use, or store water on BLM Administered Public Lands of the potential need to obtain a land use authorization from the BLM concurrent with securing a water right from the SEO.

- C. When appropriate as referenced in Sections III (D) or III (E) below, use reasonable efforts to notify the BLM State Office contact and allow 30 days upon receipt of notification, for BLM to comment on water right applications and petitions for new uses and changes to existing uses by others that propose to abandon, divert, convey, use or store water on BLM Administered Public Lands. The SEO will consider and respond to BLM comments. Said efforts shall include use of e-mail or written letter notification.
- D. When proper under state law, approve applications and issue permits for water rights and facilities proposed to be located in BLM Administered Public Lands as follows:
1. When the BLM is the sole applicant for a water right to use water on BLM Administered Public Lands, a permit will be issued solely to the BLM.
 2. When an application for new development proposes to divert water from BLM Administered Public Lands and the proposed use is for oil, gas, or mineral development, the SEO will issue the permit solely in the applicant's name. Examples include coal bed natural gas (CBNG) wells, reservoirs that will contain CBNG produced water, and water supply wells or surface water diversions for oil and gas well drilling and production operations. Once a permit is issued, the SEO will notify the BLM by providing a copy of the approved permit. This does not preclude the BLM filing a new application in the future for a new use.
 3. When an application for new non-oil, gas, or mineral development proposes to divert water on BLM Administered Public Lands, and the use is proposed on BLM Administered Public Lands, the SEO will notify the BLM as described in Section III (C). Permits issued under this scenario will generally be issued in the name of the applicant, and the SEO will add the BLM as a co-applicant.
 4. When an application proposes to use water on a combination of BLM land and non-BLM land, the SEO will notify the BLM as described in Section III (C). Permits issued under this scenario will be determined on a case-by-case basis and may list the BLM as co-applicant.
 5. When an application for a time limited use is made, such as temporary water use for road construction and pipelines, a permit will be issued solely to the applicant. A notice will be provided to the BLM of the water right issued to ensure that appropriate Federal land use authorizations are in place.

6. The SEO agrees to use a concerted effort to conform to the requirements of Section III above. Failure to conform to this section does not invalidate any permit, adjudication, or other action taken by the SEO or Wyoming Board of Control.
- E. Upon receipt of notice from the owner of a valid Wyoming water right permit located on BLM land of intent to abandon the water right permit, the SEO shall notify the BLM as described in III (C).
- F. Provide a primary contact in the SEO to address water right policies and procedural issues are relevant to both the BLM and the SEO.

IV. THE BLM SHALL:

- A. Recognize and respect the authority of the SEO under the constitution and laws of the State of Wyoming.
- B. Manage land, water, and other natural resources located in BLM Administered Public Lands within the State of Wyoming in accordance with applicable federal and state laws, regulations, and policies.
- C. Apply for permits and acquire water rights under state law as sole applicant for water used indirectly by the BLM for administrative purposes on BLM Administered Public Lands.
- D. Inform and require applicants seeking to acquire water rights to carry out activities related to multiple use objectives where points of diversion and use are on BLM Administered Public Lands of the requirement to obtain water rights under state law. The BLM may elect to file said applications as co-applicant.
- E. Inform applicants seeking to divert, convey, and/or store water on BLM Administered Public Lands of the need to obtain valid water rights from the SEO while concurrently pursuing authorization to occupy BLM Administered Public Lands.
- F. Seek the consent of an affected grazing lease holder when the BLM petitions the SEO or Wyoming Board of Control to change or abandon an unadjudicated or adjudicated water right on a grazing allotment. An affected grazing lease holder is an individual or entity holding a grazing permit for a BLM managed allotment on which a point of use for the subject water right is located.

- G. Provide a primary contact in the State Office to collaboratively address water right policies and procedural issues that are relevant to both the BLM and SEO.
- H. Provide a Hydrologist contact list for each BLM office within Wyoming to address any questions related to an individual water right on a specific parcel of land.

V. IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT:

- A. PRINCIPAL CONTACTS. Individuals listed below are authorized to act in their respective areas for matters related to this instrument.

SEO Program Contacts

Lee Arrington
Surface Water Administrator
122 W. 25th Street
Herschler Building, 1 West
Cheyenne, WY 82002
Telephone: (307) 777-6171
e-Mail: lee.arrington@wyo.gov

Lisa Lindemann
Ground Water Administrator
122 W. 25th Street
Herschler Building, 1 West
Cheyenne, WY 82002
Telephone: (307) 777-5063
e-Mail: lisa.lindemann@wyo.gov

Cheryl Timm
Board of Control Administrator
122 W. 25th Street
Herschler Building, 1 West
Cheyenne, WY 82002
Telephone: (307) 777-6899
e-Mail: cheryl.timm@wyo.gov

SEO Administrative Contacts

Rick Deuell
Assistant State Engineer
122 W. 25th Street
Herschler Building, 1 West
Cheyenne, WY 82002
Telephone: (307) 777-6168
e-Mail: rick.deuell@wyo.gov

BLM Program Contacts

Jim Honn
State Engineer, BLM Wyoming
5353 Yellowstone Road
P. O. Box 1828
Cheyenne, WY 82003
Telephone: (307) 775-6233
e-Mail: jhonn@blm.gov

Joe Cantrell
District Engineer High Desert District
230 Highway 191 North
Rock Springs, WY 82901-3447
Telephone: (307) 352-0261
e-Mail: jcantrel@blm.gov

Steve Hollister
District Engineer High Plains District
2987 Prospector Drive
Casper, WY 82604-2968
Telephone: (307) 261-7589
e-Mail: shollister@blm.gov

Monica Goepferd
District Engineer Wind River/Big Horn Basin
101 S. 23rd Street
Worland, WY 82401
Telephone: (307) 347-5239
e-Mail: mgoepfer@blm.gov

BLM Administrative Contacts

Buddy W. Green
Deputy State Director, Resources
5353 Yellowstone Road
P. O. Box 1828
Cheyenne, WY 82003
Telephone: (307) 775-6113
e-Mail: bwgreen@blm.gov

- B. **NONLIABILITY**. The BLM does not assume liability for any third party claims for damages arising out of this instrument.

- C. NOTICES. Any communications affecting the operations covered by this agreement given by the BLM or SEO is sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail as follows:

To the BLM Administrative Contact at the address specified in the MOU.

To the SEO Administrative Contact at the address specified in the MOU.

Notices are effective when delivered in accordance with this provision or on the effective date of the notice, whichever is later.

- D. PARTICIPATION IN SIMILAR ACTIVITIES. This MOU in no way restricts the BLM or SEO from participating in similar activities with other public or private agencies, organizations, and individuals.
- E. ENDORSEMENT. Any of SEO's contributions made under this MOU do not by direct reference or implication convey BLM endorsement of work products or activities.
- F. NONBINDING AGREEMENT. This MOU creates no right, benefit, or trust responsibility, substantive or procedural, enforceable by law or equity for either of the parties or for any third party. The parties shall manage their respective resources and activities in a separate, coordinated, and mutually beneficial manner to meet the purposes of this MOU. This MOU neither obligates funds nor requires either party to obligate funds at any time in the future. Further, nothing in this MOU authorizes any of the parties to obligate or transfer anything of value.

Specific prospective projects or activities that involve the transfer of funds, services, property, and/or anything of value to a party requires the execution of separate instruments and are contingent upon numerous factors, including as applicable but not limited to: Agency availability of appropriated funds and other resources; cooperator availability of funds and other resources; agency and cooperator administrative and legal requirements (including agency authorization by statute); etc. This MOU neither provides nor meets these criteria. If the parties elect to enter into an obligation instrument that involves the transfer of funds, services, property, and/or anything of value to a party, then the applicable criteria must be met. Additionally, under a prospective instrument, each party operates under its own laws, regulations, and/or policies. BLM obligation is subject to the availability of appropriated funds and other resources. The negotiation, execution, and administration of these prospective instruments must comply with all applicable laws.

Nothing in this MOU is intended to alter, limit, or expand the agencies' statutory and regulatory authority.

- G. MEMBERS OF U.S. CONGRESS. Pursuant to 41 U.S.C. § 22, no U.S. member of or U.S. delegate to Congress shall be admitted to any share or part of this instrument or benefits that may arise therefrom either directly or indirectly.
- H. FREEDOM OF INFORMATION ACT (FOIA). Public access to MOU or agreement records must not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to Freedom of Information regulations (5 U.S.C. § 552).
- I. PUBLIC NOTICES. It is the BLM's policy to inform the public as fully as possible of its programs and activities. The SEO is encouraged to give public notice of the receipt of this instrument and from time to time to announce progress and accomplishments.
- J. TERMINATION. Any of the parties may terminate this MOU in whole or in part at any time before the date of expiration in writing.
- K. DEBARMENT AND SUSPENSION. The SEO shall immediately inform the BLM if they or any of their principals are presently excluded, debarred, or suspended from entering into covered transactions with the federal government according to the terms of 2 CFR, Part 180. Additionally, should the SEO or any of their principals receive a transmittal letter or other official Federal Notice of Debarment or Suspension, they shall notify the BLM without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.
- L. MODIFICATIONS. Modifications within the scope of this MOU must be made by mutual consent of the parties by the issuance of a written modification signed and dated by all properly authorized signatory officials prior to any change being performed. Requests for modification should be made in writing at least 30 days prior to implementation of the requested change in writing.
- M. SOVEREIGN IMMUNITY. The State of Wyoming and SEO do not waive sovereign immunity by entering into this agreement and specifically retain immunity and all defenses available to it as a sovereign pursuant to WYO. STAT. Ann. § 1-39-104(a) and all other state law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.

- N. PRIOR APPROVAL. This MOU shall be reduced to writing and approved as to form by the Office of the Wyoming Attorney General.
- O. ENTIRETY OF AGREEMENT. This MOU, consisting of eight (8) pages, represents the entire and integrated MOU between the parties and supersedes all prior negotiated representations and agreements whether written or oral.
- P. COMMENCEMENT/EXPIRATION DATE. This MOU is executed as of the date of the last signature and is effective through 2022 at which time it will expire, unless extended by an executed modification signed and dated by all properly authorized signatory officials.
- Q. AUTHORIZED REPRESENTATIVES. By signature below, each party certifies the individuals listed in this document are representatives of the individual parties and are authorized to act in their respective areas for matters related to this MOU. In witness whereof, the parties hereto have executed this MOU as of the last date written below.

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Patrick Tyrrell
Patrick Tyrrell, Wyoming State Engineer, Officer

10/9/17
Date

Mary Jo Rugwell
Mary Jo Rugwell, State Director, BLM Wyoming

10/12/17
Date

Chris Brown
Chris Brown, Sr. Asst. Attorney General Approved as to Form

10/9/17
Date



Appendix D: Wyoming Decision Matrix for Stock Water Right Permits on BLM Lands

MOU Decision Matrix

Application Processing When Bureau of Land Management (BLM) Lands are Involved						
Applicant	Action		Issue without 30-Day Notice to Comment	Provide 30-Day Notice to Comment	BLM Co-Applicant	Other Action
	Permit Application	Request				
BLM	Any		Yes	No	N/A	
Non-BLM	Oil & Gas/Mineral Development		Yes	No	No	Mail BLM Copy of Permit
Non-BLM	Non- Oil & Gas/Mineral Development		No	Yes	Yes	
Non-BLM	POU on BLM and Non-BLM		No	Yes	Case-by-Case Determination	
Non-BLM	Temporary/Time Limited		Yes	No	No	Mail BLM Copy of Permit
Non-BLM		Cancel/Abandon	No	Yes	N/A	
BLM		Cancel / Abandon / Change	N/A	N/A	N/A	BLM must provide evidence that they sought consent of the grazing lease holder.

Appendix E: Western Governors' Association Policy Resolution on National Forest and Rangeland Management



Policy Resolution 2021-03

National Forest and Rangeland Management

A. **BACKGROUND**

1. The American West encompasses a huge landmass representing 2.4 million square miles, or over two-thirds of the entire country. Over 116 million people live in these states and they reside in large, densely populated cities, smaller cities and towns, and in rural areas.
2. Western communities share a unique relationship with natural resources. Communities in the West depend upon healthy forests and rangelands for jobs, recreation, and quality of life. Conversely, effective natural resource management is only possible if rural and resource-dependent communities are healthy, vibrant, and prosperous.
3. There are approximately 346 million acres of timber land in the West, of which 104 million acres are privately owned. In the United States, rangelands comprise about 31 percent of the total land area, approximately 761 million acres, which occur mostly in the West.
4. A high proportion of western lands are managed by the Federal government. The U.S. Department of Agriculture (USDA), through the U.S. Forest Service (USFS), manages over 168 million acres of forests, rangelands, and grasslands through the National Forest System (NFS). Approximately 11 percent of all western lands are in the NFS. Western states include more than 75 percent of our national forest and grassland system.
5. Department of the Interior (DOI) agencies, through the Bureau of Land Management (BLM), manage a substantial portion of the West's forests and rangelands. The BLM manages over 245 million acres in the West, of which 155 million acres are managed for livestock grazing.
6. Healthy forests and rangelands provide a number of important ecosystem services and are a vital component of western ecosystems. In addition to providing food, fuel and fiber, forests and rangelands clean the air, filter water supplies, control floods and erosion, sustain biodiversity and genetic resources, and provide opportunities for recreation, education, and cultural enrichment. Properly managed forests and rangelands can sequester greenhouse gases.
7. National forests and rangelands are economic drivers in western states. These public lands serve as critical economic engines and support local economic activities including grazing, wood products, mining, and recreation.
8. Public and private forest managers require forest products infrastructure to achieve community vitality and land management goals, including ecological restoration objectives and healthy and resilient forests.
9. Invasive species have damaged many of the forests and rangelands throughout the West and continue to be a threat to the West's working landscapes. Plant pests, such as the

emerald ash borer, can cause significant environmental, economic, and human health impacts to western forests by destroying urban, suburban, and wildland canopy covers and imperiling the species that depend upon them. Invasive annual grasses, such as cheatgrass, medusahead and ventenata, pose a major threat to western rangelands by increasing the risk of wildfire, outcompeting native grasses, and diminishing soil and water quality. Invasive species management is an essential component of effective forest, rangeland and wildfire management.

10. In recent decades, the number, severity and overall size of wildfires has increased across much of the U.S. In that time, wildfire seasons have become longer and more intense. In areas that once experienced a four-month fire season, fire seasons may now last six to eight months. Many longstanding practices of the western wildland fire service, including reliance on “1039 seasonal” and permanent subject to furlough staff, were developed in an era with shorter, less intense fire seasons.
11. The USFS operates five regional research stations that work on a range of biological, physical and social science fields to promote sustainable management of the nation’s forests and rangelands.
12. States have a particular interest in improving the active management of federal forest lands. State governments have trust authority over water, wildlife and forest resources, along with primary authority and expertise to protect community health and safety. Poorly managed forests can have significant and broad impacts on the landscapes and communities of the West, including negative impacts to air quality and public health, degradation of rivers and streams and associated water quality (including drinking water), reduced forage for domestic livestock, wildlife diseases, impaired habitats and water for wildlife and fish, and the loss of forest products and associated jobs.
13. Relative to decades past and other forest landowners, forest managers today operate under a constrained decision space as they work to address contemporary issues such as climate change, invasive pests and diseases, habitat diversity, fuel build-ups and fire risk, fish passage barriers, unmaintained roads, and legacy impacts. Adding to this challenge are concerns about the economic and social vitality of rural communities that experience effects from reduced timber supply and compromised forest health. Displaced workers, declines in school enrollment, aging demographics, property loss, business closures, and revenue effects due to wildfire and high unemployment are not uncommon to these communities.
14. Due to the current USFS funding model, many of the legacy roads and water crossing structures are not being maintained, leading to washouts, mass wasting, and sedimentation of salmonid spawning habitat. Many culverts and bridges installed over the past few decades do not meet current fish passage criteria and are past their design life and now failing. This lack of maintenance has resulted in a significant increase in the number of fish passage barriers, which is limiting fish access to important spawning and rearing habitat.
15. States are managers as well, and many western states own extensive public land holdings that require forest products infrastructure to achieve community vitality and land management goals, including ecological restoration objectives and healthy and resilient forests.

16. The USFS business model has historically been based on a combination of federal appropriations that were supplemented with revenue from resource sales and fees. Until the early 1990s, the USFS was a net contributor to the federal treasury. Over the past 20 years, timber sales have dramatically declined.
17. In addition, the last decade has seen several large, very expensive wildfires, which have increased USFS wildfire suppression costs from 13 percent of the agency's FY 1991 budget to nearly 50 percent over the last several fiscal years. Consequently, under the current agency budgeting framework, forest management, hazardous fuels reduction, habitat improvement, road maintenance, road abandonment, fish passage barrier removals, and outdoor recreation programs have been negatively affected across national forests and DOI lands.
18. An April 2015 USFS study, the "Collaborative Forest Landscape Restoration Program 5-Year Report, FY 2010-2014," found that the past century of wildfire suppression and legacy management practices have contributed to forests being overstocked and primed for larger and more intense blazes, and that changes in land use and increasing social pressures make it difficult for the agency to let fire play its natural role of clearing the forest understory in certain forest types. Active forest management has historically played a pivotal role in the growth and mortality cycle of forests to manage fuel loading, which in turn can reduce fire-fighting costs and improve habitat resilience. Today, the USFS estimates that roughly 90,625 square miles – an area larger than Utah – is at high or very high risk of severe wildfire and in need of treatment.
19. Insect infestation and disease have damaged many of the forests throughout the West. Severe drought conditions that are affecting western states, particularly California, have only exacerbated insect infestations and tree mortality. The effects go well beyond fire risk, and timber and fiber production are negatively affected, threatening the viability of the surviving forest product infrastructure. The significant decline in forest health has also created serious threats and challenges to watershed integrity, wildlife and fisheries habitats, recreational uses, businesses and tourism. All of these impacts present substantial challenges for forest-dependent communities across the West.
20. The dire forest conditions, unmet management needs, and the failure to provide lasting protections for some landscapes have brought diverse stakeholders together to find solutions. Community collaboration on forest health projects is robust in numerous places across the West, forging broad agreements among diverse stakeholders on projects that encompass fuels reduction, fiber production, habitat restoration, long-term protection for critical areas, and other community objectives. It is not uncommon to find mill owners, hunters and anglers, loggers, small business owners, conservationists, and local elected leaders working together around the table.
21. Collaborative planning and project implementation across National Forests and state and private forest lands on a larger scale allows for more diverse interests to address their particular needs for a landscape or a watershed. Taking a broad look at a landscape for planning purposes minimizes the challenges associated with managing lands for the benefit of a particular species or to address a specific need. Well-planned projects that are strategically placed across a landscape can result in a higher level of benefits than those that are more randomly or opportunistically placed. Processes associated with planning and implementing a project have become so time consuming and expensive for National Forests

in particular that a disincentive often exists for their managers to proceed with management actions that are needed to attain desired ecological, social, and economic objectives.

22. The full benefits of collaborative efforts have not been realized on the land. Working constructively with collaborators requires resources to be productive and the federal agencies often lack the necessary staff and funding.
23. Even when collaborative forest health projects enjoy broad support from diverse stakeholders and the agencies, administrative objections and litigation remain a too frequent outcome. One result is that community collaborative efforts become fatigued, and future opportunities are lost. Another outcome is that USFS restoration projects often go through exhaustive, time-consuming analysis, driving up costs and preventing the agency from scaling up management to meet the scope of the problem.
24. Today, the costs associated with planning and implementing a management project on National Forest lands are significantly more than those of the private sector. This cost, along with the time associated with drafting, analyzing, incorporating public involvement, and responding to appeals and/or litigation at the project level, lead many federal managers to focus their limited staff, funds and time on projects with the least likelihood to be challenged. This approach does not adequately address the larger socioeconomic and ecological needs of our National Forests and dependent communities.
25. Rangeland livestock operations were established decades ago, with many operations using forage on private, state and federal lands. These family-based operations are important contributors to the customs, cultures and rural economies of the West.
26. These operations also maintain open spaces and important habitat conditions (e.g., year-round water sources) benefiting wildlife and recreation. Water rights, which are granted by the states for livestock grazing, will not benefit other uses if the agricultural operation ceases to maintain the beneficial use.
27. Ranching operations that are responsibly managed provide valuable, active management of public lands including responsible grazing, maintenance of fences and other infrastructure, managing fuel loads, engaging in wildland fire monitoring and suppression, and cooperative management of noxious and invasive weeds.
28. Federal land management agencies' actions in recent years have resulted in reductions or removal of domestic livestock from federal lands.
29. The USFS and BLM have permanently closed, left vacant without reissuing a grazing permit, and converted into forage reserves or "grass banks" some grazing allotments in recent years. In many instances, the allotments are technically available based upon forage availability, but permits are not issued for reasons including unmaintained rangeland improvements and uncompleted National Environmental Policy Act (NEPA) documentation by USFS or BLM.
30. The USFS and BLM continue to receive pressure to close domestic sheep grazing allotments due to concerns about disease in bighorn sheep.

31. Restrictions and closures can have negative economic impacts on ranchers and ranch dependent communities. Ranchers who have used the same federal grazing allotments for generations may be abruptly forced to find new forage for their livestock when allotments are restricted or closed.
32. Restrictions and temporary closures, when implemented to mitigate natural events like drought, wildfires and wildlife impacts, should be factored into ongoing, regular reviews and renewals of individual livestock allotments, individual livestock operators' use of the allotments or the total amount of grazing allotments available for ranchers.
33. Inconsistent interpretation of operational policies across the West by local and regional federal land managers compounds difficulties in managing livestock grazing on public lands. For example, federal policy on acceptable types of supplemental feed, feed placement, and watering of livestock is interpreted without regard for localized rangeland conditions or the economics of local ranching operations. Failure to adapt policies to local conditions affects the ability of livestock grazing permittees to properly manage their livestock herds while achieving permit standards, goals, and objectives.
34. USDA launched a Shared Stewardship Strategy in 2018 to work collaboratively with states to set priorities and co-manage risk across broad landscapes. Through the strategy, USDA coordinates with states to set priorities and increase the scope and scale of critical forest treatments that support communities and improve forest conditions. To date, fourteen Western states have entered into individual Shared Stewardship agreements with USDA to identify landscape-scale priorities and build capacity to improve forest conditions.
35. In December 2018, the Western Governors' Association (WGA) and USDA signed a Memorandum of Understanding (MOU) to establish a framework to allow the USFS and WGA to work collaboratively to accomplish mutual goals, further common interests, and effectively respond to the increasing suite of challenges facing western landscapes. Under this agreement, WGA and USDA have pursued several collaborative campaigns to improve the management and restoration of western forests and rangelands.
36. In 1908, when Congress created the NFS, it also passed the National Forest Revenue Act, which directs the USFS to share 25 percent of gross revenues with local governments. Then in 1976, Congress passed "Payments in Lieu of Taxes" (PILT) legislation providing federal payments to local governments regardless of gross revenues that result from timber harvest and other forest management activities. After revenues from the sale of timber dropped substantially, Congress passed the Secure Rural Schools and Self Determination Act (SRS) in 2000, allowing counties to choose between a payment based on historical average and the 25 percent revenue share. SRS has expired several times, and PILT has been subject to funding uncertainty as well.
37. The 2014 Farm Bill provided the Forest Service with several new tools to accelerate forest restoration. Among them were Good Neighbor Authority (GNA), which allows USFS to enter into agreements with state forestry agencies to implement this critically important management work on national forests when USFS is unable to do the work alone. Since GNA was first authorized, 32 states have initiated more than 130 GNA projects. In the 2018 Farm Bill, GNA authorities were expanded to allow tribes and counties to enter into GNA agreements. The 2014 and 2018 Farm Bills also gave USFS and BLM Stewardship Contracting Authority (SCA), which allows communities, the private sector, and others to

enter into long-term contracts to meet land management objectives. SCA allows forest products to be exchanged for ecological restoration services, which may include thinning and brush removal.

38. In the Federal Land Assistance, Management, and Enhancement Act of 2009 (FLAME Act), Congress directed DOI and USDA to develop a national cohesive wildland fire management strategy to comprehensively address wildland fire management across all lands in the United States. The National Strategy explores four broad challenges: 1) managing vegetation and fuels; 2) protecting homes, communities, and other values at risk; 3) managing human-caused ignitions; and 4) effectively and efficiently responding to wildfire.
39. The Consolidated Appropriations Act of 2018 contained a new “fire borrowing fix,” a comprehensive remedy to budgeting for wildfire costs at DOI and USFS. The fix provides a new funding structure from Fiscal Year (FY) 2020 through FY 2027. Beginning in FY 2020, \$2.25 billion of new budget authority is available to USDA and the DOI. The budget authority increases by \$100 million each year, ending at \$2.95 billion in new budget authority by FY 2027. For the duration of the eight-year fix, the fire suppression account will be funded at the President’s FY 2015 Budget request - \$1.011 billion. If funding in the cap is used, the Secretary of Agriculture must submit a report to Congress documenting aspects of the fire season that led to the expenditures.
40. Several federal programs assist state and local fire and land managers in their efforts to manage western lands. Among these are:
 - State Fire Assistance (SFA): The SFA program assists states and local fire departments in responding to wildland fires and conducting management activities that mitigate fire risk on non-federal lands. The program also helps train and equip state first responders, who are the first to arrive at a wildfire (on any land ownership) 80 percent of the time. The program also assists communities in risk assessments and completing fire management planning projects.
 - Volunteer Fire Assistance (VFA) programs: The VFA program provides support to rural communities and is critical to ensuring adequate capacity to respond to wildfires, reducing the risk to communities, people, homes and property, and firefighters.
 - Hazard Mitigation Assistance Grants (HMAGs), administered through the Federal Emergency Management Agency, provide funding for eligible mitigation measures that reduce disaster losses. These grants include the Building Resilient Infrastructure and Communities (BRIC) program, which support states, local communities, tribes and territories as they undertake hazard mitigation projects, reducing the risks they face from disasters and natural hazards.

B. GOVERNORS’ POLICY STATEMENT

1. Western Governors support sound forest and rangeland management policies that maintain and promote ecologic, economic, and social balance and sustainability.
2. Western Governors support the creation of mechanisms to support and enhance cross-boundary collaborative work. To this end, Western Governors have established the

Working Lands Roundtable (WLR) as a platform for collaborative work on cross-jurisdictional, cross-boundary natural resource issues. The WLR allows Western Governors to draw on the expertise of a wide range of resource management experts, landowners, and conservation professionals to devise strategies that enhance the resiliency of western working landscapes and the communities they support.

3. Western Governors point to the WGA-USDA Shared Stewardship MOU as an example of an effective framework to establish shared state-federal priorities for forest and rangeland management, and encourage the development of similar MOUs with other Executive Branch agencies for other areas of natural resource management.
4. Effective forest and rangeland management is only possible through collaboration between federal, state, local, and tribal land management agencies. These agencies should strive to find new ways to collaborate on forest and rangeland management projects, as well as to explore ways to improve state-federal coordination on existing management projects. State funds can be directed to targeted federal projects to augment capacity, expedite project approvals and implementation, and add key state project priorities (including socioeconomic elements) to the federal program of work. State and local governments, municipalities, water utilities and corporate partners should be encouraged to collaborate on, and co-invest in, forest and rangeland restoration – including the support of collaborative groups – across ownership boundaries in key water supply source watersheds.
5. Federal, state, local, and tribal land managers should work to support effective collaboration on federal projects and all-lands initiatives. Federal agencies should look to local communities as a source of strength, knowledge, and support during the planning and implementation of forest and rangeland management projects, and should be encouraged to work with local communities while planning forest and rangeland management projects.
6. Local fire protective associations play a critical role in wildfire response and mitigation, and state and federal agencies should look for ways to further incorporate these groups into regional wildfire dispatch and coordination centers.
7. Western Governors support cost-share grants to local governments and local and non-governmental organizations (NGOs) to enable their participation in federal project planning and implementation. Federal agencies should facilitate the participation of local governments in federal decision making by dedicating staff to develop and provide technical assistance and enhance communications across local, tribal, state and federal partners. Congress and the Administration should support critically important programs that enable state and local wildfire protection, such as the SFA and VFA programs, as well as the Emergency Management Assistance Compact and the All Hazards National Mutual Aid System. Western communities are encouraged to take advantage of federal pre-fire mitigation programs, such as BRIC and HMAG. Federal agencies are encouraged to work with western states to ensure that communities' access to these grants is as efficient and streamlined as possible.
8. The USFS should continue to support states' efforts to operate within the Shared Stewardship Strategy, and federal agencies should continue to provide support to states as they implement projects undertaken as part of the Shared Stewardship Strategy and state-level Shared Stewardship agreements. Implementation of these projects could benefit from

enhanced governance and transparency around federal funding, as well as the use of block grants to states through USFS State and Private Forestry for project implementation. States are often the conveners of collaborative interagency forest and rangeland management efforts. Federal agencies should provide funding and support to states for cost incurred during this convening role.

9. It is important to retain citizens' rights to question governmental decisions through administrative and legal means. Western Governors believe there may be an opportunity to further streamline appeals and litigation associated with National Forest decision making in association with other changes designed to incentivize collaboration and provide more certainty as to outcomes.
10. Effective forest and rangeland management requires a network of forest and rangeland infrastructure to manage, maintain, and restore western forests and rangelands. Federal and state agencies should strive to find ways to support and expand critical forest and rangeland management infrastructure, including mills, biomass facilities, and roads. Also critical is the workforce, including the rural workforce, needed to support and operate forest and rangeland management infrastructure.
11. Western Governors support the expansion of stream restoration projects in forest and rangelands, including repair or removal of culverts and other barriers to fish passage. Federal and state agencies should strive to find ways to support and expand cost-effective means of supplying restoration projects, such as with large woody material from adjacent overstocked forests, which in turn supports the rural workforce needed to implement large-scale watershed and stream restoration efforts.
12. A thriving wood-based product market is essential to support critical forest management infrastructure. Western Governors support the expansion of wood-based product markets, and encourage USFS to develop and help fund new technologies and wood-based markets for some non-traditional products. USDA's Forest Products Laboratory is a hub for research and innovation. Supporting innovative technologies, such as cross-laminated timber and biofuels to replace diesel or jet fuel, would help bolster woody biomass utilization. Western Governors encourage the application of their knowledge and experience in a practical way in the West so that some of the federally funded infrastructure that develops from such efforts could first be demonstrated on private lands. Federal land managers should work to ensure that wood product producers have increased certainty of supply, as well as a broader suite of outlets, in addition to traditional sawmills and existing biomass facilities. Governors should work with USDA to explore mechanisms to expand low-interest loans in the forest products and woody biomass sectors to help develop rural businesses around sustainable industry. States can also work with USFS and other federal land managers to establish more long-term stewardship agreements to ensure a long-term feedstock supply.
13. Authorities granted to the USFS in the 2018 Farm Bill, including GNA and SCA, are powerful tools to boost forest and rangeland management, promote collaboration, and limit the effects of administrative objections and litigation. Western Governors encourage federal agencies to fully implement the tools provided in the 2018 Farm Bill and encourage all state and federal land managers to continue to expand the use of these tools in other areas of land management. Federal agencies should expand the use of GNA agreements and other 2018 Farm Bill tools to achieve all-lands restoration objectives across federal, state, local government and privately-owned lands. Federal agencies should use GNA authority and

program income to support additional stewardship objectives such as invasive species management and rangeland conifer encroachment. Where programmatic agreements are already in place, federal agencies should use GNA agreements to address priority restoration needs.

14. Western Governors believe clear, coordinated and consistent application of federal vegetation management practices is integral to maintaining the health of western forests, preventing dangerous and damaging wildfires, and maintaining grid reliability. The Governors support effective and efficient cross-jurisdictional coordination that enables utilities to undertake necessary vegetation management actions on federal transmission rights-of-way. Effective implementation by BLM and USFS of the FY 2018 Consolidated Appropriations Act's sections related to vegetation management, in consultation with states and utilities, would make progress towards improving vegetation management in the West. Special attention should be paid to the law's direction to USFS to pair the Wildfire Hazard Potential index and map with spatial data for use at the community level, as well as its language encouraging USFS and BLM to develop training programs on vegetation management decisions relating to electrical transmission and distribution systems. Electrical utilities and state and federal land managers should examine ways to further utilize GNA and SCA to improve vegetation management in the West.
15. Western Governors believe it is possible to reform the USFS business model in a manner that reduces project planning costs, sources funds from non-federal partners and recognizes that the agency no longer generates large revenues from commodity programs. Federal agencies can accomplish this by:
 - Striving to identify business practice barriers to cross-boundary projects;
 - Developing training on state and federal contracting procedures and administration for all partners to improve implementation of cross-boundary projects;
 - Utilize Service First authorities, which allow multiple agencies to partner to share resources, procurement procedures and other authorities;
 - Streamlining and consolidating agency processes with partners; and
 - Establishing multi-agency pilot projects, which can suggest models for subsequent formal agreements.
16. Western Governors support efforts to improve the effectiveness of NEPA in a forest and rangeland management context. Federal agencies should engage with Governors and states in early, meaningful, and substantive consultation throughout the NEPA process. Western Governors support allowing federal agencies to analyze only the action and no-action alternatives when a project is collaboratively developed, unless a third alternative is proposed during scoping and meets the purpose and need of the project. Western Governors also support rewarding successful implementation of collaborative projects through funding, retained-receipt authority, or other capacity to pursue subsequent projects.
17. State and federal agencies should look to expand the use of prescribed fire and should look for ways to reduce the statutory and regulatory barriers to its expanded use on western

forests and rangelands. State and federal air quality specialists should work together to identify reforms that reduce barriers to prescribed fire and reduce overall health impacts from smoke, improve interagency use of smoke management best practices, and examine liability protection for fire managers and compensation for private property owners negatively affected by escaped prescribed burns. Land managers across the West should strive to increase workforce capacity for prescribed fire activities, as well as science-based vegetation management activities, oversight and planning. State and federal agencies should work to identify ways to increase the cultural acceptance of the use of prescribed fire in the West. Traditional Native American cultural burning and tribal practices are an important part of forest management in the West and may be incorporated more effectively into federal and state planning management processes.

18. Western Governors support efforts to improve a broad range of pre-fire mitigation practices. State and federal agencies should work to develop tools to support mechanical hazardous fuels reduction, especially the removal of underbrush and understory, which are economically unviable in many instances. Expanding the use of spatially complex restoration treatment would help create more resilient forest through greater forest structural heterogeneity. Thinning and spatially complex treatments both address wildfire and post-fire erosion risks, but spatially complex restoration also provides habitat and biodiversity benefits that thinning does not. Invasive species, including invasive annual grasses, can be one of the greatest drivers of wildfire on western rangelands. Land managers should work to further integrate invasive species data and management practices into hazard fuels management and planning.
19. Efforts should be made by state, federal, local, and tribal agencies to modernize the wildland fire service and adapt it for the West's increasingly long and intense fire seasons. Federal agencies should examine their reliance on 1039 seasonal staff, shift a higher percentage of wildland fire staff from seasonal to permanent and permanent subject to furlough positions, evaluate policies related to the use of Administratively Determined emergency firefighters, and authorize hazard pay for federal firefighters performing prescribed fire operations. Incident command teams are valuable resources in the region, and efforts should be made to ensure that these resources have adequate access to training and preparedness activities and are, as necessary, utilized for prescribed fires in a manner similar to suppression fires.
20. Western Governors support improvements to interagency communication, fire response capability, and coordination, including the sharing of firefighting resources. Fire management activities should support fire prevention, rapid response capabilities, full suppression strategies and management of wildfire for resource benefits. Agencies and stakeholders should continue to seek opportunities, including revisions to forest plans, to enhance safety and reduce costs in suppression decisions while protecting communities. Incentives should be created for local governments to take voluntary actions to support the creation and expansion of fire-adapted and smoke-ready communities and resilience, including the promotion of education, fuels management projects and improved integration of community wildfire protection plans with land use decisions when compatible with local goals. Additional analyses should be provided to help communities evaluate the full costs of suppression associated with development in the wildland urban interface.
21. Western Governors support increased attention to the challenges posed in post-wildfire landscapes and wildfire-affected communities. Restoration of forests and rangelands is an overlooked and underfunded aspect of land management activity. Cross-boundary and

cross-jurisdictional collaboration is crucial to properly managing restoration efforts. Western Governors also encourage better awareness of post-wildfire restoration funding opportunities available to wildfire-affected communities and more sophisticated coordination of restoration activities to achieve restoration objectives.

22. The West's forests and rangelands are changing: historical fire suppression patterns have altered the composition of western forests, invasive species have moved across western rangelands, and changing patterns of industry, recreation, and land-ownership have shifted the way Westerners interact with and manage forests and rangelands. Federal agencies, including the USFS and BLM, must work to build agency cultures that can adapt quickly and responsively to these changes. Climate change can accelerate many of these changes by increasing the frequency and severity of fire, altering hydrologic patterns, and expanding the potential range of invasive species, and can pose a threat to the ecosystem services derived from forests and rangelands, such as watersheds, recreation, ranching, and agriculture. Federal agencies must be prepared to adapt to changing patterns in revenue generation, increased need for restoration activities, and a changing workforce. Increasing the pace and scale of restoration work like prescribed fire, fuels reduction, and active management can help reduce the effects of climate change. Western Governors support the creation and expansion of assistance to landowners for carbon sequestration and conservation activities on private forests and rangelands.
23. Federal agencies need to ensure adequate monitoring, assessment, and analysis of federal forests and rangelands, including data on wildlife, water, soil, and forage. Federal agencies should strive to further improve the collection of socioeconomic data related to forest and rangeland management decisions, and to further incorporate that data into management decisions. The Administration should provide federal funding to develop detailed state rangeland action plans addressing invasive species, wildlife and fish habitat, and water quality and quantity as a complement to State Forest Plans. These rangeland plans should include resource analyses of soil health, water, plants, animals and productive capacities to inform management decision-making. The Administration should target funding from USFS, BLM, the Natural Resources Conservation Service and state sources to address cross-boundary management goals (and support monitoring and assessment frameworks) in priority areas. Projects using this targeted funding should be consistent with State Forest Action Plans, wildlife action plans, community wildfire protection plans, and projects in other priority areas determined by federal, state, local and tribal partners based on the best available science.
24. Western Governors urge Congress and the Administration to support the research needed for responsible and effective forest and rangeland management in the West. Investments in widespread spatial imaging and data analytics, LiDAR or hyperspectral imaging, would improve predictive analytics and planning tools for fire and forest health. Federal agencies conducting research should also work to ensure that public research projects are focused on research that supports on the ground management needs. Western Governors urge Congress and the Administration to support USFS Research Stations, which play a key role in forest and rangeland management in the West.
25. The outbreak of the SARS-CoV-2 virus in 2020 posed a significant challenge to those working to manage the West's forests and rangelands, particularly wildland firefighters. State, federal, and local wildland fire managers should be encouraged to learn from the pandemic response and, as appropriate, implement effective new management principles

developed during that pandemic into permanent practice. Efforts should be made to ensure that emergency response personnel are prepared for similar situations in the future, as well as other potential risks.

26. Western Governors support the continued responsible use of federal lands for grazing and increased funding for grazing management, monitoring, and permit condition compliance.
27. We support sound, science-based management decisions for federal lands – including adaptive management – and believe these decisions should be based upon flexible policies that take into account local ecological conditions and state planning decisions for fish and wildlife and other human needs.
28. Federal and state land managers should identify opportunities to improve flexibility and integration of grazing management and targeted grazing as tools to achieve restoration and land management goals, including fish and wildlife habitat improvements, drought and wildfire mitigation and resilience, water quality and watershed health, soil health management, promotion of perennial plant health, and control of invasive species such as cheatgrass. They should also promote grazing allotment flexibility on federal lands, within USFS and BLM permitting systems and across ownership boundaries, to respond to changing rangeland conditions and environmental considerations.
29. Livestock grazing on federal lands is compatible with recreation and wildlife management and fulfills the multiple use and sustained yield mission of both the USFS and BLM. Policies, analyses, or planning decisions that lead to closing allotments must be based on science, documented threats and causal factors consistent with state policies and programs as well as federal multiple use missions.
30. Decisions to reduce or suspend grazing should only be made assisted by an appropriate quantitative assessment of long- and short-term trends in rangeland conditions on specific allotments, risk of spread of invasive weeds, diseases to wildlife, or other documented fish or wildlife impacts. If, after consultation with the state, the federal agency decides to reduce, suspend, close, or modify an allotment due to documented harmful wildlife impacts, an alternative allotment, properly authorized pursuant to NEPA, if a suitable alternative allotment exists, must be made available to the displaced operator prior to adjustment of the original allotment. In order to fully implement this policy, the BLM and USFS must have alternative allotments properly authorized under relevant planning documents. This ensures that suspensions or modification of grazing permits will not result in a net loss of Animal Unit Months and that appropriate alternative allotments are available.
31. Grazing permit renewal decisions should be assisted by current site-specific, quantitative data. Federal agencies should engage in meaningful consultation, coordination and cooperation with livestock grazing permittees, state and local governments, tribes, and stakeholders, prior to initiation and throughout the entire permit renewal process.
32. Federal land management agencies' decisions to reduce or close allotments should only be based upon completion of a full and complete administrative review and analysis, including a complete review under the provisions of NEPA. The decision process must include opportunities for states, livestock grazing permittees and other stakeholders to provide input. Allotments should not be closed due to a pending NEPA review without allowing

authorized use of the allotment pending a final decision, or the use of an equivalent amount of forage at reasonably equivalent cost to compliant operators.

33. Federal rangeland specialists should have an understanding of the economics and management of ranching operations dependent upon federal lands, and should receive the necessary training to comprehensively monitor rangelands, conduct objective analysis, and write sound environmental documents.
34. Clear directives and accountability throughout all levels of the USFS and BLM should be required so that interpretation and implementation is practical and predictable from office to office and individual to individual, and informed by an understanding of localized rangeland and ecological conditions, and economic health of ranch operations.
35. Federal land management agencies must give interested state agencies an opportunity to fully participate in or provide input to grazing permit actions – prior to their initiation – including: generalized review of livestock operations on federal lands; any assessment of grazing conditions as part of a federal planning process; review of past compliance of the operator with grazing allotment conditions; and individual allotment reviews. Grazing permit decisions should not be finalized until after this opportunity for meaningful consultation with the states, local governments, and the affected permittees.
36. Governors possess primary decision-making authority for management of state resources. States also have knowledge and experience that are necessary for the development of effective plans. Accordingly, it is essential that Governors have a substantive role in federal agencies' planning processes and an opportunity to review new, revised, or amended federal land management plans for consistency with existing state plans. Federal agencies should:
 - Provide Governors with sufficient time for a full and complete state review, especially when federal plans affect multiple planning areas or resources.
 - Align the review of multiple plans affecting the same resource, especially for threatened or endangered species that have vast western ranges.
 - Afford Governors the discretion to determine which state plans should be reviewed against federal plans for consistency, including State Wildlife Action Plans, conservation district plans, county plans, and multi-state agreements.
 - Maintain Governors' right to appeal any rejection of recommendations resulting from a Governor's consistency review.
 - Create a database of federal forest and rangeland management projects, available to states and other collaborators, that includes planned, current, and past projects.
37. The federal government should honor its historic agreements with states and counties in the West to compensate them for state and local impacts associated with federal land use and federally owned, nontaxable lands within their borders, such as the PILT and SRS programs.

38. The federal government should be a responsible landowner and neighbor and should work diligently to improve the health of federal lands in the West. Federal actions or failures to act on federal lands affect adjacent state and privately-owned lands, as well as state-managed natural resources.
39. Congress and federal agencies should provide opportunities for expanded cooperation, particularly where states are working to help their federal partners to improve management of federal lands through the contribution of state expertise and resources.
40. Western Governors support efforts to examine rural communities' relationships with natural resources, such as forests, rangelands, croplands, wildlife, and source water, as well as the important role that rural communities play in the management of these resources. Policy makers in the West should be encouraged to identify barriers to growth and sustainability in western communities, including a lack of restoration infrastructure, disaster mitigation challenges, dependence upon a single natural resource, and issues related to local capacity, expertise, and funding, and identify best practices to help rural communities overcome these barriers.

C. GOVERNORS' MANAGEMENT DIRECTIVE

1. The Governors direct WGA staff to work with congressional committees of jurisdiction, the Executive Branch, and other entities, where appropriate, to achieve the objectives of this resolution.
2. Furthermore, the Governors direct WGA staff to consult with the Staff Advisory Council regarding its efforts to realize the objectives of this resolution and to keep the Governors apprised of its progress in this regard.

This resolution will expire in December 2023. Western Governors enact new policy resolutions and amend existing resolutions on a semiannual basis. Please consult <http://www.westgov.org/resolutions> for the most current copy of a resolution and a list of all current WGA policy resolutions.