FREMONT COUNTY WYOMING

LAND USE PLAN

This Plan Is Dedicated
To
The Citizens Of Fremont County

September 7, 2004

June 24, 2004

To the Fremont County Planning Commission;
Steve Beazley, Chairman

This letter accompanies a Document that has been thirteen months in the making, many volunteer man-hours and extensive research. The Fremont County Commissioners established the Natural Resources Planning Committee b y Resolution and charged us with creating this document.

The committee's goal was to have the final draft done June of 2004. Prior to acceptance by the Commission the plan must be viewed by the Public. The NRPC is ready for your committee to act in placing our plan before the Public for comment at this time.

Thank you in advance for your commitment to the Fremont County Citizenry and your prompt attention to this very important matter.

NRPC Chairman Zane L Fross

NRPC Membership

Jim Allen	Pat Realing
Dorothy Bartholomew	Mike Rinehart
Jiggs Black	Shane Sanderson
Rita Campbell	Charles Schooley
Craig Cooper	James Sloan
Troy Corbett	Dustin Stetter
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Tom Johnson	Margaret Wells
Ted Knowles	Jim Yoder

PREAMBLE

The people of Fremont County, Wyoming believe the United States Constitution and Wyoming State Constitution to be the supreme law of Fremont County. Those documents contain the ultimate protections for the rights of Fremont County citizens in regard to customs, culture, economic viability, social stability, and quality of life and they guarantee our freedoms to pursue activities protected by those rights. The people of Fremont County establish this Land Use Plan in the spirit of those Constitutions, and reject all activities affecting her citizens which are inconsistent with the provisions of those basic founding documents and which inhibit the rights of her citizens to pursue the freedoms those documents guarantee.

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PART I

FREMONT COUNTY

Article I. INTRODUCTION

This Land Use Plan has been developed in fulfillment of the requirements of the Wyoming Land Use Planning Act (W.S. 9-8-101 through 9-8-302). It is intended to be a guide for the citizens of Fremont County in identifying and respecting the customs, culture, economic viability, social stability and quality of life found in this unique area, and then applying those values to growth and development as they occur in the County. This Land Use Plan has no provisions for zoning and shall not be used for such. Nothing in this document may be used for the taking of any private property, or property right, without constitutional due process and full and complete compensation to all victims thereof.

This Plan incorporates the efforts of numerous County residents from all walks of life and economic sectors. It embodies the local traditions, values and visions that each of those residents brought to the effort, and is the result of considerable research and thought by each of those participants and the neighbors they represent. It also draws on the successful planning efforts of other counties around the West, and attempts to recognize common issues being dealt with by those entities.

The focus of the Fremont County Land Use Plan is driven by the fact that the federal government manages approximately 54% of the county. Federal management of these extensive enclaves intertwines with, and impacts, the abilities of private citizens in the County to pursue activities according to traditional and historic customs and culture. Federal management also infuses a never-ending stream of regulations, government employees, and out-of-county opinion into the daily lives of Fremont County citizens. Past experience has shown that some of these regulations and opinions have not always worked for the good of Fremont County's people, and have sometimes been implemented over their objections and better judgment.

Fremont County has long been respectful of the constitutional concept of private property rights. It has been the custom and culture of citizens of the area to hold their private rights free from intermeddling by outside government and interest groups, and to respect the private rights of their neighbors. It is the intent of this Plan to be a mechanism whereby

the general public and particularly federal and State land managers can recognize, understand, and honor the customs, culture, economic viability, social structure and quality of life of the citizens of Fremont County. It is a goal of the planning process that federal and State management actions in Fremont County will be more cooperative and less confrontational than in the past. Fremont County is well aware of the statutes requiring federal agencies to give consideration to local land use plans, resolve inconsistencies in federal plans, and provide for meaningful involvement of local officials in the management processes. It is the intent of this planning process that those mandates are complied with, and that Fremont County's Plan is fully recognized.

The first part of the Plan is a brief history of Fremont County, its demographics, customs, culture, economics, social structure, and the County's authority to plan. Actual goals and objectives of the selected plan components as defined in terms of Fremont County customs, culture, economic viability and social stability, proposed management actions and continued or future planning activities are found in the second part of the Plan. Although the Plan is divided into several individual segments, no portion of the plan is mutually exclusive, i.e. concepts embodied in any part of the Plan are applicable to all parts of the Plan, even without being specifically mentioned.

The State Land Use Planning Act of 1975 requires that "All counties shall develop a countywide land use plan which shall incorporate the land use plans of all incorporated cities and towns within the county." (W.S. 9-8-301(c))

Article II. DEFINITIONS

Since much of this Plan deals with how laws are applied in Fremont County, the meaning of several terms must be understood when reading federal and State statutes and regulations. Congress and the State Legislature enact federal and State statutes respectively. Those statutes can only be amended or abolished by the body that enacted them. Regulations are promulgated by the various executive agencies to carry out the intent of statutes. The following terms are often used in statutes and promulgated regulations.

For the purposes of this Land Use Plan, the following definitions apply:

"Adjudicated" means adjudged; tried and decided. (American Dictionary Of The English Language, Noah Webster 1828)

"Ad valorem tax" means a property tax based on the assessed value of the property. (W.S. 39-13-101)

"Affected party" means Fremont County and/or its individual citizen(s) who is, or will be, directly affected by an agency proposed action or the action itself.

"Allotment management plan (AMP)" means a document prepared in consultation with the lessees or permittees involved, which applies to livestock operations on the public lands or on lands within National Forests in the eleven contiguous Western States and which:

1) prescribes the manner in, and extent to, which livestock operations will be conducted in order to meet the multiple-use, sustained-yield, economic and other needs and objectives as determined for the lands by the Secretary concerned; and
2) describes the type, location, ownership, and general specifications for the range improvements to be installed and maintained on the lands to meet the livestock grazing and other objectives of land management; and
3) contains such other provisions relating to livestock grazing and other objectives found by the Secretary concerned to be consistent with the provisions of this Act and other applicable law. (43 U.S.C 1702(k))

"Animal Unit Month" (AUM) means the amount of forage necessary for the sustenance of one cow or its equivalent for a period of 1 month. (43CFR4100.0-5)

BLM regulation - 43CFR4130.8-1(a)(2)(c) "Except as provided in Sec. 4130.5, the full fee shall be charged for each animal unit month of authorized grazing use. For the purposes of calculating the fee, an animal unit month is defined as a month's use and occupancy of range by 1 cow, bull, steer, heifer, horse, burro, mule, 5 sheep, or 5 goats, over the age of 6 months at

the time of entering the public lands or other lands administered by the Bureau of Land Management; by any such weaned animals regardless of age; and by such animals that will become 12 months of age during the authorized period of use. No charge shall be made for animals under 6 months of age, at the time of entering public lands or other lands administered by the Bureau of Land Management, that are the natural progeny of animals upon which fees are paid, provided they will not become 12 months of age during the authorized period of use, nor for progeny born during that period. In calculating the billing the grazing fee is prorated on a daily basis and charges are rounded to reflect the nearest whole number of animal unit months."

"Head month" is a term used by Forest Service. A head month is a month's use and occupancy of range by one animal, except for sheep or goats. A full head month's fee is charged for a month of grazing by adult animals; if the grazing animal is weaned or 6 months of age or older at the time of entering National Forest System lands; or will become 12 months of age during the permitted period of use. For fee purposes 5 sheep or goats, weaned or adult, are equivalent to one cow, bull, steer, heifer, horse, or mule. (36CFR222.50(c))

"Board" means the Fremont County Board of County Commissioners. See "Notify"

"Common Sense" means sound practical judgment; that degree of intelligence and reason, as exercised upon the relations of persons and things and the ordinary affairs of life which is possessed by the generality of mankind and which would suffice to direct the conduct and actions of the individual in a manner to agree with the behavior of ordinary persons. (Black's Law Dictionary, 5th Ed., p. 250).

"Consistent" means marked by harmony, regularity, or steady continuity: free from variation or contradiction. (Merriam-Webster's Collegiate Dictionary, Deluxe Edition (1998), p. 386)

"Consistency" means agreement or harmony of parts or features to one another or a whole: *specifically*: ability to be asserted together without contradiction. (Merriam-Webster's Collegiate Dictionary, Deluxe Edition (1998), p. 386)

"Consult" means the act of asking the advice or opinion of someone. (Black's Law Dictionary Deluxe 7th ed., p. 311)

"Consultation, Cooperation, and Coordination" means to solicit the advice or opinion of, in the spirit of working with, and without subordination of the affected party.

"Cooperate" means to act or work with another or others: act together. (Merriam-Webster's Collegiate Dictionary, Deluxe Edition (1998), p. 399)

"Collaborationism" means the advocacy or practice of collaboration with an enemy. (Merriam-Webster's Collegiate Dictionary, Deluxe Edition (1998), p. 351)

"Coordinate" means equal, of the same rank, order, degree or importance; not subordinate. (Black's Law Dictionary, 5th edition, p. 303)

"Credible science" means knowledge covering general truths or the operation of general laws especially as obtained and tested through scientific method. The practice of reaching solutions to resource problems through use of scientific methods and conclusive factual data rather than by consensus or popular vote.

"Custom" means a practice that by its common adoption and long, unvarying habit has come to have the force of law. (Black's Law Dictionary, Deluxe 7th edition, p. 390)

"Culture" means the integrated pattern of human knowledge and behavior passed to succeeding generations; it is the customary beliefs, social forms, and material traits of a social group. (Webster's 9th New Collegiate Dictionary, 1991, p. 314).

"Economic Viability" means the condition of a society, and/or community, to be economically capable of working, functioning, growing, developing, and prospering as an independent unit. It is a critical component of social and community stability.

"Federally or State managed lands" means lands and natural resources that fall under federal or State management, including, but not limited to, the National Forest System (Reserves, National Forest, Wilderness, Wild and Scenic); Bureau of Land Management lands (including wilderness study areas and areas of critical concern); Bureau of Reclamation lands; State School lands and other State trust lands (including Game and Fish lands).

"Goal" means a desired condition as it relates to land use. Historical land use of the majority of the land in a region shall be a determining factor in defining goals. (W.S. 9-8-102)

"Guidelines" means a checklist of methods through which a land use policy is established. (W.S. 9-8-102(v))

"Local Government" means any county, city, or town, or any combination of the above as formed under the provisions of the Wyoming Joint Powers Act. (W.S. 9-8-102)

"Land Use Planning" means the process which guides the growth and development of an area and assures the best and wisest use of that area's resources now and in the future. (W.S. 9-8-102)

"Local Land Use Plan" means any written Statement of land use policies, goals, and objectives adopted by local governments. Such plans shall relate to an explanation of the method of implementation, however, these plans shall not require any provisions for zoning. Any local Land Use Plan may contain maps, graphs, charts, illustrations, or any other form of written or visual communication. (W.S. 9-8-102)

"May" means the discretion or choice between two or more alternatives. (Black's Law Dictionary, 5th edition, p. 883)

"Multiple use" means the sustained simultaneous use of public natural resources, both renewable and non-renewable, for the grazing of domestic livestock, wood harvesting, minerals extraction, hunting, fishing, commercial outfitting, motorized and non-motorized vehicle use, camping, hiking, horseback riding, shooting firearms, and/or other use that is customarily practiced and is integral to the economy and/or culture of the local citizenry.

"Natural Resources Planning Committee (NRPC)" means the Fremont County Natural Resources Planning Committee as duly appointed by the Fremont County Board of County Commissioners under the authority of Fremont County Resolution 2003-04.

"Natural right" means a right that is conceived as part of natural law and that is therefore thought to exist independently of rights created by government or society, such as the right to life, liberty, and property. (Black's Law Dictionary Deluxe 7th ed., p. 1323)

"Notify" means, for the purposes of this plan, official notification, which shall be constituted by delivery of information documents to the attention of the Chairman of the Fremont County Board of County Commissioners, 450 No. 2nd, #220, Lander, Wyoming 82520.

"Objective" means a desired level of achievement or measurable step towards achievement of a goal. (W.S. 9-8-102)

"Permit" means a certificate evidencing permission; a license. (Black's Law Dictionary Deluxe 7th ed., p. 1160)

"Policy" means the method that should be applied to obtain a desired goal. (W.S. 9-8-102)

''Principal or major uses" includes, and is limited to, domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production. (43 U.S.C 1702(l))

"Private property" means property – protected from public appropriation – over which the owner has exclusive and absolute rights. (Black's Law Dictionary Deluxe 7th ed., p. 1233)

"Property" means any external thing over which the rights of possession, use, and enjoyment are exercised. (Black's Law Dictionary Deluxe 7th ed., p. 1232)

"Property right" means a right to specific property, whether tangible or intangible. (Black's Law Dictionary Deluxe 7th ed., p. 1323)

"Public lands" means those lands held by the federal or State government with full respect and consideration given to any and all privately held rights attached thereto.

"Public property" means nation, State or community owned property not restricted to any one individual's use or possession. (Black's Law Dictionary Deluxe 7th ed., p. 1233)

"Resolution", or "County Resolution" means a formal expression of a decision by the Fremont County Board of County Commissioners, which carries the force and effect of law, similar to that authority of a city ordinance.

"Right" means the interest, claim, or ownership that one has in tangible or intangible property. (Black's Law Dictionary Deluxe 7th ed., p. 1322)

"Riparian" means of, on, or relating to the banks of a natural course of water. (American Heritage Dictionary 4th ed.)

"Secretary" means the Secretary of Agriculture and/or the Secretary of Interior, or their delegates.

"Shall" means Imperative or mandatory. It excludes the idea of discretion (Black's Law Dictionary, 5th edition, p. 1233).

"Social Stability" means the condition of a society and/or community being firmly established, permanent and steadfast, not subject to insecurity, emotional illness, or outside disruption, and with the strength to stand and endure in its established way of life.

"Sustain(ed)" means to nourish and encourage; lend strength to. (Black's Law Dictionary Deluxe 7th ed., p. 1322)

"Sustained yield" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use. (43 U.S.C 1702(h))

Article III. AUTHORITY; COORDINATION

Section 3.01 AUTHORITY TO PLAN:

In 1975, the Wyoming Legislature enacted the State Land Use Planning Act, (W.S. 9-8-101 through 9-8-302) which mandates counties to "develop a local land use plan within their jurisdiction" (W.S. 9-8-301(a)). "Local land use plans shall not require any provisions for zoning" (W.S. 9-8-102(a)(ix)).

W.S. 9-8-301(c) requires that all counties develop a countywide land use plan which incorporates the land use plans of all incorporated cities and towns within the county.

Further, the development and adoption of this plan is in conformance with W.S 9-8-302, which States, "The duty, procedures and requirements for public hearings and responsibility for land use planning at the local level shall be exercised ... by the respective counties pursuant to W.S. 18-5-201 et seq."

State land use planning, of which this plan is a part, is allowed on federal lands as long as such land use planning does not include zoning. Federal agencies cannot claim "Constitutional Supremacy" if the agency can comply with both federal law and the local land use plan. Also, Congress has demonstrated its understanding of land use planning and environmental regulation as distinct activities. (*California Coastal Commission v. Granite Rock Co., 480 U.S. 572(1987))*

When considering preemption, the U.S. Supreme Court will not assume that the State's historic powers are superseded by federal law unless that is the clear manifest purpose of Congress. (Wisconsin Public U.S. Intervenor v. Mortier, 111 S. Ct. 2475 (1991))

Section 3.02 COORDINATION REQUIREMENTS

This Plan provides a positive guide for the people of Fremont County. Law requires agencies to coordinate their management activities in a manner consistent with Fremont County's Land Use Plan. The intent for this legislative requirement is to ensure that agency actions provide benefit to local citizenry, rather than harm. Only through coordination with the County can this mandate be achieved.

(a) NOTIFICATION; COORDINATION WITH COUNTY

The Natural Resource Planning Committee, the Board, and the citizens of Fremont County recognize that federal law mandates multiple use of federally managed lands and have long supported multiple use, not only for federally managed lands but also for State managed lands. Sustained multiple use necessarily includes continued historic and traditional economic uses, which have occurred on federally and State managed lands in the County.

Upon gaining Statehood, the State of Wyoming retained concurrent civil and criminal jurisdiction by the State of Wyoming on all lands ceded to the federal government (W.S. 36-10-103). To this end, State agencies must require federal coordination with State law.

It is therefore the policy of Fremont County that federal and State agencies shall notify the Board in writing of all pending or proposed actions and coordinate with the Board in the planning and implementation of those actions. For the purposes of this plan, official notification shall be constituted by delivery of information documents to the attention of the Chairman of the Fremont County Board of County Commissioners, 450 No. 2nd, #220, Lander, Wyoming 82520.

(b) FEDERAL INVOLVEMENT

Federal laws governing land management, mandate coordination by the managing agency.

Wyoming law, on the other hand, requires that the State Land Use Commission must "Cooperate with federal agencies ... in a manner to assure that no federal intervention or control shall take place in the initial or continuing ... local land use planning process"(W.S. 9-8-202(a)(xii)). The law is clear on the following facts:

1) Fremont County is required to have a land use plan (W.S. 9-8-101 et seq.)
2) The State is required to prevent federal interference or control in Fremont County's land use efforts (W.S. 9-8-202(a)(xii))
3) The federal agencies are required to coordinate their actions with Fremont County (authorities outlined in detail throughout this plan)

43CFR1610.3-2 Consistency requirements.

> (c) State Directors and District and Area Managers shall, to the extent practicable, keep apprised of State and local governmental ... policies, plans, and programs, but they shall not be accountable for ensuring consistency if they have not been notified, in writing, by State and local governments ... of an apparent inconsistency.

36CFRP219.14 (National Forest...Planning) Involvement of State and local governments. The responsible official must provide early and frequent opportunities for State and local governments to:

(a) Participate in the planning process, including the identification of issues; and

(b) Contribute to the streamlined coordination of resource management plans or programs.

36CFR219.1 (National Forest...Planning) Interaction with private landowners. The responsible official must seek to collaborate with those who have control or authority over lands adjacent to or within the external boundaries of national forests or grasslands to identify:

(a) Local knowledge;

(b) Potential actions and partnership activities;

(c) Potential conditions and activities on the adjacent lands that may affect management of National Forest System lands, or vice versa; and

(d) Issues (Sec. 219.4).

40 CFR Part 1506.2 (Council On Environmental Quality) Other Requirements of NEPA

(b) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include:

(1) Joint planning processes.

(2) Joint environmental research and studies.

(3) Joint public hearings (except where otherwise provided by statute).

(4) Joint environmental assessments.

The Federal Land Policy and Management Act (FLPMA), 43 U.S. § 1701, declared the National Policy to be that "the national interest will be best realized if the public lands and their resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process coordinated with other federal and State planning efforts" (43 U.S.C. § 1701(a)(2)).

43 U.S.C. § 1712(c) of FLPMA, sets forth the "criteria for development and revision" of land use plans. Section 1712 (c) (9) refers to the coordinate status of a county which is engaging in land use planning, and requires that the Secretary [of Interior] "shall . . . coordinate the land use inventory, planning, and management activities . . . with the land use planning and management programs of ... local governments within which the lands are located." This provision of federal law

assures the County status over the general public, and/or special interest groups of citizens in the decision making process.

43 U.S.C. § 1712, also provides that the Secretary of Interior "shall . . . assist in resolving, to the extent practical, inconsistencies between federal and non-federal government plans." This provision also gives status to those counties, which are engaged in the planning process over the general public, and/or special interest groups of citizens. In view of the requirement that the Secretary of Interior "shall coordinate" land use inventory, planning and management activities with local governments, it is reasonable to read the requirement of assisting in resolving inconsistencies to mean that the resolution process takes place during the agency's planning cycle, instead of at the end when the draft federal plan is released for public review. Either way, it is clear that agencies must resolve their inconsistencies prior to any action going into effect.

The same section of FLPMA further requires that the Secretary of Interior "shall . . . provide for meaningful public involvement of State and local government officials . . . in the development of land use programs, land use regulations, and land use decisions for public lands." When read in light of the "coordinate" requirement of the section, it is reasonable to read "meaningful involvement" as referring to on-going consultations and involvement throughout the planning cycle not merely at the end of the planning cycle. This latter provision of the statute also distinguishes the elevated status of local government officials from members of the general public or special interest groups of citizens in the decision making process.

43 U.S.C. § 1712 (c) (9) further provides that the Secretary of Interior must assure that the BLM's land use plan be "consistent with State and local plans" to the maximum extent possible under federal law and the purposes of the Federal Land Policy and Management Act. It is reasonable to read this statutory provision in association with the requirement of coordinated involvement in the planning process.

The provisions of 43 U.S.C. § 1712 (c) (9) of FLPMA set forth the nature of the coordination required by the Bureau with respect to the planning efforts by local government officials. Subsection (f) of Section 1712 sets forth an additional requirement that the Secretary of Interior "shall allow an opportunity for public involvement" which again includes local governments. The "public involvement" provisions of Subsection (f) do not limit the coordination language of Section 1712 (c) (9) or allow the Bureau to simply lump local government officials in with State government, special interest groups of citizens or members of the public in general. The coordination requirements of Section 1712 (c) (9) set apart for special involvement those government officials who are engaged in the land use planning process, as is Fremont County. The statutory language distinguishes the County because engaging in the land use planning process fulfills the Board's obligation to plan for future land uses which will serve the welfare of all the

people of the County and promote continued operation of the government in the best interests of the people of Fremont County.

Another federal Act, the National Environmental Policy Act (NEPA) requires that all federal agencies consider the impacts of their actions on the environment and on the preservation of the culture, heritage and custom of local government. In 42 U.S.C. § 4331 (a) the law provides as follows:

"...it is the continuing responsibility of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans with local land use plans.

Thus, by definition, the National Environmental Policy Act requires federal agencies to consider the impact of their actions on the custom of the people as shown by their beliefs, social forms, and "material traits." It is reasonable to read this provision of the National Environmental Policy Act as requiring federal agencies to consider the impact of their actions on rural, range-oriented, agricultural counties such as Fremont County where, for generations, families have depended upon the "material traits" of ranching, farming, mining, timber production, wood products, and other agricultural lines of work for their economic livelihoods.

(c) STATE INVOLVEMENT

While no State statute specifically mandates coordination of planning by State agencies regarding management of State lands, such coordination is implicitly contemplated by the provisions of the Land Use Planning Act of 1975, Wyoming Statutes § 9-8-101 thru 9-8-302. In fact, W.S. 9-8-202(a)(xii) calls upon the State land use commission "to assure that no federal intervention or control shall take place in the initial or continuing ... local land use planning process". This, in itself, speaks to clear legislative intent supporting local control of the land use planning process. That, after all, is the very reason we have local governments. Local governments are closest to the people and are therefore, closest to the needs and desires of the people in that subdivision of the State.

Article IV. FREMONT COUNTY; ITS PEOPLE

Section 4.01 PHYSICAL ENVIRONMENT

(a) Geology

Much of Fremont County is made up of the 8,500 square mile Wind River Basin. This basin is typical of other large sedimentary and structural basins in the Rocky Mountain West. These basins were formed during the Laramide Orogeny from 135 to 38 million years ago. Broad belts of folded and faulted mountain ranges surround the basin. These ranges include the Wind River Range on the west, the Absoroka Range and Owl Creeks and southern Big Horn Mountains on the north, the Rattlesnake Hills on the east, and the Granite Mountains on the south. The center of the basin is occupied by relatively un-deformed rocks of more recent age.

Formations of every geologic age exist in Fremont County. This creates a surrounding of enormous geologic complexity and diversity. The geology of Fremont County gives us our topography, mineral resources; natural hazards, and contributes enormously to our cultural heritage.

(b) Topography

Fremont County is characterized by dramatic elevation changes. Surface elevations range from 13,804 feet above sea level on Gannett Peak (highest point in Wyoming) to 4,035 feet on the Sand Mesa west of Boysen Reservoir. Although there is nearly 9,800 feet separation between the highest and lowest elevations in the county, the average elevation is 5,500 feet.

Mountain topography characterizes much of the county and contributes to the spectacular views anywhere in the county. However, the majority of the topography consists of the broad, fairly flat, depositional strata of the central basin and the landforms that wind and water have sculpted upon them.

(c) Climate

The climate of Fremont County is mainly semi-arid. Technically, it is classified as Middle-latitude Desert. The central part of Fremont County, away from the mountain ranges that ring the basin, is semi-arid. The aridity is produced because of our central location in the North American Continent and the great distance from a source of moisture. The prevailing winds are from the west. Air masses from the Pacific Ocean are depleted of moisture by the time they reach Wyoming in the rain shadow of the Rocky Mountains. The Gulf of Mexico can, under certain conditions, be a source of moisture for Fremont County and Wyoming.

Occasionally, a cyclonic disturbance from the west can "stall out" just east of the Rocky Mountain Front over the High Plains. If the cyclonic depression is large enough much moisture can be back funneled up the mountains and produce prodigious amounts of moisture, usually in the form of snow. This is called an "up slope condition".

The approximate 9,769-foot difference between the lowest and highest point in Fremont County elevation has a major impact on precipitation and temperature. Many texts on geography and climate simply label mountainous areas as "Highland climates: too variable to be rated". Precipitation varies from 60 inches per year on Gannett Peak to 8 inches per year in the central basin area of the county around Shoshoni. Most of the inhabited area of the county receives between 8 and 14 inches per year.

(d) Water

The semi-arid climate makes water extremely important to Fremont County. Adequate water supplies have affected the historical settlement of the county and will also determine future settlement. Although not enough precipitation falls in the warmer months for adequate natural growth of crops, most of the County's water supply is accumulated in the mountains in the form of winter snow. This water reservoir melts and is distributed during the runoff period by a system of ditches that allow the water to be used over the length of the growing season in many parts of the county. Water in this arid region is allocated to users under the doctrine of prior appropriation ("first in time is first in right").

Surface water supplies about 99 percent (592 million gallons per day in 1990) of the total off-stream use in Fremont County. Irrigation is the largest off-stream use of surface water, and provides a delayed return of water to the streams until later in the summer, creating flows instream at late summer times when the streams would have been dry without these irrigation return flows. The largest use of ground water is for public supply. Total ground-water use in 1990 was 5.9 million gallons per day (U.S.G.S. Water-Resources Investigations Report 95-1095). Ground water in Fremont County varies greatly in availability and quality. Often, adequate quantity is only available at great depth. However, depth and quantity does not always assure quality.

Section 4.02 FREMONT COUNTY HISTORY

Humans have occupied what is now Fremont County for over 5,000 years and perhaps longer. Hard archeological evidence is lacking for earlier occupation by humans. However, humans probably traveled through, if not actually staying here, soon after the last ice age that ended 10,000 to 15,000 years ago.

People knew this vast and beautiful area of land lying between the Owl Creek and Wind River Mountains as the 'Warm Valley'. The earliest historic record links the occupation of Fremont County with the Crow Tribe and the Shoshone Tribe. In 1854 Chief Washakie of the Shoshones and Big Robber of the Crows met in battle along the Wind River in the vicinity of Crowheart Butte. According to legend the battle between the two tribes was climaxed when Chief Washakie killed Big Robber on top of Crowheart Butte and proudly displayed his heart on the end of his lance. It was the winning of this battle that transferred the historical dominance of the area from the Crow Nation to the Shoshones.

The first white people to enter the area were fur trappers from Canada. A French Canadian by the name of Sieur de La Verendrye and his sons came down through northern Wyoming as far as the Wind River. They traded with the Indians and the Indians in turn acted as their guides. Sometime later, French, Canadians, and Indians formed the Northwest Fur Company, which became the largest in the world.

President Jefferson in 1803, after the Louisiana Purchase, commissioned Meriwether Lewis and William Clark to find a water route through the new territory. Two people in their party Sacajawea, their Indian guide, and John Colter played later roles in Wyoming's history. Colter returned to the West after the Lewis and Clark expedition and entered what is now Fremont County over the Northern Owl Creek Mountains, ascended the Wind River and crossed over Union Pass into Jackson Hole. Other trappers and hunters in the area during the early 1800's included people such as Wilson Hunt, General Ashley, Captain Benjamin Bonneville, Kit Carson, and Jim Bridger. Some of these early hunters and trappers, notably Hunt, Ashley, and Bonneville were the first to use South Pass as a trail route that became, several years later, the Oregon Trail, one of America's most important emigrant trails. The history of the fur trade is a fascinating chapter of Fremont County history. Many "rendezvous", yearly gatherings of trappers, traders, Indians, and fur company men, were held in the Wind River Basin. These were the first temporary, mainly white, settlements anywhere in Fremont County. The trappers and traders of the 1820's and 1830's pioneered the exploration of Fremont County that would later help bring permanent settlement.

In 1846, General John C. Fremont, with the help and knowledge of early trappers and explorers such as John Colter, explored and mapped portions of the area that was later named in his honor. Later in 1859, Col. F.W. Lander was commissioned to survey and layout a road from Burnt Ranch on the Sweetwater to the upper crossing of the Green River thence to Oregon via Bear Lake, Utah. Fremont County's county seat was later named in honor of Col. Lander.

Gold was known to exist in the area many years before the actual rush of 1867. Emigrants, on their way to California, had discovered gold along Strawberry Creek and the Sweetwater. Soldiers also found small amounts of gold in various

locations and the Indians had found gold bearing quartz that they had taken to their trading places. Louis Robinson discovered and brought a considerable amount of gold to Fort Bridger, Utah in 1867. Shortly afterward there was a rush to South Pass. The first major lode mine "the Clarissa", now called the Carissa, was located by a group of Salt Lake City men in 1867. Within a very short time there were as many as five thousand people combing the hills and valleys of the area.

The city of South Pass was established in 1867 in what is called the Clarissa Gulch below the Clarissa mine. It was estimated that during South Pass' heyday that there was a resident population of between 1200 and 2000 people. Other mining camp towns created during the gold rush days included Atlantic City and Miners Delight. The last gold mining camp to be created was Lewiston in 1881 sometime after the main gold rush was over. By the early 1870's most of the easy gold had been removed and the area began to lose population with only a few remaining to carry on with hard rock mining. While vast sums of money were never made from the sale of gold, the gold rush greatly accelerated the settlement of the Wind River Valley and the development of its early farms and villages.

South Pass is as equally known for being the birthplace of women's suffrage as it is for its gold production. Ester Hobart Morris, a resident of South Pass City, obtained a pledge from Col. William H. Bright, a member of the Wyoming Territorial Legislature, to introduce and work for the passage of legislation granting suffrage to women. Col. Bright's bill was passed and signed into law by Governor J.A. Campbell on December 10, 1869. Wyoming territory thus became the first government to grant its women the right to vote. Mrs. Morris was then honored in 1870 by being appointed as the world's first woman Justice of the Peace.

(a) The Reservation, Forts, and Settlers

The creation of the Shoshone Indian Reservation, the result of a treaty signed at Fort Bridger Utah Territory on July 3, 1868, by the U.S. Government, Eastern Shoshone and Bannock was another important event that helped accelerate the settlement of the area. After the boundaries of the Reservation were established the government built several forts and camps to keep the peace. The earliest military camps included Camp Auger, built in 1869, where the City of Lander is now located, and Camp Stambaugh near South Pass City in 1870. Camp Auger was renamed Camp Brown, in honor of Captain Brown of the eighteenth Infantry who was killed in the Fort Phil Kearney massacre of 1866. Three years later Camp Brown was moved sixteen miles north of Lander to its present location. In 1879 Camp Brown was renamed Fort Washakie in honor of the great Chief Washakie of the Shoshone.

The Arapaho now co-occupying the Reservation with the Shoshone are what were known as the "Northern Arapaho". Their placement on the reservation stems from a series of actions and inactions taken by the government after the treaty entered into by the U.S. Government and the Sioux, Cheyenne, and Arapaho in 1876. The Arapaho agreed to take up residence in the Indian Territory on a separate reservation to be created for them. After reaching the North Platte River in Eastern Wyoming a portion of the Arapaho decided they would travel no further and they asked that a reservation be established for them along the North Platte. The government, because winter was coming, sought and obtained permission from the Shoshone to place them temporarily on the Shoshone Reservation. No later action was taken to move the Arapaho. The whole situation dragged along until a new administration in Washington was elected and all promises made by the earlier administration were forgotten. Consequently the Arapahos have never been moved. The government later changed the name of the reservation to the Wind River Indian Reservation and has officially recognized it as being jointly owned by both tribes.

(b) Early Towns

The very earliest towns within the county were the gold mining towns mentioned earlier. Many of the miners however, after the mining played out, moved further north and settled in the "Warm Valley" on the north side of the Wind River Mountains. Some of the earliest settlers had started truck gardening in areas along the Popo Agie and supplied the mining towns with fresh vegetables. This vegetable growing earned the community to be formed near the Popo Agie the name of "Push Root". The treaty of 1868 with the Shoshone resulted in the building of Camp Auger located near the location of Fourth and Main Streets in Lander. The same treaty also diminished the Shoshone areas by relinquishing the area between the Sweetwater and the North Fork of the Popo Agie to settlers. In 1882 a town site was platted by B.J. Lowe and Peter Dickenson, which encompassed the old Camp Auger site. The new town site was named in honor of Col. F.W. Lander who surveyed land and established the Lander Cut-Off portion of the Oregon Trail.

Moneta, another of the County's earliest trading spots originated as a Texas cattle drive stop. It was here that the hired hands received and spent a part of their pay. Later when the Wyoming and Northwestern Railroad was built (1906), J.B. Okie, an Englishman, built a sheep-shearing barn, holding pens, and a store in the area. The town, named Lost Cabin, also boasted three houses, a livery stable and a hotel.

(c) Fremont County Created

The Wyoming Territorial Legislature created Fremont County in 1884. The history of its creation can be traced from Idaho Territory, through Dakota, Nebraska and finally Wyoming Territory. Fremont County was cut from a then much larger Sweetwater County, which was originally called Carter County. When Fremont County was first established it contained over twelve and one half million acres. Subsequent actions have reduced the overall size of the County to approximately six million acres. Lander was named as the County Seat and the first Board of County Commissioners met and organized the County on May 6, 1884. It is interesting to note that the very first formal action of the Board on that day was the establishment of the first county road.

(d) Riverton Reclamation Project

In 1904, a U. S. Government engineer, Goyne Drummond, after completing a thorough study of a portion of the Reservation between the Owl Creek and Wind River Mountains, found that the study area could be made agriculturally productive through irrigation. Pursuant to a 1905 agreement with the tribes, the U. S. Government withdrew the area north of the Big Wind River from the Reservation and opened it to homesteading. A group of Chicago investors, the Wyoming Central Irrigation Company, contracted to build an irrigation project on the ceded portion and began construction in 1906. Wyoming Central completed what is now known as the Riverton Valley Canal in 1907, and the LeClair-Riverton Canal was completed in 1916. Widespread irrigation on the Midvale portion of the project did not get underway until after 1920 when the U.S. Reclamation Service (later called the Bureau of Reclamation) took over all funding and development responsibility for that portion of the project.

The Midvale Irrigation District was organized in 1921 and through the Reclamation Service, the principal water storage and distribution facilities were constructed. At the present time there are over 70,000 acres under irrigation within the Midvale project. The private LeClair-Riverton and Riverton Valley Irrigation Districts irrigate an additional 20,000 acres outside the Midvale project boundaries but within the general Riverton area.

All water used in the Midvale project and in the private Indian and non-Indian canals on the lower river comes from the Wind River and its tributaries above the Wind River Diversion Dam. The estimated annual water runoff at the Diversion Dam is 870,000 acre-feet, all of which contributes to the supply for the Riverton, Thermopolis and Worland areas.

(e) Later Towns

In 1906, when the ceded portion of the Reservation was opened to homesteading, a town site was platted by the government surveyors to provide lots for the

coming homesteaders and to create a center of commerce. The town was first called "Wadsworth," but the name Riverton was chosen after a few weeks as the permanent name for the town built in response to the boom brought about by the irrigation project. Riverton is now the largest city in the county.

Shoshoni is another town that came into being because of the development of the Riverton Reclamation Project. With the announcement that the government was going to open a portion of the Reservation to homesteading, the Pioneer Townsite Company platted and laid out the border town of Shoshoni. The official opening of the date of the new town was September of 1905 nearly one year before the opening of the ceded portion of the Reservation. It is reported that the town became an instant tent city with over two thousand residents prior to the opening of the Reservation.

Section 4.03 FREMONT COUNTY CUSTOM

The present-day County of Fremont, State of Wyoming, consists of more than 5.8 million acres. This land area is made up of approximately 5% State administered lands, 17% National Forests, 15% private lands, 27% Tribal Lands, and 37% lands administered by the Bureau of Land Management or Bureau of Reclamation[1]. The federally or State managed lands and resources located in Fremont County have historically been used for grazing, mining, timber harvest, oil and gas development, and land and water recreation. The earliest commerce in this county was resource-based on such activities as ranching, fur trapping, gold and coal mining, oil drilling, and railroad tie manufacturing and timbering. Our State has had a reputation as a recreation paradise, the land of big game hunting and sport fishing. We are the State of Yellowstone and the Grand Tetons.

Wildlife is another resource that attracted the white man to Fremont County. The earliest white inhabitants of Fremont County were fur trappers. Central Fremont County boasts the site of the first rendezvous in the area, which was held in 1829, on the Popo Agie River near what is now called Lander. The rendezvous was a method by which commerce in the fur trade was advanced. The trappers could bring their harvest to the rendezvous and sell their furs and purchase supplies, saving the travel east for hundreds of miles.

Fremont County citizens migrated to the area because of abundant natural resources. These resources provided a livelihood to the early settlers and nomadic populations. Many historical documents record the names of people, both white and Indian, who customarily harvested and developed resources, and created resource based communities.

Fremont County citizens have a long history of using federally or State managed lands and waters according to the invitation and enticements of the land use and land disposal acts of those federal and State governments. Recreational and subsistence hunting, and recreational fishing, trail riding, camping and nature appreciation activities all have their

[1]Figures derived from Fremont County GIS system.

roots in the survival skills of early settlers as seated in the customs of their individual historic cultures.

(a) Agriculture

Grazing has been important in the Fremont County area for 50,000 years. Prior to the establishment of commercial cattle operations in the mid 1800's wild game and buffalo, the sustainer of the Indian culture, grazed in the semi-arid lands of the area. The grazing of ungulates is not a modern invention of white culture. Both historically and recently, the Indian and white cultures have relied on the grazing lands of Fremont County to provide food, clothing, recreation, and sources of income. The semi-arid climate and topography on both rangeland and forest provide excellent areas for the grazing of livestock.

The cultivation of crops first appeared in Fremont County by early semi-nomadic Indian tribes. Later, vegetables were grown near Lander to sell to the miners at South Pass. Ranching, like crop cultivation, came to Fremont County early in its history. William Boyd brought in the first stock of cattle in 1869 and William Tweed was the first to introduce sheep raising in 1870.

Fremont County's custom of using federally managed land for grazing is based on the invitation of the federal government during the open range days of livestock production. The grazing custom was continued on "leftover" lands of lesser value after settlers patented their homesteads under the various land disposal acts of the federal and State governments. Lands not patented by homesteaders, later to become federally managed, were commonly used by all residents for resource consumption, often for free. The Taylor Grazing Act of 1934 recognized grazing as the optimum use of federally managed lands and in conjunction with later grazing legislation, facilitated the continued grazing of those lands as customary values to the local cultures.

(b) Railroads and Timber

Jim Seward who had been logging the Sheridan area began Fremont County's timber industry, the principal economic stimulus to the growth of Dubois in 1905. The main products of the industry were timbers and ties, used primarily in the construction of railroads. The ties were hand-hewn in the forest by lumberjacks called "tie-hacks", whose customs in that industry came with them from their former homelands. During spring runoff, when the river was full of water, the ties manufactured during the winter were transported downstream to processing yards. The first tie drive from Dubois downstream to Riverton on the Big Wind River took place in 1915 and such tie drives were commonplace until 1946. Between 1946 and the late 1980's, timber was processed in mills at Dubois. Such

timbering and tie driving activities, remnants of which are promoted in the County museums, provided a substantial County industry for a great many years.

The coming of the railroad in 1906 stimulated the local economy and provided further impetus to the overall development of the area. At least one town, Hudson, owes its origin to the building of the railroad. Hudson began as a railroad depot at the confluence of the Big and Little Popo Agie Rivers. Subsequent growth of the town was stimulated by the development of a coal mining operation. Hudson's peak population numbered approximately 1500 persons. Later reductions in the demand for coal, caused by the advent of the diesel locomotive and operational problems at the two mines caused the town's population to dwindle.

The Wyoming and Northwestern Railroad Company originally built the railroad from the east connecting the towns of Moneta, Bonneville, Shoshoni, Riverton, Hudson, and Lander. The majority of the track had since been taken over by the Burlington Northern which ran a north-south line from points north through the Wind River Canyon connecting with the Wyoming-Northwestern near Bonneville. These railroads served as major transportation arteries for a number of years. The railroad discontinued its service between Riverton and Lander in the late 1960's. Rail service from Riverton to Shoshoni was discontinued in the late 1980's.

(c) Modern Prospectors

The search for and use of mineral deposits in the Earth has long been an activity of Fremont County residents. The first mining in Fremont County was conducted by Indians looking for flint deposits in order to fashion projectile points, knives, and other cutting/piercing implements. The upper rim of Sinks Canyon near Lander bears the imprint of some of these early miners in the form of several prehistoric pits where flint was extracted and worked. Steatite (soapstone) was also mined by Paleo-Indians for use in making pots.

Mining gained commercial importance in the County with the gold rush at South Pass in 1868. Since that time gold, coal, magnetite, feldspar, and uranium have been mined commercially in Fremont County.

The gold rush in South Pass lasted until the late 1870's. Since then gold has not been of commercial importance although individuals "panning" in the streams of the area have recovered small amounts of gold. Periodic interest is shown in reopening one or more of the old mines and in more extensive exploration.

Coal production was important in Hudson between 1907 and 1940. Two large mines and several smaller ones produced coal for the railroad and other uses until the 1940's when natural gas started to replace coal for heating purposes.

In 1953, the discovery of uranium south of Riverton in the Gas Hills and Crooks Gap areas launched Fremont County into the uranium industry. The importance of uranium mining grew to a peak in the early 1980's and has since declined due to reduced emphasis on nuclear power and lower priced uranium from foreign sources. In the late 1970's and early 80's over two thousand people were employed within the county in the mining and milling of uranium.

Copper deposits are known to exist in Fremont County north of Shoshoni, however, no commercial extraction has occurred to date. Feldspar was mined in the Owl Creek Mountains north of Shoshoni between 1970 and 1979.

Jade, a semi-precious gemstone has been used since pre-historic times in the manufacture of weapons, utensils, ornaments, bells, and jewelry. Several claims southeast of Lander supply jade for use in jewelry.

The first producing oil well west of Pennsylvania, the Murphy No. 1 in the Dallas Oil Field approximately eight miles southeast of Lander, was drilled in 1884. Prior to that, Indians used the naturally occurring oil springs and tar seeps for medicinal purposes; and by early settlers for wagon lubrication. Since then numerous oil and gas wells have been brought into production. The oil fields lie mainly along a northwest-southeast axis running roughly parallel to the Wind River Mountains passing through the center of the county. The natural gas fields are mainly found within the northeastern part of the county

Iron ore was also discovered within the area in the 1950's. The Columbia-Geneva Steel Division of the United States Steel Corporation began taconite mining and milling operations in 1962. Until 1982, U.S. Steel employed over 500 people. Between 1982 and 1985 the taconite mine saw several periods of declining activity followed by renewed vigor. By 1985 the mine was closed permanently. This large commercial mining operation had a great impact on Fremont County and Lander in particular. When U.S. Steel closed the mine and milling operations in 1984 Lander suffered a significant loss of population and as a result lost revenue in the form of taxes and wages.

New prospecting interest in recent years has been for diamonds. Exploration companies and consultants working in Wyoming have led to some interesting new discoveries and information regarding the potential for diamond occurrences in Wyoming. Although the two most significant areas are the Colorado-Wyoming State line districts south of Laramie and the Green River Basin of southwestern Wyoming, new information about possible occurrences in the Bighorn and Owl Creek Mountains and in central Wyoming have raised interest in those areas.

The importance of the geology of Wyoming, in relation to federally or State managed lands, as a source of minerals and gemstones cannot be overemphasized both as a local and national economic resource. However, one economically overlooked national asset of federally or State managed lands is their educational

value for study of the discipline and praxis of geology and the mineral industry. Fremont County is the location of two university geology field camps. Other colleges and universities frequently make scheduled stops in Fremont County during field trips. The Fremont County Schools and Central Wyoming College make use of federally or State managed lands as an outdoor classroom as well.

The following minerals are found in Fremont County: Alum, Agate, Arsenic, Asbestos, Bentonite, Beryl, Calcite, Chalcedony, Chromium, Coal, Columbite-Tantalite, Copper, Corundum, Dolomite, Feldspar, Fluorite, Garnet, Glass Sand, Gold, Graphite, Gypsum, Magnetite, Hematite, Pyrrhotite, Pyrite, Siderite, Aluminum/Silica Clays, Lead, Lithium, Manganese, Mercury, Mica, Nephrite (Jade), Nickel, Petroleum & Natural Gas, Phosphate, Pumice, Sodium Sulfate & Sodium Carbonate, Selenium, Silver, Stone (building grade Granite and Sandstone), Sulfur, Talc, Tin, Tourmaline, Tungsten, and Uranium.

(d) Tourism

As shown below, in Table 1, a substantial portion of the Fremont County economy is related to tourism. Snowmobiling is a primary contributor to that economy in the western half of the County, supporting at least six lodges and much of the winter economy of the town of Dubois. The Lander office of the U.S. Forest Service reports an estimate of around 10,000 snowmobile crossings of traffic counters on the Continental Divide Snowmobile Trail near Dubois per winter, and around 7,500 crossings per year on the Loop Road above Lander. These numbers do not include the number of snowmobiles using Fremont County's snowmobiling areas where traffic counters have not been installed. Recreational boating on Boysen, Bull Lake, Pilot Butte reservoirs, and other water bodies also contributes significantly to the tourism economy of the County. The use of four-wheelers and other off road vehicles is also recognized as a significant contributor to this sector of the economy as well, as are the drive-through activities of tourists headed for Yellowstone and Grand Teton National Parks.

Table 1 - Tourism Facts and Economic Data

Travel Spending in Fremont County for 2002 was $82.3 Million dollars.
Earnings were $25.8 Million dollars.
Tourism jobs-1,510
Travel generated Sales Tax-$1.8 Million dollars.

Source-Wyoming Travel and Tourism Website

Section 4.04 FREMONT COUNTY CULTURE

Our rural nature is such that our culture is shaped by our relationship with the land. Early residents of the area brought with them the cultures of their former homelands. Indian, Spanish, French, English, Scandinavian, Basque, other European and South American cultures all gravitated to the rich resources found in Fremont County. Those cultures all revolved around hard work, self-sufficiency, individualism, isolation, and a love for the land and natural resources. They also all used the renewable resources found here, and used them in such a way that those resources are still capable of producing economic good and social livelihood yet today. Fremont County's culture today is the mixture of those backgrounds and their heritage of use of the natural resources found here. Our cowboy image is recognized worldwide and that image reflects the determination of our citizens. The early residents of this county faced arid summers, frigid winters, and isolation from civilized society. They worked hard to establish their livelihoods, and today's residents similarly work hard and depend on Fremont County's natural resources to maintain their livelihoods. The accomplishments of our predecessors in the County were made through tenacity, risk-taking and stubbornness in exercising and protecting their constitutionally guaranteed rights.

Section 4.05 FREMONT COUNTY ECONOMY

The economic stability of Fremont County rests upon continued multiple use of the federally or State managed lands. Tax revenue is available to the County mainly through the ad valorem tax, or property tax. Secondarily, is the County's share of sales tax receipts. The limited amount of private property, which is approximately 15% of the County, greatly restricts the tax revenue of the County. That limited tax base must be protected, and the continued vitality of that tax base is dependent upon continued multiple use of federally or State managed lands. If multiple use is restricted, business income will suffer and sales and property taxes will be affected. If grazing is restricted, financial pressure will be placed on the rancher, which may even result in his going out of business. When that happens, the tax base of the County suffers, and the business income is also reduced.

In our sparsely populated county, all sources of economic support must be maintained at their highest sustainable level. The loss of any industry, at any level, heavily impacts smaller communities, most of which are reliant on one or two industries. The effects of such losses critically impact the community structure at the local level, causing loss of community cohesion and disintegration of the community itself. It is with this in mind that the Fremont County Commission mandates through the Fremont County Land Use Plan that all planning and management involving federally or State managed lands in Fremont County be done only with joint involvement of resource management agencies and coordination with Fremont County as required by State and federal laws.

The composition and health of the local economy are very important to Fremont County and to County residents. Planning and policy issues need to be based on an understanding

of the County economy, and with the health of the County economy in mind. In 1995 Fremont County entered a three-year study of the County economy with the University of Wyoming. The information from that study is used in the pages that follow, and more detailed information may be obtained by accessing the individual reports on file in the Fremont County Planning Department.

University of Wyoming reports available are:

Agriculture in Fremont County
Fremont County Migration Flows
Cost of County Government in Fremont County
Fremont County Population Estimates and Forecasts
Fremont County Per Capita Income: Indian
Sources of Personal Income in Fremont County
The Service Sector in Fremont County
The Retail Sector in Fremont County
The Travel Industry in Fremont County
An Economic Profile of Fremont County
The Construction Sector in Fremont County
The Lumber & Wood Products Sector in Fremont County
The Mining Sector in Fremont County
The Wholesale Sector in Fremont County
The Finance, Insurance, & Real Estate Sector in Fremont County
The Local Government Sector in Fremont County
Fremont County Payments in Lieu of Taxes (PILT)
The Fremont County Economy: Past, Present, and Future (1970-2005)
Fremont County Economic Model
The Economic Role of the Indian Tribes in Fremont County, WY
Federal Lands Dependent Sectors in the Fremont County Economy
The Economic Impact of the Wind River Reservation on Fremont County
Outdoor Recreation on Public Lands
External Trade Flows in the Fremont County Economy
Retail Expenditure Leakage in Fremont County
Impacts of Grazing Reductions

(a) Agriculture

Agriculture continues to be a very important part of Fremont County's economic and cultural heritage. In comparison with Wyoming's other 22 counties, Fremont County ranks first in all hay production, fourth in sugar beets, sixth in dry beans, eighth in oats, and eighth in corn (2004). Fremont County is ranked third in total value of livestock and crops. Based on assessed valuation, the amount of land in agricultural use has remained relatively constant in Fremont County over time. Fremont County has the largest number of irrigated acres of any county in Wyoming. Agricultural use is the dominant land use in the county.

The continued viability of the livestock industry is vital in maintaining Fremont County's economy and government, as well as preserving the culture and heritage of area residents. In 1997 the Bureau of Land Management authorized a total of 285,221 animal unit months (AUM) in Fremont County, although it should be noted that permitted use figures and actual use figures often vary significantly.

Fremont County also ranks fourth in all Wyoming counties in the production of cattle. Today, 73% of Fremont County's agricultural income comes from livestock. The agricultural industry of Fremont County contributes significantly to the State of Wyoming's national ranking in agriculture. Wyoming ranks first in the nation in average size of farms and ranches, and second in wool production and number of breeding sheep. Wyoming ranks third in the nation in number of all sheep and lambs.

The key to agricultural productivity in Fremont County is the large amount of irrigated acres made possible by the backbreaking labor of early homesteaders and several federal irrigation projects. The lawful application of water rights for agricultural purposes as mandated by the prior appropriation water doctrine is responsible for the bounty and diversity of Fremont County's economy. Irrigated acres are the base of all agriculture, including range operations, and water rights will be protected fiercely.

(b) Mining and Minerals

Fremont County recognizes the importance of the mineral industry to our tax base and our economy. The assessed valuation for oil and gas for 2003 was $445,438,569. This has far reaching implications on the tax base in that one mil generates over $445,000. The mineral industry provides many opportunities for employment and benefits our communities in several ways. Good paying jobs open the door for greater needs of services and consumables. The mineral industry is a friend to Fremont County and an integral part of the good things we enjoy as a community.

(c) Additional Inputs

Not only does Fremont County's private economy depend heavily on federally or State managed lands, but also Fremont County government receives approximately 15 percent of its general fund revenues from federally or State managed lands as well (See Table 2).

Table 2 - Fremont County Revenue from Federally or State managed lands:

	92/93	93/94	94/95	95/96	96/97	97/98
FOREST RESERVE	103,841	101,772	89,516	90,852	108,919	88,226
FEDERAL PILT	721,394	727,590	711,759	708,603	769,713	774,223
TOTAL FED ASSIST	825,235	829,362	801,275	799,455	878,632	862,449
TOTAL REVENUE	7,723,531	10,084,173	8,661,836	7,738,432	8,845,126	9,505,837
PERCENT FEDERAL	10.7%	8.2%	9.3%	10.3%	9.9%	9.1%

	98/99	99/2000	2000/01	2001/02	2002/03	11 YR AVG
FOREST RESERVE	70,450	81,809	76,322	110,959	95,070	92,521
FEDERAL PILT	768,381	812,287	866,146	*2,540,522	1,473,298	988,538
TOTAL FED ASSIST	838,831	894,096	942,468	2,651,481	1,568,368	1,081,059
TOTAL REVENUE	9,398,024	9,688,208	12,113,136	15,401,431	14,637,436	10,345,197
PERCENT FEDERAL	8.9%	9.2%	7.8%	17.2%	10.7%	10.4%

SOURCE: FREMONT COUNTY TREASURER *(*PILT payments for year 2001/02 were significantly larger due to a change in the pay schedule by the federal government. The schedule moved forward resulting in two payments being made in the same year.)*

Forest Reserve Funds are based on the amount of U.S. Forest land in each county and the amount of revenue received from timber sales, camping fees, etc. on those lands. The State Treasurer distributes Forest Reserve Funds to counties.

The Payment In Lieu of Taxes funds (PILT) are paid directly to the County's general fund by the Bureau of Land Management and are determined by a complex formula of population and the amount of certain types of federal land in the County. These funds are intended to provide counties with funds that would be available from private tax payments if this land were under private ownership. It should be noted that PILT has never been funded at the authorized level and even though federally managed lands comprise 54% of Fremont County's land mass, PILT only constitutes 10% of Fremont County's general fund amount.

State law authorizes Severance Tax Revenues to the County. A significant amount of revenue is generated for County use from various mining operations on federal lands in Fremont County. While a significant portion of the Severance Tax is collected from federally or State managed lands and resources, a portion is collected from mining on private lands. Therefore, Severance tax payments are not included in the above table.

Federally managed lands have other impacts on Fremont County. One such area is employment. Of the approximately 17,597 jobs in Fremont County reported by the Wyoming Department of Employment, 2,979 or 16.1 percent directly involve operations on federally or State managed lands. Wages generated by employment

on federally or State managed lands amounts to 14.9 percent of total wages earned in Fremont County. A significant amount of Fremont County's property tax income is based on federally or State managed land operations. Fremont County assessed valuation directly attributed to federal lands is 53.9 percent of the total county assessed valuation (1994).

The economy of Fremont County benefits from multiple use policies that allow for grazing, mining, the harvest of marketable timber, the development of oil and gas reserves, water storage for irrigation and hydroelectric power, and recreational use of the federally or State managed land. Many of our industries have seen the impact of policies made at the federal level without adequate local coordination. Some of our historic industries have been forced out by ill-conceived policies. We must protect and enhance our historical industries to insure that our natural resource based economy can survive.

Past experience shows that our local custom and culture will not be understood at a Federal level without our joint input. The local economy as it relates to the use of the federally or State managed land is best protected by the citizens who live here and will not be given adequate regard by agencies headquartered far from our community, or by individuals in power who have little or no history in our community. This is the spirit in which the federal laws were enacted calling for federal coordination with local governments, just as our nation itself was formed with a spirit that the people were to govern themselves in a citizen-run government.

Section 4.06 FREMONT COUNTY SOCIAL STABILITY

Federally or State managed lands and natural resources provide the base structure and continuance of Fremont County's social stability. Agriculture, mining and mineral production, tourism, and the significant impact of the high number of government officials are directly tied to the federally or State managed lands. Indirectly these sectors provide guidance and economic stimulus for the rest of the County. Any management decision for federally or State managed lands and natural resources will continue to have a ripple effect throughout the whole society.

Agriculture has historically been perhaps the most socially stable industry. Although agricultural production income rises and falls, the social influence of agriculture remains constant. Some of our social events tied to agriculture are the fairs, the 4-H program, parades and rodeos.

Social stability has been disrupted at times. When the gold mining ended in the South Pass area, the three communities of South Pass City, Atlantic City and Miners Delight, and the rural residents who traded and mingled socially in those communities were forever changed. Mining in the County has come and gone on a large scale twice more. These were the uranium mines and the iron ore mines. The impact of the closure of these

mines was that many families moved from our communities causing a loss, not only economically, but socially as well. The loss of these families impacted the schools, churches, and other parts of society, which all benefit from population numbers and diversity. Even more families moved away after the loss of the timber industry. The families that stayed had to bear the social burden of the lack of employment opportunity and subsequent upheaval of holding themselves together in the face of uncertain times.

The current minerals industry in Fremont County consists mostly of natural gas development. This industry along with oil production is cyclic and based on market fluctuations and federal policies.

Tourism is based on the abundant natural resources in the County, but is impacted by federal regulations (such as expanding grizzly bear habitat boundaries), which negatively affect tourism revenues and adversely impact jobs and the tax base.

The social structure of Fremont County is based on the principles outlined in the United States and Wyoming Constitutions--specifically the protection of property rights and the balance of power that allows the three branches of government to provide services required by the people they support. Resource management decisions have not always been based on coordination with the parties involved and many of those decisions have not been given legislative review. Contracts, Memorandums of Understanding, and other agreements found between governmental agencies bypass the legislative process, end-run local input, and significantly undermine the social stability of any area, as well as weight the constitutional balance of power this Republic and State were founded upon.

PART II

RESOURCE COMPONENTS OF THE FREMONT COUNTY LAND USE PLAN

Article V. LAND

Approximately 58.2 % of the surface land in Fremont County is federally and State managed, 26.89 % is the Wind River Indian Reservation, and the remaining 14.91% is under private ownership. (Source: Fremont County Assessor, February 24, 2004)

Section 5.01 GUIDELINES:

The policy hereby set forth for the achievement of the Goal and Objectives of this component item shall be consistent with the protection of Fremont County's historic:

1) custom,
2) culture,
3) economic viability, and
4) social stability.

Section 5.02 GOAL:

The goal of this plan is to assert the rights granted under the laws of the United States of America and the State of Wyoming, to a voice in the planning and regulation of the federally or State managed lands within the borders of Fremont County Wyoming. The high percentage of federally or State managed land in this county has led to a dependency on the rights of use of this land to the economic base and culture of this area. The goal of the Fremont County Land Use plan is to secure the right of use of the federally or State managed land on no more restricted level than is spelled out by the accompanying plan components for Water, Timber, Grazing, Mining and Minerals, Endangered Species, Recreation, and Transportation, and others.

Section 5.03 OBJECTIVES:

Strive for current or higher levels of use and development of federally or State managed lands and natural resources to occur alongside common sense conservation for future generations. To require credible science to be employed in any decisions made regarding lands and resources in Fremont County.

Section 5.04 POLICY:

(a) FREMONT COUNTY CUSTOM:

During the 18th and 19th centuries the policy of the federal government of the United States of America was to conduct a systematic disposal of the unsettled land. The Land Ordinance of 1785, the Homestead Act of 1862 and the General Land office surveys were intended to facilitate this policy. Approximately 10% of federal land was transferred to private ownership during these years. During the latter years of the 1800's it became apparent that some of the public lands were of a unique character and were set aside in the form of forest reserves, national parks, national monuments, etc. Still other public lands were not desirable for homestead because the lands were too swampy, too arid, too alkaline, or had poor topography for farming or ranching or for other reasons.

Late in the 19th century and all through the 20th century the policy of our government toward the public lands changed from one of disposal to conservation and use of the land for the good of the public. The Forest Reserve Act, the Taylor Grazing act, FLPMA, NEPA, the Outdoor Recreation Act and others were geared toward maintaining land in the public trust for economic and recreational use by the people, as well as providing refuge and habitat for flora and fauna. The citizens of our country have come to treasure the federally or State managed land system. These lands have become a valuable asset. The people of this great country are allowed to roam freely and make use of land in excess of lands that they hold patent to. The federally or State managed land policies were drafted to allow for the multiple use of the federally or State managed lands, as well as economic use.

(b) FREMONT COUNTY CULTURE:

Land and water and the relationship of one to the other began at the dawn of time. Species of plants and animals have come and gone throughout geologic history but the land and the water have been constant. The surface of the land forms a watershed and the character of the vegetation and the topography on and of that land determines the dynamics of that watershed. Water is a resource that is of the utmost value to our county and to those downstream of our county. Fremont County contains the headwaters of numerous streams and rivers.

The use of federally or State managed land for harvest of timber was a component of the forest reserve "act" that originally established the national forests. Access roads were built and improved, skid trails were cleared, timber harvest was done in the most economic manner possible, and fire suppression was called for *(USFS Use Book of 1905)*. Modern concerns over logging methods and road building have led to a near shutdown of this historic industry in Fremont County.

Grazing on federally or State managed land has a similar history in the western States. The Taylor Grazing of Act 1934 established that grazing would be allowed, and managed, on federally or State managed land. Recently the manner in which grazing has been regulated at the ground level has become overly

burdensome as federal or State land managers have drifted away from the official policies at the upper levels of government.

"The public lands are to be managed in a manner which recognizes the National need for domestic sources of minerals, food, timber, and fiber from the public lands" (FLPMA). The Wyoming Oil and Gas Commission (W.S. 30-5-103), as well as the federal or State land management agencies regulate oil and gas development. Extraction of these resources also involves the development of access roads, as well as pipeline corridors, and well site development.

The presence, or potential presence, of endangered species on the federally or State managed lands of Fremont County has added a burden to the lawful use and enjoyment of federally or State managed land. This has taken place in the form of varied access and use restrictions relating to each species. Historically some of these species were considered detrimental to the livelihoods and safety of county residents, and they were destroyed.

Recreation on federally or State managed land means different things to different people or groups of people. The Outdoor Recreation Act of 1963 States that

> "Congress finds and declares it to be desirable that all American people of present and future generations be assured adequate outdoor recreation resources, and that it is desirable for all levels of government and private interests to take prompt and coordinated action to the extent practicable without diminishing or affecting their respective powers and functions to conserve, develop, and utilize such resources for the benefit and enjoyment of the American people."

The use of off-road vehicles, horses, and other types of ATVs has come to significantly contribute to the exercise of cultural activities associated with the various land-based economies of Fremont County. Their enhancement of the ability to access the more difficult terrain of the county provides significant benefit to users of those areas.

The transportation industry has evolved in the western States over the last 200 years. Indigenous and migrant peoples have walked, and ridden by horse and wagon along the trails of historic Fremont County. Later, trains became key to our economy and culture. Our county still benefits from the goods and services provided by the railroads, and even more from over-the-road trucking, and airline freight services. The benefits of tourism and the free movement of our citizens depend on our highway and airline system.

(c) FREMONT COUNTY ECONOMIC VIABILITY:

Fremont County's economic viability depends to a large extent on the federally or State managed lands in the county and the continued use of the resources

associated with these lands. Some of these resources are water, wildlife, timber, forage species, and minerals. Recreation on federally or State managed lands is highly valued to our residents and as part of our tourism economy.

Water is fundamental to our economy and our very lives. Domestic consumption, livestock industry, and irrigation of farmland are the most fundamental water uses. Water recreation adds dollars to our economy as well. Wildlife is the basis for a large portion of our tourism economy and subsistence hunting has been a part of our economy since the earliest settlements. The managed harvest of the timber resource created many jobs and supported the economies of towns like Dubois for many years. Grazing livestock on federally or State managed lands has taken place from the beginning of the settlement of our county. Without the access to grazing acreage we would have no significant livestock industry. From the mid 1800's minerals have been a cornerstone of both our base economy and the amenities our government can sponsor. Gold brought settlers, coal heated their homes, gravel built the roads, iron built the railroads, uranium built our towns, and oil and gas is paying for our schools. The largest towns in Fremont County progressed from dirt streets to asphalt and from outhouses to treatment plants because of the mineral economy. Tourists and business travelers alike are very important to the service sectors of motels, restaurants and taverns. The economic viability of Fremont County rests directly upon the continued and enhanced use of federally or State managed lands.

(d) FREMONT COUNTY SOCIAL STABILITY:

Federally or State managed land use and enjoyment has considerable effect on the social stability of Fremont County. Citizens customarily make use of these lands when recreating with their families and friends. Sons and daughters learn the sports of fishing and hunting. Families and social groups get together for a day of snowmobiling, or boating. Church groups gather to cut Christmas trees for members of the church. Tribal members hunt for meat for the elderly. People come from around the globe to experience a family vacation in our outdoors.

Fremont County's social stability is also tied to the resources derived from the federally or State managed lands. In our county there are agriculture communities, tourism communities, mining communities, and, in past years, timber communities. These labels indicate the industry that the families, the local government and the local service industries are primarily dependent on. These labels also indicate which communities will be hit the hardest by increased restrictions on those industries. Industry means jobs and jobs build families. If an act of God such as drought, fire, or damaging storms creates a hardship on an industry, those families have to bear it because nothing can change it. However if an act of government creates that hardship, "we the people" have no obligation to stand silently.

Section 5.05 REQUIREMENT FOR COORDINATION:

Rangeland Renewable Resources Planning Act of 1974,

Sec. 3, 6(a) "As part of the program provided for by section 3 of this Act, the Secretary of Agriculture shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, coordinated with the land and resource management planning processes of State and Local governments and other federal agencies."

National Forest Management Act of 1976,

(B), (5) Preservation of important historic, cultural, and natural aspects of our national heritage
(9) "Coordination with the land and resource planning efforts of other federal agencies, State and local governments and Indian tribes;

Federal Land Policy and Management Act of 1976

FLPMA provides specific directives for federal agencies to coordinate public land use planning with county governments and to ensure that federal land use plans are consistent with local plans. The statute details federal agencies' mandate as follows:

Sec. 202. [43 U.S.C. 1712] (c) In the development and revision of land use plans, the Secretary shall-

> **(9)** to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management ... of the States and local governments within which the lands are located ... the Secretary shall, to the extent he finds practical, keep apprised of ... local ... land use plans; assure that consideration is given to those ... local ... plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of ... local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands. Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and

with respect to such other land use matters as may be referred to them by him. Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.

43CFR1610.3-1 Coordination of planning efforts.
In addition to the public involvement prescribed by Section 1610.2 of this title the following coordination is to be accomplished with local governments.

Congress and the courts have provided the means by which county governments and resource users are to be involved in planning.

Section 5.06 AGENCY MANDATES:

"The public lands are to be managed in a manner which recognizes the National need for domestic sources of minerals, food, timber, and fiber from the public lands" (FLPMA).

This is also provided for in Wyoming State law: "The land shall be used to foster, promote and encourage the optimum development of the State's human, industrial, mineral, agricultural, water, wildlife and wildlife habitat, timber and recreational resources" (W.S. §36-12-106).

"The Secretary (of the Interior) shall, to the extent he finds practical, keep apprised of State, local, ... land use plans; assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands..." (FLPMA)

"The board of county commissioners of a county which has officially adopted a comprehensive plan pursuant to Wyoming Statute 18-5-202(b) may participate in efforts to coordinate the plan with federal regional forest or other resource management plans as provided in the Federal Land Policy and Management Act of 1976 and federal regulations adopted pursuant to that act, including, but not limited to Title 36 of the Code of Federal Regulations, part 219.7, and Title 43 of the Code of Federal Regulations, part 1610.3" (W. S. 18-5-208).

"The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable

or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory approaches that respect the role of State, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable. We do not have such a regulatory system today" (William J. Clinton, Presidential Executive Order 12866).

Section 5.07 GUIDANCE:

It is imperative that land activities occurring in Fremont County are analyzed to provide the highest and best use of the water resource. Reservoir storage of spring runoff flows is encouraged, as an important way to provide water for year-around needs. Methods to distribute water to arid areas are encouraged to provide better dispersal of people, livestock and wildlife. Protection of an adequate supply of potable water for the county's residents is essential.

The policy of Fremont County shall be to increase the harvest of timber products to a level that optimizes the benefit to the economy of Fremont County, the forest resource and the non-consumptive users as well. To achieve this goal it will be necessary to re-establish an acceptable level of access and logging activity, and good sense resource management on the timbered federally or State managed land.

The policy of Fremont County shall be to re-establish grazing leases to adjudicated levels, and improve the coordination between the grazing leaseholder and the management of federal or State land and resource that he/she depends on.

The levels of mineral development are sure to change over time and it is our goal to work for a common sense approach to maintaining the industry while protecting the environment in keeping with the policy of encouraging private enterprise to develop domestic mineral resources *(Mineral Leasing Act of 1920)*.

State and federal agencies responsible for endangered species recovery will coordinate their actions with Fremont County. Management plans and policies to maintain ranges for endangered species will be kept to a level that does not impact the custom, culture, economic viability and social stability of Fremont County as defined throughout the contents of this plan.

Fremont County must optimize the levels of various recreational opportunities on federally or State managed land to embrace the whole gamut of motorized and non-motorized recreation. The role of our present and future county officials is to be proactive in protecting these rights in coordination with State and federal agencies (Stat. 49; 16 U.S.C. 460l through 460l–3).

The role of our current and future county officials with regard to transportation and federally or State managed land must be to encourage the development and evolution of

the transportation industry in the form of support for road and railroad rights-of-way, airport development and other associated projects that enhance the transportation industry while protecting the federally or State managed land resource in a common sense manner.

The foregoing policy of the land component is intended to support the other plan components. As the other plan components evolve so may this component. This plan is being developed under the guidance of law and is to be a means to deliver the voice of our county to each agency that, by law, is instructed to listen.

Article VI. ENDANGERED SPECIES

Section 6.01 GUIDELINES:

The policy hereby set forth for the achievement of the Goal and Objectives of this component item shall be consistent with the protection of Fremont County's historic:

1) custom,
2) culture,
3) economic viability, and
4) social stability.

Section 6.02 GOAL:

To mesh: a.) Endangered species management concerns with: b.) Local custom, culture, economic viability and social stability concerns. All management decisions must adequately reflect genuine concern by demonstrating action for achieving the protection of both concerns (a. and b.) and one must not subordinate the other.

Section 6.03 OBJECTIVES:

1) Require State and federal agencies to coordinate their actions with Fremont County as State and federal laws mandate, and use sound science in any decisions made regarding County lands and resources.

2) Require State and federal resource management agencies to follow all State and federal statutes with regards to the application of endangered species management.

3.) Provide for the protection of all property rights and interests when endangered species protections are applied.

Section 6.04 POLICY:

(a) FREMONT COUNTY CUSTOM:

Fremont County citizens migrated to the area because of abundant natural resources. These resources provided a livelihood to the early settlers and native populations. Many historical documents record the names of people, both white and native, who customarily harvested and developed resources, and created resource-based communities. It has been the custom of Fremont County residents

to use common sense and skepticism in evaluating the science alleged by federal agencies in promoting endangered species listings.

(b) FREMONT COUNTY CULTURE:

The residents of Fremont County have a long heritage of using resources on both federally or State managed and private lands. Federally or State managed lands are intertwined with private lands. Fremont County land would probably be completely private if payment of property taxes had not prevented white settlers from acquiring "leftover" public land of lesser value. Land not patented by homesteaders was commonly used by all residents for resource consumption, often for free. The value of private property and the culture of county residents are still dependent upon the use of adjacent federally or State managed lands. A culture of free and easy access across all federally or State managed lands continues to the present day. Using endangered species to prohibit access to historic lands and prohibit legitimate exercise of cultural practices by all county cultures without proof of the value and legitimacy of such actions is rejected.

(c) FREMONT COUNTY ECONOMIC VIABILITY:

Fremont County's economy relies in large part on natural resource use in connection with federally or State managed lands. It is the policy of the County, as well as the requirement of federal law, to mandate federal agencies to coordinate their actions with the County Land Use Plan and provide a thorough, legitimate County approved economic analyses of proposed actions as several federal laws dictate. Listing a species as Threatened or Endangered could have a negative impact on the County's economy. Most game animals, timber and firewood are harvested on federally or State managed lands today. Most recreation, grazing and mineral development also occurs on federally or State managed land. Jobs related to resource use, derived in part or wholly from federally or State managed lands or from public resources such as wildlife or water, provide a hefty portion of the total County economy. Curtailment of economic activity as a result of endangered species protection is already occurring, for example by reductions in elk numbers due to wolf predation in the County.

(d) FREMONT COUNTY SOCIAL STABILITY:

Erosion of access to federally or State managed land and resources and fines and imprisonment as a result of federal species protection actions has caused hardships on county residents. For example, disruption of local social stability as evidenced by grizzly attacks (some fatal) where the victims cannot shoot back for fear of imprisonment and/or fines.

Livestock owners witnessing a wolf attack cannot defend their property because the fines for shooting a wolf are greater than the value of the livestock. Because of the impacts of the Endangered Species Act, many county families who rely on resource production from federally or State managed lands are in financial peril with all the attendant social manifestations including depression, stress, bankruptcy, fear of agency reprisal and loss of hope. The social fabric of the community is being torn apart by the heavy handed application of the Endangered Species Act with little regard to county custom, culture, economic viability and social stability or property rights. The Endangered Species Act should not be an impediment to the safety, future growth, well-being and prosperity of County citizens.

Section 6.05 REQUIREMENT FOR COORDINATION:

Rangeland Renewable Resources Planning Act of 1974,

Sec 3, 6(a) "As part of the program provided for by section 3 of this Act, the Secretary of Agriculture shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, coordinated with the land and resource management planning processes of State and Local governments and other federal agencies."

National Forest Management Act of 1976,

(B), (5) Preservation of important historic, cultural, and natural aspects of our national heritage; (As referenced in NEPA, preservation of culture, see Webster's, Culture is the integrated pattern of human knowledge and behavior passed to succeeding generations; it is the customary beliefs, social forms, and material traits of a social group.)
(9) "Coordination with the land and resource planning efforts of other federal agencies, State and local governments and Indian tribes;

US Forest Service line officers are required by law (40 CFR. 1502.16(c), 1506.2) to revise the Forest Plan not less than every 15 yrs. At the time of this writing, the Shoshone National Forest last wrote their plan 18 years ago. The law goes on to say,

(a) The responsible line officer shall coordinate regional and forest planning with the equivalent and related planning efforts of other Federal agencies, State and local governments and Indian tribes.
(b) The responsible line officer shall review the planning and land use policies of other Federal agencies, State and local governments, and Indian tribes.

The results of this review shall be displayed in the environmental impact Statement for the plan. The review shall include-

(1) Consideration of the objectives of other federal, State and local governments and Indian tribes as expressed in their plans and policies:

(2) An assessment of the interrelated impacts of these plans and policies:

(3) A determination of how each Forest Service plan should deal with the impacts identified, and:

(4) Where conflicts with Forest Service planning are identified, consideration of alternatives for their resolution.

(c) In developing land and resource management plans, the responsible line officer shall meet with the designated State official (or designee) and representatives of other Federal agencies, local governments and Indian tribal governments at the beginning of the planning process to develop procedures for coordination. As a minimum, such conferences shall also be held after public issues and management concerns have been identified and prior to recommending the preferred alternative.

(d) In developing the forest plan, the responsible line officer shall seek input from other Federal, State and local governments, and universities to help resolve management concerns in the planning process and to identify areas where additional research is needed. This input should be included in the discussion of the research needs of the designated forest planning area.

(e) A program of monitoring and evaluation shall be conducted that includes consideration of the effects of National Forest management on land, resources, and communities adjacent to or near the National Forest being planned and the effects upon National Forest management of activities on nearby lands managed by other Federal or other government agencies or under the jurisdiction of local governments.

The agency regulations also reflect the specific requirements to protect the economic and community stability of a county. The preparation, revision, or significant amendment of a forest plan includes the formulation of reasonable alternatives according to NEPA procedures. The alternatives must be in sufficient detail to provide the following information regarding economic and community stability.

The physical, biological, economic, and social effects of implementing each alternative considered in detail shall be estimated and compared according to NEPA procedures. These effects include those described in NEPA procedures (40 CFR 1502.14 and 1502.16) and at least the following:

(3) Direct and indirect benefits and costs, analyzed in sufficient detail to estimate-

(iii) The economic effect of alternatives, including impacts on present net value, total receipts of the Federal Government, receipt shares to State and local governments, income, and employment in affected areas.

The significant physical, biological, economic, and social effects of each management alternative shall be evaluated in detail.

Further:

The evaluation shall include a comparative analysis of the aggregate effects of the management alternatives and shall compare present net value, social and economic impacts, outputs of goods and services, and overall protection and enhancement of environmental resources.

Upon implementation, the plan shall be evaluated to determine how well objectives have been met and how closely management standards and guidelines have been applied. Necessary changes in management direction, revisions, or amendments to the forest plan as necessary, shall be recommended to the forest supervisor.

Federal Land Policy and Management Act of 1976

FLPMA provides specific directives for federal agencies to coordinate public land use planning with county governments and to ensure that federal land use plans are consistent with local plans. The statute details federal agencies' mandate as follows:

Sec. 202. [43 U.S.C. 1712] (c) In the development and revision of land use plans, the Secretary shall-

(9) to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management ... of the States and local governments within which the lands are located ... the Secretary shall, to the extent he finds practical, keep apprised of ... local ... land use plans; assure that consideration is given to those ... local ... plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of ... local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands. Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him. Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.

43CFR1610.3-1 Coordination of planning efforts.

(a) In addition to the public involvement prescribed by Section 1610.2 of this title the following coordination is to be accomplished with local governments.

Endangered Species Act:

> Amendments to the Endangered Species Act in 1988 require the US Fish and Wildlife Service to notify State and county governments regarding all proposed listings of threatened or endangered species, all proposed additions or changes in critical habitat designations, and all proposed protective regulations. (16 U.S.C. 1533(b)(5)(A))
>
> The listing of a threatened or endangered species by the Secretary is to be based on the best scientific and commercial data available, after taking into account those efforts of a State, or any political subdivision of a State, to protect the species, (16 U.S.C. 1533(b)).
>
> "The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) of this section on the basis of the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat." Therefor, failure to consider economic impacts is a violation of statute. "The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned." (16 U.S.C. 1533(b)(2)).

The 1988 amendments to the ESA require that county governments are to be notified by USFWS regarding the listing, delisting, or reclassification of a threatened or endangered species or designation or revision of its critical habitat. This notification must be "actual notice". (16 U.S.C. 1533(b)(5)(A)(iii)). Actual notice means the county must receive a letter regarding any of the above actions. General newspaper or Federal Register notice is not enough. Once notified, the county government has the opportunity to comment on the proposed species listing or critical habitat designation. If the County disagrees with the USFWS decisions, the USFWS must specifically respond to the comments of local government in writing. (16 U.S.C. 1533(i)). The courts have stated that the failure of the federal agency to adequately respond to comments made by the county government (or the public) will void the decision, Natural Resources Defense Council v. Clark, No. 86-0548(August 13, 1987, E.D. Ca.).

Designation of critical habitat or preparation of recovery plans (for endangered species) should be considered major federal actions significantly affecting the quality of the human environment. County governments can press for an environmental impact

Statement under the NEPA process to evaluate federal actions regarding critical habitat and recovery plans, thus forcing federal coordination with the county.

Section 6.06 AGENCY MANDATES:

To the extent that USFWS claims it is illegal under the Endangered Species Act for an individual to protect his private property such as livestock under attack from wolves or grizzlies, Fremont County asserts the following Executive Order and the aforementioned Acts as contradictory to that claim:

> Presidential Executive Order No. 12630 issued March 15, 1988 by President Reagan titled Governmental Actions and Interference with Constitutionally Protected Property Rights, States, in part, "Actions undertaken by government officials that result in a physical invasion or occupancy of private property, and regulations imposed on private property that substantially affect it's value or use, may constitute a taking of property. Further, governmental action may amount to a taking even though the action results in less than a complete deprivation of all use or value, or of all separate and distinct interests in the same private property and even if the action constituting a taking is temporary in nature."
> The E.O. further States, "Undue delays in decision making during which private property use is interfered with carry a risk of being held to be takings."
> The E.O. cannot legally prevent takings, but it directs the government to prevent unnecessary takings. An E.O. is not a statute but it is binding within the limits of existing law. Its authority is permanent unless it is amended or repealed by the issuing President.

Recent Supreme Court decisions have imposed strict limits on how far government regulations can restrict the use of private property. Nollan v. California Coastal Commission 107 S.Ct 3141 (1987) and Lucas v. So. Carolina Coastal Council No. 91-453, June 29, 1992, have tightened the standard determining when a restriction on property use becomes a taking for which the government must pay. These cases determine that even a temporary and/or partial deprivation of the economic use of property caused by a governmental action could amount to a taking. If a taking occurs, the government must prove that there is a public purpose that warrants the taking and must provide just financial compensation and due process. Undue delays in the government's decision-making process could lead to a taking according to these landmark cases.

The E.O. establishes a process that requires Evaluation of Risk and Avoidance of Unanticipated Takings be prepared by the Attorney general to be used by the agencies as a yardstick for making a TIA (Takings Implications Assessment.) It designates an official in an agency responsible for compliance with the E.O. Agencies are to assess the takings implications of proposed regulatory actions and address those actions in the light of takings implications to the OMB. Each agency must report annually an itemized compilation of all awards of just compensation for takings. The compliance by the federal

agencies has been generally inadequate with the E.O. and TIA process. The county government should look to the E.O. as an important tool.

"Neither 'property' nor the value of property is a physical thing. Property is a set of defined options...It is that set of options which has economic value....It is the options and not the physical things, which are the 'property'-economically as well as legally...But because the public tends to think of property as tangible, physical things, this opens the way politically for government confiscation of property by forcibly taking away options while leaving the physical objects untouched." Thomas Sowell

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In summary, Fremont County expects all federal and State agencies to fully coordinate all proposed actions with the county early on, during and throughout the process. Fremont County expects due notification and full participation in the planning and implementation process as required by State and federal laws.

Fremont County has in place resolutions regarding various related issues, as appended hereto.

Article VII. FIRE MANAGEMENT

Section 7.01 GUIDELINES:

The policy hereby set forth for the achievement of the Goal and Objectives of this component item shall be consistent with the protection of Fremont County's historic:

1) custom,
2) culture,
3) economic viability, and
4) social stability.

Section 7.02 GOAL:

Protect life, property and resource values in a manner that maximizes the benefits of multiple use to the people of Fremont County.

Section 7.03 OBJECTIVES:

1. Suppress wildfires in areas where fire would endanger human safety and private property or valuable vegetation that will support and expand multiple use.
    A. Fight fire aggressively, including at night.
    B. Salvage timber products where feasible.
    C. Keep roads and trails open where possible to provide access for ATV's and other vehicles used for fire suppression.

2. Consider "let burn" policy for areas where invading trees or shrubs are reducing the value of livestock and big game ranges, or there are other considerations that support and extend multiple use.

3. Encourage development of policies for grazing rest prescriptions related to either wildfires or prescribed burns on a site-specific basis.
    A. Where rest prescriptions are appropriate, they may include the year of the burn, grazing light late season use or moderate late season use in the year following the burn.
    B. Post-fire grazing will not be limited when monitoring and evaluation produces data that demonstrates grazing will not unduly harm the range.

4. Encourage prescribed burning in areas that will support and expend multiple use, or reduce the threat of wildfire, and where feasible, market the renewable resources before burning. Require credible science to be employed in any decisions made regarding lands and resources in Fremont County.

Section 7.04 POLICY:

(a) FREMONT COUNTY CUSTOM:

It has been the custom for Fremont County residents to seek to prevent the occurrence of undesirable fires in Fremont County in order to prevent disruptions in economic viability and social stability from loss of personal and public property. It is also the custom of Fremont County to responsibly use horses, ATVs, snowmobiles, and other ORV's to monitor and access fire suppression and prevention activities.

(b) FREMONT COUNTY CULTURE:

In Fremont County, as over most of the West, early settlers considered all fires as a threat and they were automatically suppressed. As a result, there are areas where excessive fuel loading have built up, and areas where undesirable shrubs and trees have encroached and crowded out more desirable vegetation. The people of Fremont County have always been largely self sufficient; they have a strong land ethic. They feel the federally or State managed lands should be managed for multiple use and the benefit of county residents. They support fire management policies that improve and expand multiple use on federally or State managed lands, and do not waste the natural resources.

(c) FREMONT COUNTY ECONOMIC VIABILITY:

Fremont County economic viability depends to a large extent on the management of federally or State managed lands in the county and the wise use of their natural resources.

Large wildfires on federally or State managed lands adversely impact the economic viability of Fremont County, through the loss or damage of the natural resources, including scenery enjoyed by the many tourists traveling through the area.

Fremont County has an excellent fire organization, as do the various cities and towns. The Wind River Indian Reservation has a large organized fire crew that travels to fires all over the west.

Local fire fighters from county and city fire departments and equipment are often sent to large wildfires out of county. There is economic benefit returned to the county from wages and equipment rental from the use of local resources on

wildfires on federally or State managed lands.

Fire management policies and prescribed fires that suppress damaging wildfires and improve and expand multiple use on federally or State managed lands have a positive impact on the economic viability of Fremont County.

(d) FREMONT COUNTY SOCIAL STABILITY:

Undesirable fire can create social instability from the standpoint of loss of recreational areas, which force citizens to concentrate in unburned areas, increasing a feeling of loss of personal space and special places. Overcrowding of recreational areas generates a loss of interest in the values that Fremont County citizens cherish. The county rejects activities that may be used to drive citizens from their historic and cultural special places.

Section 7.05 REQUIREMENT FOR COORDINATION:

Laws requiring the Forest Service (FS) to consider county governments in its planning processes have become more explicit over time.

The Multiple Use and Sustained Yield Act of 1960: (Public Law 86–517; Approved June 12, 1960, As Amended Through Public Law 106–580, Dec. 31, 2000; 16 U.S.C. 528-531)

Section 2, of the act, directs the Secretary of Agriculture "to develop and administer the renewable surface resources of the national forests for multiple use and sustained yield of the several products and services obtained there from." (16 U.S.C 529) However, the act merely authorized the Secretary of Agriculture "to cooperate with interested State and local governmental agencies and others in the development and management of the national forests" (16 U.S.C 530).

Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA): (Public Law 93–378; Approved August 17, 1974, As Amended Through Public Law 108–21, April 30, 2003; 16 U.S.C. 1600)

This act, however, clearly requires Forest Service to coordinate with the County.

Section 3, the RPA recognized the importance of renewable forest and range resources, and directed the Secretary of Agriculture to prepare a Renewable Resource Assessment.

The RPA elevated the relationship between the FS and the county governments from one of cooperation to one of coordination with the following requirement:

> Section 6 (a) "As a part of the Program provided for by section 4 of this Act, the Secretary of Agriculture shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, coordinated with the land and resource management planning processes of State and local governments and other Federal agencies." (16 U.S.C. 1604 (a))

National Forest Management Act of 1976:

> Significantly, Section 6 (a) of the RPA, quoted above, was not amended. The National Forest Management Act requires that each plan developed "be revised (A) from time to time when the Secretary finds conditions in a unit have significantly changed, but at least every fifteen years" (19 U.S.C. 1604 (f) (5)). The FS must coordinate land use planning efforts with those of county governments under this act or through the NEPA process.

Section 7.06 AGENCY MANDATES:

"Community Stability" is defined as a combination of local custom, culture and economic preservation. As described by the Forest Service:

History and Objectives of Forest Reserves are for the purpose of preserving a perpetual supply of timber for home industries, preventing destruction of the forest cover which regulates the flow of streams, and protecting local residents from unfair competition in the use of the range....

> "We know that the welfare of every community is dependant upon a cheap and plentiful supply of timber; that a forest cover is the most effective means of maintaining a regular stream flow for irrigation and other useful purposes, and the permanence of the livestock industry depends up the conservative use of the range." From the Forest Service, United States Department of Agriculture, The Use Book, 13 (1906 ed.)

The USFS has promulgated regulations for developing, adopting, and revising the land and resource management plans for the National Forest System. The regulations prescribe how land and resource management planning will be conducted on National Forest System lands (36 CFR 219.1 (a)). The purposes and principles involved regarding planning coordination with county governments and preservation of culture and economic and community stability are articulated as follows:

> The resulting plans shall provide for multiple use and sustained yield of goods and services from the National Forest System in a way that maximizes long-term net public benefits in an environmentally sound manner.
>
> (b) Plans guide all natural resource management activities and establish management standards and guidelines for the National Forest System. They

determine resource management practices, level of resource production and management, and the availability and suitability of lands for resource management.

Regional and forest planning will be based on the following principles:

(5) Preservation of important historic, cultural, and natural aspects of our national heritage;

(9) Coordination with the land and resource planning efforts of other Federal agencies, State and local governments, and Indian Tribes;

(13) Management of National Forest System lands in a manner that is sensitive to economic efficiency; and

(14) Responsiveness to changing conditions of land and other resources and to changing social and economic demands of the American people.

(36 CFR 219.1 (a) (b) (5) (9) (13) (14))

These regulations apply to the National Forest System, which includes special areas, such as wilderness, wild and scenic rivers, and national recreation areas, and national trails. Whenever the special areas require additional consideration by the Forest Service, this planning process applies. (36 CFR 219.2) The regulations stipulate that each forest supervisor shall develop a forest plan for administrative units of the National Forest System. (36 CFR 219.4 (3)) An administrative unit for this purpose can be a national forest, or all lands for which a forest supervisor has responsibility (e.g., a national forest and one or more special areas) or a combination of national forests within the jurisdiction of a single forest supervisor.

Specific processes and requirements for accomplishing the purposes and principles of planning coordination with county governments and the protection of culture and community stability are provided as follows:

(a) The responsible line officer shall coordinate regional and forest planning with the equivalent and related planning efforts of other Federal agencies, State and local governments, and Indian tribes.

(c) The responsible line officer shall review the planning and land use policies of other Federal agencies, State and local governments, and Indian tribes. The results of this review shall be displayed in the environmental impact Statement for the plan (CFR 1502.16(c), 1506.2).

The review shall include---

(l) Consideration of the objectives of other Federal, State and Local governments, and Indians [sic] tribes, as expressed in their plans and policies;

(2) An assessment of the interrelated impacts of these plans and policies;

(3) A determination of how each Forest Service plan should deal with the

impacts identified; and,

(4) Where conflicts with Forest Service planning are identified, consideration of alternatives for their resolution.

> (d) In developing land and resource management plans, the responsible line officer shall meet with the designated State official (or designee) and representatives of other Federal agencies, local governments and Indian tribal governments at the beginning of the planning process to develop procedures for coordination. As a minimum, such conferences shall also be held after public issues and management concerns have been identified and prior to recommending the preferred alternative. Such conferences may be held in conjunction with other public participation activities, if the opportunity for government officials to participate in the planning process is not thereby reduced.
>
> (e) In developing the forest plan, the responsible line officer shall seek input from other Federal, State and local governments, and universities to help resolve management concerns in the planning process and to identify areas where additional research is needed. This input should be included in the discussion of the research needs of the designated forest planning area.
>
> (f) A program of monitoring and evaluation shall be conducted that includes consideration of the effects of National Forest management on land, resources, and communities adjacent to or near the National Forest being planned and the effects upon National Forest management of activities on nearby lands managed by other Federal or other government agencies or under the jurisdiction of local governments (36 CFR 219.7 (a) (c) (1) (2) (3) (4) (d) (e) (f)) [emphasis added].

The agency regulations also reflect the specific requirements to protect the economic and community stability of a county. The preparation, revision, or significant amendment of a forest plan includes the formulation of reasonable alternatives according to NEPA procedures (36 CFR 219.12 (a) (b) (c) (d) (e) (f)). The alternatives must be in sufficient detail to provide the following information regarding economic and community stability:

> The physical, biological, economic, and social effects of implementing each alternative considered in detail shall be estimated and compared according to NEPA procedures. These effects include those described in NEPA procedures (40CFR 1502.14 and 15.02.16) and at least the following:
>
> **(3) Direct and indirect benefits and costs, analyzed in sufficient detail to estimate-**

> (iii) The economic effects of alternatives, including impacts on present net value, total receipts to the Federal Government, direct benefits to users that are not measured in receipts to the Federal Government, receipt shares to State and local governments, income and employment in affected areas (36 CFR 219.12 (g)).

The significant physical, biological, economic, and social effects of each management alternative shall be evaluated in detail (36 CFR 219.12 (h)).

Further:

> The evaluation shall include a comparative analysis of the aggregate effects of the management alternatives and shall compare present net value, social and economic impacts, outputs of goods and services, and overall protection and enhancement of environmental resources (19 U.S.C. 1604 (f) (5)).

Upon implementation, the plan shall be evaluated to determine how well objectives have been met and how closely management standards and guidelines have been applied. Necessary changes in management direction, revisions, or amendments to the forest plan as necessary, shall be recommended to the forest supervisor. (36 CFR 219.12 (k))

Section 7.07 GUIDANCE:

Fire management and suppression is a coordinated interagency effort involving city, county, and federal organizations in Fremont County. Approximately 58.2 % of the land in Fremont County is federally and State managed, 26.89 % is the Wind River Indian Reservation, and the remaining 14.91% is under private ownership. (Source: Fremont County Assessor, February 24, 2004)

Fire management and suppression activities are mostly carried out by management plans of the various agencies and cooperative agreements between the agencies and local governments. Plans range from for immediate suppression in high value areas or where there is a human safety hazard or potential for damage or loss to private property, to "let burn" policy in most wilderness areas, or areas that have been previously so designated. Prescribed fire is also being used, mostly on federal or State lands as a vegetative and fuels management technique, usually to improve wildlife and livestock range lands and reduce fuel loading and wild lands flammability.

Every effort should be made to reduce dangerous fuel build-ups, through grazing and commercial timber harvests, before other methods are employed. Non-use, after prescribed burns, should be determined only after close coordination with local governments on a case-by-case basis.

Article VIII. GRAZING

Section 8.01 GUIDELINES:

The policy hereby set forth for the achievement of the Goal and Objectives of this component item shall be consistent with the protection of Fremont County's historic:

1) custom,
2) culture,
3) economic viability, and
4) social stability.

Section 8.02 GOAL:

Promote healthy, sustainable rangeland supporting a viable livestock industry upon which Fremont County, our small communities, and our citizens depend for their custom, culture, economic viability, and social stability.

Section 8.03 OBJECTIVES:

Provide for statutory requirements for cooperation, consultation, and coordination between Federal land use plans and actions and the Fremont County Land Use Plan for Federal and State lands.

Assure that both State and Federal statutes are followed in the administration of the federally or State managed lands in Fremont County.

Compel the Federal land agency to complete their required tasking that provides the science decisions for enhancing the productive capabilities of federally managed lands.

Contribute to the safety and reliability of the domestic food and fiber supply through the support of agriculture, in particular, federal and State lands grazing.

Provide for protection of all property rights and interests related to water, livestock grazing, rights-of-way, and use of State land leases.

To be informed about grazing law, policy, use, and development opportunities within Fremont County, and then provide meaningful input and proposals that enhance the process.

To require credible science to be employed in any decisions made regarding lands and resources in Fremont County.

Section 8.04 POLICY:

(a) FREMONT COUNTY CUSTOM:

Fremont County's custom of using federally managed land for grazing is based on the open range days of livestock production. The grazing custom was continued on "leftover" lands of lesser value after settlers patented their homesteads. Lands not patented by homesteaders, later to become federally managed, were commonly used by all residents for resource consumption, often for free. The Taylor Grazing Act of 1934 recognized grazing as the optimum use of federally managed lands and in conjunction with later grazing legislation, facilitated the continued grazing of those lands. It has long been the custom for ranchers and farmers engaged in Fremont County grazing to responsibly use horses, ATVs, snowmobiles, or other ORV's to access and monitor their grazing lands and activities. It has also been their custom to carry firearms, shovels, jacks, axes, chains, two-way radios, cell phones, and other outdoor tools in order to provide for personal safety and self-sufficiency. Many a stranded motorist, hiker, biker, sightseer, or other citizen has been rescued by a rancher or farmer monitoring his grazing activities in a remote area of Fremont County and who was carrying proper survival equipment. Customarily, in Fremont County, citizens have always been good neighbors and stewards by closing all gates that they have opened, This plan encourages that same kind of citizenship with regards to the general public.

(b) FREMONT COUNTY CULTURE:

Fremont County residents from the earliest times have been self-sufficient due largely to their isolated location and their independent nature. Fremont County residents have continued that culture in development of natural resources, including grazing, on both federally or State managed and private lands. Our cowboy image is recognized worldwide, and that image reflects the determination, self-sufficiency, and culture of our citizens. Other basic characteristics of this culture are help of neighbor and civic responsibility. Private property rights and interests, including grazing rights are important to Fremont County residents, and through determination, residents have diligently protected the livelihoods that the county's first settlers worked hard through adversity to develop.

(c) FREMONT COUNTY ECONOMIC VIABILITY:

The citizens of Fremont County have historically and traditionally earned their livelihood from activities reliant upon natural resources. Privately owned land is intermingled with the federal and State managed lands, and, therefore, management decisions for federal and State managed lands directly impact the use and economic value of private lands and rights to use federal and State lands. In the absence or reduction of that use, county livestock operations are not viable nor are input providers in the county's small communities. The tax base in Fremont County suffers severely as well. The economic viability of Fremont County rests directly upon the continued and enhanced multiple use of the federal and State lands.

(d) FREMONT COUNTY SOCIAL STABILITY:

The social stability of Fremont County is significantly tied to the well being of the agricultural community, just as the economic stability is tied to agriculture. Federal and State agency actions that are unduly detrimental to multiple use are harmful to families and communities that rely on that use. Families and communities, who rely on federally or State managed lands for livestock production, are at risk of financial peril with all the attendant social manifestations including depression, suicide, bankruptcy, fear of agency reprisal and loss of hope. Federal management should not be an impediment to the safety, well being, and future growth and prosperity of Fremont County citizens.

Section 8.05 REQUIREMENT FOR COORDINATION:

(a) WITH LOCAL GOVERNMENT:

Forest And Rangeland Renewable Resources Planning Act Of 1974 (Public Law 93–378; Approved August 17, 1974), Sec. 6. National Forest System Resource Planning.

> **(a)** "As a part of the Program provided for by section 4 of this Act, the Secretary of Agriculture shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, coordinated with the land and resource management planning processes of State and local governments and other Federal agencies." **(16 U.S.C. 1604(a))**

National Forest Management Act of 1976,

(B)(5) Preservation of important historic, cultural, and natural aspects of our national heritage
(9) "Coordination with the land and resource planning efforts of other federal agencies, State and local governments and Indian tribes;

Federal Land Policy and Management Act of 1976

FLPMA provides specific directives for federal agencies to coordinate public land use planning with county governments and to ensure that federal land use plans are consistent with local plans. The statute details federal agencies' mandate as follows:

Sec. 202. [43 U.S.C. 1712] (c) In the development and revision of land use plans, the Secretary shall-

(9) to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management ... of the States and local governments within which the lands are located ... the Secretary shall, to the extent he finds practical, keep apprised of ... local ... land use plans; assure that consideration is given to those ... local ... plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of ... local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands. Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him. Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.

43CFR1610.3-1 Coordination of planning efforts.

In addition to the public involvement prescribed by Section 1610.2 of this title the following coordination is to be accomplished with local governments.

(b) WITH GRAZING PERMITTEES:

Public Rangelands Improvement Act of 1978

Section 8 of the PRIA Act of 1978 specifically requires the Bureau of Land Management and the U.S. Forest Service to engage in careful and considered consultation, cooperation, and coordination with grazing permittees, lessees, and landowners involved, the district grazing advisory boards, and any State or States having lands within the area (i.e., not merely 'interested parties'), in the development and revision of Allotment Management Plans (AMP). The words "careful and considered," and the explicit exclusion of 'interested parties' in the legislation, indicate that Congress intended Section 8 to be a very specific and limited process: A process intended to ensure meaningful and productive interchange between the identified parties and the pertinent agency in matters relating to AMP's. Section 8 establishes the obligation of the agencies to engage in good faith cooperation, consultation, and coordination with the specified parties apart from other public participation requirements associated with development or amendment of AMP's. Section 8 also establishes the grazing permittees and lessees as unique parties in regard to the development and revision of AMP's. Again, the term "coordinate" means the State of being "equal, of the same rank, order, degree, or importance; not subordinate" (Black's Law Dictionary, 1979). Applied to the development or revision of AMP's, coordination means that the working relationship between agency staff and the specified parties is intended by Congress to be more than simple consultation and cooperation. The point to be emphasized is that coordination with county government under this comprehensive plan is not sufficient. Coordination must be effected with the parties specified in Section 8.

Congress and the courts have provided the means by which county governments and resource users are to be involved in planning.

Section 8.06 AGENCY MANDATES:

The Bureau of Land Management and the Forest Service are required to preserve the stability of the western livestock industry and to provide for multiple use management including necessary range improvements for the benefit of livestock production, wildlife habitat, watershed protection, and recreation. These federal mandates - - - The Taylor Grazing Act (TGA), The Federal Land Policy and Management Act and The Public Rangelands Improvement Act - - - can be met only by action on all federally or State managed lands within Fremont County in such a way as to provide for continued use of allocated forage by permitted livestock and to work toward the restoration of forages to recover suspended AUM's. TGA requires management practices designed to improve the range so that it will support "expansion of the forage resource" to the benefit of livestock

production. The mandate of TGA is not furthered by management practices designed to reduce grazing in order to improve the range. Such practices challenge the Congressional mandate set forth in the statute. These laws demand the continued enhancement of the multiple use concepts.

Taylor Grazing Act of 1934

The Taylor Grazing Act of 1934, 43 U.S.C. § 315, was passed primarily to provide for stabilization of the western livestock industry; and that Act is still sound law. The Act authorized the Secretary of Interior to establish grazing districts in those federally managed lands, which were "chiefly valuable for grazing and raising forage crops." The Secretary was authorized to act in a way that would "promote the highest use of the public lands" 43 U.S.C. § 315. The Act authorized the Secretary to issue grazing permits on a preferential basis with preference to be given to those "land owners engaged in the livestock business," "bonafide occupants or settlers," or "owners of water or water rights" 43 U.S.C. § 315 (b). The Secretary was authorized to take action to stabilize the livestock industry, which was recognized, as necessary to the national well-being.

The Act also recognized the property interests of a permittee in the form of an investment-backed expectation in § 315 (b). That Section provided that no preference would be given to any person whose rights were acquired during the year 1934 except that the Secretary could not deny the renewal of any such permit "if such denial will impair the value of the grazing unit of the permittee, when such unit is pledged as security for any bonafide loan."

Historically, the Congress, the Bureau of Land Management, and the Federal Courts have recognized that community economic stability is an important consideration for the management of federally managed lands. In interpreting the Taylor Grazing Act, the Courts have recognized that the purpose of the Act "is to stabilize the livestock industry and to permit the use of public range according to needs and qualifications of livestock operators with base holdings." See Chournos v. United States, 193 Fd.2d 321 (10th Cir. Utah 1951), Cert. Den. 343 U.S. 977 (1952). In Red Canyon Sheep Co. v. Ickes, 98 Fd.2d 308 (1938), the Court Stated that the purpose of the Taylor Grazing Act is to provide the "most beneficial use possible of public range because the livestock industry of the West is an important source of food supply for the people of the nation." Red Canyon also pointed out that "in the interest of the stock growers themselves" the Act was intended to define "their grazing rights and to protect those rights by regulation against interference."

Even more recently, a United States District Court has re-affirmed the fact that the Taylor Grazing Act was intended to provide economic security to the rancher who grazed those western federal lands, which the Congress determined to be suitable for grazing when the Act was passed. In Public Lands Council v. Babbitt, 929

F.Supp.1436 (U.S.D.C. Wyoming 1996), Judge Brimmer issued an injunction restraining the Secretary of Interior from eliminating a grazing preference by using the term "permitted use" in Rangeland Reform regulations.

Judge Brimmer Stated that the term "grazing preference" represents "an adjudicated right to place livestock on public lands" which provided predictability and security to livestock operators. He pointed out that the Taylor Grazing Act imposes on the Secretary "an affirmative duty to protect" this preference. In issuing the injunction, the judge found that the Secretary had violated this "affirmative duty":

"With a mere stroke of his pen, the Secretary has boldly and blithely wrested away from Western ranchers the very certainty, the definiteness of range rights, and the necessary security of preference rights that their livestock operations require. Congress gave Western ranchers these rights by enacting the Taylor Grazing Act, and many decades of satisfactory operations and the course of case by case adjudications have confirmed these rights." – 929 F. Supp. at 1441.

Federal Land Policy and Management Act of 1976

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 et seq., did not limit, restrict or amend the purposes and provisions Stated in the Taylor Grazing Act. Section 1701 stated the policy of the Congress as follows:
"The Congress declares that it is the policy of the United States that
(2) "The national interest will be best realized if the public lands and their resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process coordinated with other Federal and State planning efforts; . . . "(43 U.S.C. 1701 (a)(2)
(8) The public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource and archaeological values; that, where appropriate, will preserve and protect certain public lands in their natural conditions; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use; . . . " (43 U.S.C. 1701 (a)(8)
(12) The public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands including implementation of the Mining & Minerals Policy Act of 1970 . . . as it pertains to the public lands"" (43 U.S.C. 1701 (a)(12).

Public Rangelands Improvement Act of 1978

The Public Rangelands Improvement Act of 1978 (43 U.S.C. § 1901-1908) once again revitalized the purposes of the Taylor Grazing Act, providing that the Secretary of Interior "shall manage the public rangelands in accordance with the

Taylor Grazing Act, the Federal Land Policy and Management Act of 1976 and other applicable law consistent with the public rangelands improvement program pursuant to this Act." See 43 U.S.C. §1903, which also provides that:
"The goal of such management shall be to improve the range conditions of the public rangelands so that they become as productive as feasible in accordance with the rangeland management objectives established through the land use planning process, and consistent with the values and objectives listed in [Section 1901]."

The values and objectives listed in Section 1901 by which the Secretary was to be guided include a finding and declaration by the Congress that:
"to prevent economic disruption and harm to the western livestock industry, it is in the public interest to charge a fee for livestock grazing permits and leases on the public lands which is based on a formula reflecting annual changes in the costs of production." 43 U.S.C. § 1901 (a) (5)."

The Congress further found and declared that one of the reasons the Public Rangelands Improvement Act was necessary is that segments of the public rangelands were producing less "than their potential for livestock" and that unsatisfactory conditions on some public rangelands prevented "expansion of the forage resource and resulting benefits to livestock and wildlife production" (43 U.S.C. § 1901 (a) (3)). The Act mandates improvement of the rangelands in order to increase the potential for livestock development and to prevent economic harm to the "western livestock industry."

Range improvements necessary to maintain current levels of livestock production, wildlife habitat, watershed protection, and recreation opportunity must be identified by the Bureau of Land Management and will be identified by Fremont County. The Secretary of Interior, and therefore the Bureau of Land Management, is committed by statute to preserving the stability of the livestock industry. The stability of that industry as a whole is directly related to the stability of the individual ranches that make up the industry, including those in Fremont County. The stability of the livestock industry in the County requires that the statutory mandates be followed.

The quality of economic life of Fremont County as well as the scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values which are part of life in the County protected by the Federal Land Policy and Management Act require that the statutory mandates for stabilizing the livestock industry be followed.

Presidential Executive Order No. 12630 issued March 15, 1988 by President Reagan titled Governmental Actions and Interference with Constitutionally Protected Property Rights, States, in part, "Actions undertaken by government officials that result in a physical invasion or occupancy of private property, and regulations

imposed on private property that substantially affect its value or use, may constitute a taking of property. Further, governmental action may amount to a taking even though the action results in less than a complete deprivation of all use or value, or of all separate and distinct interests in the same private property and even if the action constituting a taking is temporary in nature."
The E.O. further States, "Undue delays in decision making during which private property use is interfered with carry a risk of being held to be takings."
The E.O. cannot legally prevent takings, but it directs the government to prevent unnecessary takings. An E.O. is not a statute but it is binding within the limits of existing law. Its authority is permanent unless it is amended or repealed by the issuing President.

Recent Supreme Court decisions have imposed strict limits on how far government regulations can restrict the use of private property. Nollan v. California Coastal Commission 107 S.Ct 3141 (1987) and Lucas v. So. Carolina Coastal Council No. 91-453, June 29, 1992, have tightened the standard determining when a restriction on property use becomes a taking for which the government must pay. These cases determine that even a temporary and/or partial deprivation of the economic use of property caused by a governmental action could amount to a taking. If a taking occurs, the government must prove that there is a public purpose that warrants the taking and must provide just financial compensation and due process. Undue delays in the government's decision-making process could lead to a taking according to these landmark cases.

The E.O. establishes a process that requires Evaluation of Risk and Avoidance of Unanticipated Takings be prepared by the Attorney General to be used by the agencies as a yardstick for making a TIA (Takings Implications Assessment.) It designates an official in an agency responsible for compliance with the E.O. Agencies are to assess the takings implications of proposed regulatory actions and address those actions in the light of takings implications to the OMB. Each agency must report annually an itemized compilation of all awards of just compensation for takings. The compliance by the federal agencies has been generally inadequate with the E.O. and TIA process. The county government should look to the E.O. as an important tool.

"Neither 'property' nor the value of property is a physical thing. Property is a set of defined options...It is that set of options which has economic value....It is the options and not the physical things, which are the 'property'-economically as well as legally...But because the public tends to think of property as tangible, physical things, this opens the way politically for government confiscation of property by forcibly taking away options while leaving the physical objects untouched." Thomas Sowell

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Section 8.07 GUIDANCE:

Continued grazing use of federally managed land is vital if the livestock industry is to survive. The expectation for continuation of the livestock industry in the County is essential to support the economic stability and to preserve the custom and culture of the citizens.

(a) VEGETATION MANAGEMENT:

Very clearly both the Taylor Grazing Act and the Federal Land Policy and Management Act ordered maintenance and improvement of the vegetation on the federally managed lands to provide forage for livestock and wildlife and habitat for wildlife. Even more pointed however, were the instructions given to federal managers by the Public Rangelands Improvement Act of 1978. In 43 U.S.C. § 1901, the Congress found that the federally managed lands were producing "less than their potential for livestock, wildlife habitat, recreation, forage, and water and soil conservation benefits." The Congress further found in § 1901 that unsatisfactory vegetation conditions on public rangelands "prevent expansion of the forage resource and resulting benefits to livestock and wildlife production." The Congress also found that such conditions preventing an expansion of the forage resource and other unsatisfactory conditions on the public rangelands "may ultimately lead to unpredictable and undesirable long-term local and regional climatic and economic changes." In order to eliminate such conditions the Congress called for intensive planning and improvement of the condition of the federally managed rangelands so that "they become as productive as feasible for all rangeland values."

Under the federal statutes setting forth the planning and management responsibilities for the federally managed lands, then, it is clear that planning and management efforts must be directed toward increased and expanded forage resources. Fremont County considers itself bound by good planning principles as well as the requirements of the federal statutes to plan for methods of improving and expanding forage development on the federally managed lands in the County. Increased and expanded forage can result from proper grazing management improvements. In planning for vegetation management the Committee and the Board will be guided by the following general considerations.

(b) LIVESTOCK GRAZING:

Planned livestock grazing will be managed so as to maintain and enhance desired plant communities for the benefit of watersheds, wildlife, water quality, recreation and livestock grazing as required by the Public Rangelands Improvement Act through effective implementation of planning and management. Such management will be developed specifically for each allotment in order to achieve the desired result throughout the County. All necessary grazing management

improvements, including water development, sagebrush control, reseeding, fencing, salting plans, herding plans, and grazing systems will be included in Allotment Management Plans. All decisions as to such improvements should be made on an allotment basis since they are integral with use of State leases, private leases, private lands, other allotments, and in overall operation of each ranch enterprise.

In order to comply with the multiple use concept mandated by the Statutes, no individual resource value will be given priority in vegetation management decisions. Congress has directed that the federally managed rangelands be managed, maintained and improved "so that they become as productive as feasible for all rangeland values" 43 U.S.C. § 1901 (b) (2). In order to carry out the Congressional intent, it will be necessary that the Bureau of Land Management "inventory and identify current public rangelands conditions and trends" 43 U.S.C. § 1901 (b) (1). All planning effort will adhere to the careful and considered consultation, coordination and cooperation requirements established by Federal statutes. See 43 U.S.C. § 1701 (a) (2); §1712(c)(9); §1752 (d).

(c) FIRE MANAGEMENT; as related to grazing:

Controlled burns will be evaluated as a means of encouraging revitalization of rangeland vegetation, which will support and expand multiple use.

Grazing rest prescriptions related to either wildfires or prescribed burns will be determined on a site-specific basis. Where rest prescriptions are appropriate, they may include the year of the burn, light late season use in the year following the burn, and/or moderate late season use in the second year following the burn. Post fire grazing will not be limited when unbiased post fire monitoring and evaluation produces relevant, accurate data which demonstrates that grazing will not unduly harm the range. Any grazing rest or restriction following burns shall not place unreasonable burden on the livestock operator, and the federal agency should provide the temporary fencing or other devices to rest the area of the burn, without closure of an entire allotment.

(d) WILD HORSE MANAGEMENT:

The Wild and Free Roaming Horse and Burros Act, 16 U.S.C. §§ 1331 et seq., does not allow relocation of the designated animals to areas where they did not exist at the time of passage of the Act in 1971. The Congress stated its purpose to be, to consider these animals "in the area where presently found" [at the time of enactment] See 16 U.S.C.S. §1331. The Secretary of the Interior is charged with managing these animals "in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands." See 16 U.S.C.S. § 1331 (a). In Mountain States Legal Foundation vs. Andrus, 16 ERC 1351 (U.S.D.C.,

Wyoming, 1981), a Wyoming Federal District Court ruled that the failure of the Bureau of Land Management to control the number of wild horses in the BLM's Rock Springs District, which caused an increase in wild horse population and placed excess demand on grazing lands within the district so as to upset ecological balance, violates the mandate of 16 U.S.C.S. § 1331 (a) which provides that animals shall be managed in a manner which achieves and maintains thriving ecological balance on federally managed lands.

Determinations of the Wild Horse ranges and locations have been made in accordance with that Act for all of Fremont County. Management of wild horse numbers must provide for the protection of vegetation and soil resources, which supports the horses, other wildlife, and adjudicated livestock. Management actions will not interfere with the continuation or development of improved livestock management. There is no provision in the Act that permits the relocation of horses to an improved portion of the range, which has been developed for livestock grazing, thus disrupting such livestock grazing. As a matter of fact there is no provision in the Act for establishing a single use Horse Herd Area. The legislative history makes it clear that Congress did not intend single use areas.

The Natural Resources Planning Committee and the Board are aware that the 1978 Congressional amendments to the Act were intended to decrease the level of protective management, which had been practiced by federal agencies. H.R. Ref. No. 9S-1122, 95th Cong.2d Sess.23 (1978) Stated:

> " . . . Congress acted in 1971 to curb abuses which posed a threat to [the wild horses and burros] survival. The situation now appears to have reversed, and action is needed to prevent a successful program from exceeding its goals and causing animal habitat destruction."

The resulting amendments called for the federal agencies to act expeditiously in removing "excess animals" from the range, and defined "excess animals" as "those wild and free-roaming horses or burrows which must be removed from an area in order to preserve and maintain a thriving natural ecological balance and multiple-use relationship in that area." See 16 U.S.C. § 1332 (f). The definition made it explicitly clear that the federally managed range is to be managed for multiple uses, without any priority given to maximum protection of horses. The Statute specifically provides that cattle are never to be considered "excess animals." Gatherings of excess horses will be conducted in a timely manner with full force decisions if necessary, to prevent resource damage.

Horses or burros, protected under this act, which stray from federally or State managed lands onto privately owned lands remain protected. Landowners, however, can request removal, and federal officials shall have the animals removed (16 U.S.C 1334). It is also the position of Fremont County that horse numbers be strictly kept at Appropriate Management Levels (AML's), with annual aerial counts conducted and verified by a neutral entity.

(e) NOXIOUS WEEDS:

The Board is the weed control authority for Fremont County. Ongoing programs to identify locations of all noxious weeds and to initiate management and/or eradication efforts will continue. All State agencies are required to control noxious weeds on State managed lands. The State law contemplates cooperation by the federal agencies in controlling noxious weeds on the federally managed lands. The Federal Public Rangelands Improvement Act virtually mandates such cooperation in order to improve "unsatisfactory condition" of the federally managed rangelands. Cooperative agreements and, if necessary, legal actions, will be utilized to assure protection of vital land resources from noxious weed occupation or invasion.

All agencies should be aware of the implications of discontinued irrigation. Land not properly rehabilitated before ending irrigation has the potential to be overtaken by noxious weeds, thereby creating a significant seedbed and an impediment to noxious weed control.

(f) MONITORING:

The citizens of Fremont County consider monitoring to be the responsibility of the management agency(s). Monitoring protocol and data shall be coordinated with grazing permittees as required by statutes. The minimum monitoring protocol used will be yearly monitoring following the Wyoming Rangeland Monitoring Guide developed by The Wyoming Range Service Team, August 2001.

Federal and State agencies shall provide at the request of the Fremont County Commissioners any and all monitoring protocols and data.

Article IX. LAW ENFORCEMENT

Section 9.01 GUIDELINES:

The policy hereby set forth for the achievement of the Goal and Objectives of this component item shall be consistent with the protection of Fremont County's historic:

1) custom,
2) culture,
3) economic viability, and
4) social stability.

Section 9.02 GOAL:

To provide protection to all citizens' private property rights and the natural resources located within Fremont County while complying with laws of the United States of America, the U.S. Constitution, Wyoming laws, the Wyoming Constitution, and County resolutions. This is to be achieved by close cooperation and detailed coordination by all federal and State agencies with the Fremont County Board of County Commissioners and the Fremont County Sheriff.

Section 9.03 OBJECTIVES:

To achieve a balance between responsible use of the natural resources within Fremont County, protection of those resources, and safety of the citizens (which courts have long held to be the jurisdiction of the State).

Section 9.04 POLICY:

(a) FREMONT COUNTY CUSTOM:

The Fremont County citizens have relied on the elected County Sheriff since 1890, when Wyoming became a State, to provide law enforcement and security. Over the years the Sheriff has been the sole law enforcement agent, however, with the origination of the Bureau of Land Management (BLM), National Forest Service (USFS) and other federal agencies, more rules and regulations have come about. The Federal Land Policy and Management Act of 1976 (FLPMA) requires all management activities be coordinated with the County and State governments involved.

(b) FREMONT COUNTY CULTURE:

Since, Territorial days, Fremont County citizens have depended upon the County Sheriff to provide law enforcement and this is still the case. Therefore, it is incumbent upon the Federal agencies to consult, cooperate, and fully coordinate with the Board and the County Sheriff, as required by federal law. Working through the authority of the Board and County Sheriff, will ensure that the safety of the citizens of Fremont County will be protected. Further, this will assist the federal agencies in their mission of sustained multiple use of the natural resources within Fremont County.

(c) FREMONT COUNTY ECONOMIC VIABILITY:

Fremont County's economy has long depended upon, and continues to depend upon, the citizens' rights to utilize the natural resources of the area. Also, the legal rights and safety of Fremont County citizens depend on local law enforcement. This is under the jurisdiction of the Board and the County Sheriff.

(d) FREMONT COUNTY SOCIAL STABILITY:

The social stability of Fremont County is directly related to the security of the citizens as provided by familiar and adequate law enforcement by the authority of Fremont County's duly elected Sheriff.

Section 9.05 REQUIREMENT FOR COORDINATION:

Federal Land Policy Management Act of 1976

Section 303(c)(1) When the Secretary determines that assistance is necessary in enforcing Federal laws and regulations relating to the public lands or their resources he shall offer a contract to appropriate local officials having law enforcement authority within their respective jurisdictions with the view of achieving maximum feasible reliance upon local law enforcement officials in enforcing such laws and regulations.

Section 9.06 AGENCY MANDATES:

36-10-103. Retention of concurrent jurisdiction by State.

"[T]he State of Wyoming shall retain concurrent jurisdiction with the United States in and over the said land, so far as that all civil process, in all cases, and such criminal and other process as may issue under the laws or authority of the State of Wyoming against any person or persons charged with crimes or misdemeanors committed within said State, may be executed therein in the same

way and manner as if such consent had not been given or jurisdiction ceded, except so far as such process may affect the real or personal property of the United States."

Federal Land Policy Management Act of 1976

Section 303(c)(1) When the Secretary determines that assistance is necessary in enforcing Federal laws and regulations relating to the public lands or their resources he shall offer a contract to appropriate local officials having law enforcement authority within their respective jurisdictions with the view of achieving maximum feasible reliance upon local law enforcement officials in enforcing such laws and regulations.

Congress mandates that "Nothing in this Act shall be construed as . . . a limitation upon the police power of the respective States, or as derogating the authority of a local police officer in the performance of his duties or as depriving any State or political subdivision thereof of any right it may have to exercise civil and criminal jurisdiction on the national resource lands." (FLPMA Sec. 701(g)(6))

Section 9.07 GUIDANCE:

The elected Fremont County officials have the overall responsibility for the protection and safety of the citizens of the County. Federal agencies shall coordinate with the County as required by applicable Congressional mandates.

Article X. MINERALS AND MINING

Section 10.01 GUIDELINES:

The policy hereby set forth for the achievement of the Goal and Objectives of this component item shall be consistent with the protection of Fremont County's historic:

5) custom,
6) culture,
7) economic viability, and
8) social stability.

Section 10.02 GOAL:

Produce and encourage development of any valuable mineral within Fremont County. The State of Wyoming and the County of Fremont have seen a rapid decline in numbers of young families. In order to aid in the creation of economic stability and social stability it is imperative for us to explore all possible avenues of business development and job creation.

Section 10.03 OBJECTIVES:

To locate and produce as much mineral resource as is economically feasible, while promoting the following:

1. Positive working relationships with the mining and minerals industry. (W.S. 18-3-521)

2. Encourage projections so as to aid in planning long-term federally and/or State managed land use.

3. To require sound science and engineering to be employed in any decisions made regarding lands and resources in Fremont County.

Section 10.04 POLICY:

(a) FREMONT COUNTY CUSTOM:

Mining and minerals have historically played an integral part of every aspect of life in Fremont County. Oil drilling began in Fremont County in the late 1800's. The first oil well, the Murphy #1, was drilled in 1883 in the Dallas oil field near

Lander, Wyoming. Prospecting, mining and mineral development remain the unsung heroes in many of our customs. Some of the best paying jobs and highest revenue development have come from the mineral industry. It has long been the custom of county citizens to access their work in the mining and minerals industry through the responsible use of horses, ATVs, snowmobiles, or other ORV's. The carrying of outdoor equipment such as shovels, axes, jacks, chains, two-way radios, cell phones and other survival and work-related tools are rooted in the custom of workers in that industry to be in remote and treacherous areas. Many a stranded motorist, hiker, biker, sightseer and other recreationist in a remote area of Fremont County has been rescued by citizens in the mining and minerals industry being prepared for such emergencies. Recreational gold panning has also long been customary.

(b) FREMONT COUNTY CULTURE:

Presently Oil and Gas comprise most of the mineral resource activity in Fremont County. However we have had a long history with the mineral industry. In 1867 gold was discovered on the South Pass of the Wind River mountain range. Later, iron ore was mined in that same area. In the latter part of the last century, Uranium was mined extensively in the Gas Hills area and Jeffrey City area near Green Mountain. The end of gold mining at South Pass led settlers into the surrounding valleys. Towns like Lander, Hudson, and Riverton sprang up. Minerals and mining are an important part of the diverse communities that create this county.

(c) FREMONT COUNTY ECONOMIC VIABILITY:

Fremont County derives much of its operating capital from property tax. Assessed valuation of property has taken a dramatic increase over the last decade largely attributable to the mineral industry. Fremont County has some very large gas reserves and a good percentage of the citizenry derive their livelihoods from the mineral industry. The direct effect from employment is substantial but the indirect effect from having such an industry in the county is profound. The lands in Fremont County have a rich and diverse inventory many of which hold future opportunity for development if not locked away from those opportunities.

(d) FREMONT COUNTY SOCIAL STABILITY:

Minerals and mining have historically followed "boom or bust" cycles in Fremont County, and this can produce a negative ripple in social stability. Experience is a good teacher and we have had many opportunities to learn. Social stability is best achieved when society is served through ample opportunity to pursue life, liberty, and happiness. The mineral industry has historically provided good paying jobs

and need for services. Business in Fremont County is boosted by exploration and development of our natural resources thus creating jobs, broadening our tax base and aiding in social stability. Public roads and institutions receive a direct windfall from resource development.

Section 10.05 REQUIREMENT FOR COORDINATION:

Rangeland Renewable Resources Planning Act of 1974,

Sec. 3, 6(a) "As part of the program provided for by section 3 of this Act, the Secretary of Agriculture shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, coordinated with the land and resource management planning processes of State and Local governments and other federal agencies."

National Forest Management Act of 1976,

(B)(5) Preservation of important historic, cultural, and natural aspects of our national heritage
(9) Coordination with the land and resource planning efforts of other federal agencies, State and local governments

Federal Land Policy and Management Act of 1976

FLPMA provides specific directives for federal agencies to coordinate public land use planning with county governments and to ensure that federal land use plans are consistent with local plans. The statute details federal agencies' mandate as follows:

Sec. 202. [43 U.S.C. 1712] (c) In the development and revision of land use plans, the Secretary shall-

(9) to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management ... of the States and local governments within which the lands are located ... the Secretary shall, to the extent he finds practical, keep apprised of ... local ... land use plans; assure that consideration is given to those ... local ... plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of ... local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands. Such officials in each State are authorized to furnish

advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him. Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.

43CFR1610.3-1 Coordination of planning efforts.

In addition to the public involvement prescribed by Section 1610.2 of this title the following coordination is to be accomplished with local governments.

Congress and the courts have provided the means by which county governments and resource users are to be involved in planning.

Section 10.06 AGENCY MANDATES:

Mineral Leasing Act of 1920 as amended by

Mineral Leasing Act revision 2001:

Title 30, Chapter 3A, Subchapter IV, Sec. 226, (a) Authority of the Secretary, All lands subject to disposition under this chapter which are known or believed to contain oil or gas deposits may be leased by the Secretary.

Federal Land Policy and Management Act of 1976

Section 1701 stated the policy of the Congress as follows:

"The Congress declares that it is the policy of the United States that

(12) The public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands including implementation of the Mining & Minerals Policy Act of 1970 . . . as it pertains to the public lands" (43 U.S.C. 1701 (a)(12).

16 U.S.C. 528 - Development and administration of renewable surface resources for multiple use and sustained yield of products and services; Congressional declaration of policy and purpose

"It is the policy of the Congress that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes. ...Nothing herein shall be construed so as to affect the use or administration of the mineral resources of national forest lands or to affect the use or administration of Federal lands not within national forests"

Section 10.07 GUIDANCE:

Consider profitability for all stakeholders, producers, developers, business, and citizens.

Work with the mineral industry to further discover and develop our mineral resources.

Cooperate on an ongoing basis with all stakeholders to ensure that the Fremont County and State and Federal land agencies work in concert.

Pursue organized abandonment of any regulations or rules that are archaic or outdated.

Article XI. OUTDOOR RECREATION

Section 11.01 GUIDELINES:

The policy hereby set forth for the achievement of the Goal and Objectives of this component item shall be consistent with the protection of Fremont County's historic:

1) custom,
2) culture,
3) economic viability, and
4) social stability.

Section 11.02 GOAL:

Protect for present and future generations of all citizens the right and privilege to recreate on federally or State managed lands and waters in Fremont County.

Section 11.03 OBJECTIVES:

Require State and federal agencies to coordinate any and all actions with Fremont County government in regards to protecting outdoor recreation opportunities on federally or State managed lands and waters within the county as the law mandates. *Any federal prohibitions, occupancy and use restrictions or closures will not be sanctioned without County approval.*

Section 11.04 POLICY:

(a) FREMONT COUNTY CUSTOM:

Fremont County citizens have a long history of using federally or State managed lands and waters for recreation. Hunting, fishing, trail riding, camping and nature appreciation activities have their roots in the survival skills of early settlers. Indians taught the earliest whites how to live on the land and survive with what nature provided. It has been the historic custom of county citizens to responsibly use horses, ATVs, snowmobiles, or other ORV's to engage in recreational activities in the county. Cabins in many parts of the county have been in place since the early 1900s and winter access to them has customarily been by snowmobile since the 1950s. The carrying of equipment such as firearms, knives, jacks, chains, shovels, ropes, axes, two-way radios, cell phones, chain saws, and

other survival and safety tools has long been accepted custom for individuals spending time in the remote areas of the county. Customarily, in Fremont County, citizens have always been good neighbors and stewards by closing all gates that they have opened, This plan encourages that same kind of citizenship with regards to the general public.

(b) FREMONT COUNTY CULTURE:

Outdoor recreation today is no longer the primary mode of survival in Fremont County (except for commercial guides), however it has deep cultural roots and is one reason many citizens choose to live here. Such events as the One Shot Antelope Hunt, Boysen Fishing Derby and Sled Dog Races are evidence of this strong outdoor recreation culture. The vast majority of lands in Fremont County are federally or State managed and citizens have become accustomed to free and easy access to these lands year round.

(c) FREMONT COUNTY ECONOMIC VIABILITY:

Fremont County's economy relies in large part on federally or State managed lands and waters for recreation. Tourism, including sporting goods stores, outfitters, guides, lodging tax revenues, meat processors, taxidermists, bed and breakfasts, motels, the Bighorn Sheep Center, dude ranches, off road vehicle dealers (see Table 3) and air service are just some of the examples of the reliance so many Fremont County entities have on continued outdoor recreation. Many user groups such as hunters and anglers pay for the management of the resource through the purchase of licenses. Protecting user days and recreational opportunities for commercial and non-commercial recreationists is important for everyone.

Table 3. Actual Number Registered Units in Fremont County during 2003.

ATV permits	2430	
Snowmobiles	4423 resident	4363 non-resident

Source: Wyoming State Trails Program

Actual sales of units for Fremont County: 2003

ATV's	503
Snowmobiles	150
Personal Water Craft	10
Motorcycles	172

Source: Fremont County Vendors

(d) FREMONT COUNTY SOCIAL STABILITY:

Federal and State agency regulations, actions and rulings from federal judges such as banning snowmobile use in Yellowstone Park, road closures near Dubois or the advance of grizzly recovery boundaries have resulted in serious destabilization of outdoor recreation opportunities in Fremont County. Lost jobs, devalued investments, demoralization and social stress upon Fremont County citizens are occurring because of these and other actions by agency bureaucrats and national lobbying groups and organizations. Coordination and planning between Fremont County and State and federal agencies, as required by law, will go a long way in relieving the disruption of outdoor recreation and ensure continued future opportunities for citizens to safely enjoy the outdoors.

Section 11.05 REQUIREMENT FOR COORDINATION:

Outdoor Recreation Act 1963,

Recreation on federally or State managed land means different things to different people or groups of people. The Outdoor Recreation Act of 1963 States that:

> "Congress finds and declares it to be desirable that all American people of present and future generations be assured adequate outdoor recreation resources, and that it is desirable for all levels of government and private interests to take prompt and coordinated action to the extent practicable without diminishing or affecting their respective powers and functions to conserve, develop, and utilize such resources for the benefit and enjoyment of the American people."(Stat. 49; 16 U.S.C. 460l through 460l–3)

Rangeland Renewable Resources Planning Act of 1974,

Sec. 3, 6(a) "As part of the program provided for by section 3 of this Act, the Secretary of Agriculture shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, coordinated with the land and resource management planning processes of State and Local governments and other federal agencies."

National Forest Management Act of 1976,

(B), (5) Preservation of important historic, cultural, and natural aspects of our national heritage

(9) "Coordination with the land and resource planning efforts of other federal agencies, State and local governments and Indian tribes;

Federal Land Policy and Management Act of 1976

FLPMA provides specific directives for federal agencies to coordinate public land use planning with county governments and to ensure that federal land use plans are consistent with local plans. The statute details federal agencies' mandate as follows:

Sec. 202. [43 U.S.C. 1712] (c) In the development and revision of land use plans, the Secretary shall-

> **(9)** to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management ... of the States and local governments within which the lands are located ... the Secretary shall, to the extent he finds practical, keep apprised of ... local ... land use plans; assure that consideration is given to those ... local ... plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of ... local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands. Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him. Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.

43CFR1610.3-1 Coordination of planning efforts.

In addition to the public involvement prescribed by Section 1610.2 of this title the following coordination is to be accomplished with local governments.

Congress and the courts have provided the means by which county governments and resource users are to be involved in planning.

Section 11.06 AGENCY MANDATES:

1.) National Environmental Protection Act 1969

2.) BLM Authority to write commercial recreation permits-43 U.S.C 1740; 16 U.S.C 4601-6A

3.) Executive Order 12630-prohibits "takings" by agency regulations/actions.

Presidential Executive Order No. 12630 issued March 15, 1988 by President Reagan titled Governmental Actions and Interference with Constitutionally Protected Property Rights, States, in part, "Actions undertaken by government officials that result in a physical invasion or occupancy of private property, and regulations imposed on private property that substantially affect it's value or use, may constitute a taking of property. Further, governmental action may amount to a taking even though the action results in less than a complete deprivation of all use or value, or of all separate and distinct interests in the same private property and even if the action constituting a taking is temporary in nature."

The E.O. further States, "Undue delays in decision making during which private property use is interfered with carry a risk of being held to be takings."
The E.O. cannot legally prevent takings, but it directs the government to prevent unnecessary takings. An E.O. is not a statute but it is binding within the limits of existing law. Its authority is permanent unless it is amended or repealed by the issuing President.

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The E.O. establishes a process that requires Evaluation of Risk and Avoidance of Unanticipated Takings be prepared by the Attorney general to be used by the agencies as a yardstick for making a TIA (Takings Implications Assessment.) It designates an official in an agency responsible for compliance with the E.O. Agencies are to assess the takings implications of proposed regulatory actions and address those actions in the light of takings implications to the OMB. Each agency must report annually an itemized compilation of all awards of just compensation for takings. The compliance by the federal agencies has been generally inadequate with the E.O. and TIA

process. The county government should look to the E.O. as an important tool.

"Neither 'property' nor the value of property is a physical thing. Property is a set of defined options...It is that set of options which has economic value....It is the options and not the physical things, which are the 'property'-economically as well as legally...But because the public tends to think of property as tangible, physical things, this opens the way politically for government confiscation of property by forcibly taking away options while leaving the physical objects untouched." Thomas Sowell

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4.) Executive Order 13132-guards against impacts of federalism on States.

5.) Regulatory Flexibility Act (5 U.S.C 601 et seq.)-Ensures agency rules not have a significant economic effect on a substantial number of small entities such as small businesses.

6.) Small Business Regulatory Enforcement Fairness Act 5 U.S.C 804 (2)-ensures agency regulations not cause major increases in costs or prices for consumers, individual industries or geographical regions.

Section 11.07 Recreational Use Data:

(Not a complete compilation of all types of use)

Federally or State managed land in Fremont County=3.4 million acres

HUNTING LICENSES SOLD by WG&F in 2002 in Fremont County=**14,855**
(Source-Wyoming Game and Fish Department Lander Regional office and website)

BIG GAME ANIMALS HARVESTED in 2002=**5,158**:
Elk=1,833; DEER=1,771; ANTELOPE=1,402; MOOSE=86; BIGHORN=37;
BLACK BEAR=29 (Source-Lander Regional office WG&F)

FISHING LICENSES SOLD by WG&F in 1990 in Fremont County=**10,450**
(Source-Wyoming Game and Fish Department)

OUTDOOR RECREATION VISITOR DAYS, (commercial and non-commercial) on SHOSHONE NATIONAL FOREST in 1997=**528,114**
(Source-Shoshone National Forest)

COMMERCIAL OUTDOOR RECREATION VISITOR DAYS on SHOSHONE NATIONAL FOREST in 2001=**63,183**

(Source Shoshone National Forest Lander and Dubois offices)

OUTDOOR RECREATION VISITOR DAYS (commercial and non-commercial) on BLM Lands in Fremont County=**347,870**
(Lander Resource Area office)

STATE PARK VISITOR DAYS in Fremont County in 1998=**562,000**
(Source-UW Ag Econ)

SNOWMOBILE REGISTRATIONS sold in Fremont County in 1999=**3,223**
(Source-UW Ag Econ Dept)

TRIBAL FISHING LICENSES sold to non-Indians in 1999=**3,577**
(Source-UW Ag Econ Dept)

LODGING TAX COLLECTED in Fremont County in 2001=**$170,541**
(Source State of Wyoming, Dept. of Administration & Information)

TOTAL VISITOR DAYS on FEDERALLY OR STATE MANAGED LANDS in FREMONT COUNTY=**1.5 Million**

Article XII. PREDATORY ANIMALS

Section 12.01 GUIDELINES:

The policy hereby set forth for the achievement of the Goal and Objectives of this component item shall be consistent with the protection of Fremont County's historic:

1) custom,
2) culture,
3) economic viability, and
4) social stability.

Section 12.02 GOAL:

To apply common sense to the management of predator species in Fremont County in a way that it protects the rights of County citizens to pursue their historic and customary livelihoods without fear of economically devastating property losses, including, but not limited to, wildlife and domestic livestock, due to unbalanced predator/prey relationships.

Section 12.03 OBJECTIVES:

To maintain trapping and calling as historic and environmentally sound methods of predator control, and to recognize other means, including chemical control, as effective tools for keeping predator populations under control. To monitor the predator-related activities of State and federal governments as those activities affect Fremont County, and to participate in decisions made by those governments so that Fremont County's economic interests are represented and protected. To encourage the retention of and expansion of an animal damage control plan, including, but not limited to, public or private bounties for the protection of livestock and crops on private lands bordering State and federally managed lands, and to expect government entities to coordinate their pest control actions and regulations with those of Fremont County. To require sound science to be employed in any decisions made regarding County lands and resources.

Section 12.04 POLICY:

(a) FREMONT COUNTY CUSTOM:

Fremont County residents from the earliest times have recognized the natural relationships between predators and their prey, and it has been their custom to use common sense to carry out actions to keep those relationships in balance. It has

also been the custom of County residents to recognize when the impact of predators on the weaker and less competitive prey species in the county begins to have detrimental effects. Historic accounts of wolf roundups in the County show that the customs and necessities of early residents were directed at maintaining a healthy livestock economy and a harvestable surplus of big game species. Fremont County has now been artificially top-loaded with uncontrolled predator populations, which include grizzly bears, wolves, coyotes, mountain lions, foxes, bobcats, skunks, raccoons, badgers, eagles, hawks, and likely, lynx and wolverine. Each of these species competes with each other to prey on the next lower level of organisms in the food chain, consuming not only the mammals and birds themselves but also their eggs and young. Because county citizens are for the most part prohibited from controlling the numbers of predators, the weaker prey species cannot avoid the constant predation and can suffer population failures. Historically it was the custom of rural citizens who understood these relationships to control predator species to manageable levels in Fremont County. It continues to be a custom for Fremont County citizens to use such methods as ATVs, snowmobiles, other ORV's, airplanes, helicopters, firearms, leg-hold traps, snares, and other outdoor gear and equipment to control predator populations to the extent allowable. It has been the custom of County residents to maintain a consistent position on predator control even though the federal government policies vacillate depending on politics. For example, in the past, the federal government spent millions and spread tons of poison baits throughout the West in attempts to control predators. Today, they levy stiff penalties upon private citizens for doing the very same thing the federal government was doing when it realized the importance of controlling predation in the past.

(b) FREMONT COUNTY CULTURE:

Historically, predators have been trapped, called, shot, poisoned, and hunted in roundups. This Plan recognizes the contributions to the varied cultures present in Fremont County made by predator furs and bounties. With the historic culture being diverse but primarily resource-based, predator impacts were historically not ignored. Indians, trappers, hunters, livestock owners and others all have cultural ties to the predatory species and a desire to keep their populations regulated to levels compatible with economic viability of wildlife and livestock interests. Predator control has been a part of the livestock culture and the recreation culture, and citizens in other Fremont County cultural situations are beginning to see the value of common sense predator control when Grizzly bears, mountain lions and wolves show up on their porches and doorsteps unafraid of the presence of man.

(c) FREMONT COUNTY ECONOMIC VIABILITY:

Predator control is an essential tool for the continued economic stability of the agriculture, hunting, outfitting and recreation industries in Fremont County. The

loss or endangering of any prey species and the thinning of larger ungulate herds caused by uncontrolled predation creates losses of economic opportunities for most sectors of county citizens. Uncontrolled predator populations harm the agriculture, hunting, outfitting and recreation industries in Fremont County and are specifically rejected by this Plan.

(d) FREMONT COUNTY SOCIAL STABILITY:

Social stability in Fremont County is dependent on a firm economic base. Loss of livestock and wildlife to predation creates loss of income, disgust and irritation among those who value those resources. Fear of attacks by grizzly bears and, to a lesser extent, wolves causes citizens who formerly enjoyed the back-country areas of Fremont County to not care to place themselves and their families at risk by entering those areas anymore. The loss of the freedom to move about safely in the County is socially unacceptable and ultimately results in some people foregoing the outdoor experience altogether.

Section 12.05 REQUIREMENT FOR COORDINATION:

Outdoor Recreation Act of 1963

Recreation on federally or State managed land means different things to different people or groups of people. The Outdoor Recreation Act of 1963 States that:

> "Congress finds and declares it to be desirable that all American people of present and future generations be assured adequate outdoor recreation resources, and that it is desirable for all levels of government and private interests to take prompt and coordinated action to the extent practicable without diminishing or affecting their respective powers and functions to conserve, develop, and utilize such resources for the benefit and enjoyment of the American people." (Stat. 49; 16 U.S.C. 460l--460l.3)

Rangeland Renewable Resources Planning Act of 1974,

Sec. 3, 6(a) "As part of the program provided for by section 3 of this Act, the Secretary of Agriculture shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, coordinated with the land and resource management planning processes of State and Local governments and other federal agencies."

National Forest Management Act of 1976,

(B), (5) Preservation of important historic, cultural, and natural aspects of our national heritage

(9) "Coordination with the land and resource planning efforts of other federal agencies, State and local governments and Indian tribes;

Federal Land Policy and Management Act of 1976

FLPMA provides specific directives for federal agencies to coordinate public land use planning with county governments and to ensure that federal land use plans are consistent with local plans. The statute details federal agencies' mandate as follows:

Sec. 202. [43 U.S.C. 1712] (c) In the development and revision of land use plans, the Secretary shall-

(9) to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management ... of the States and local governments within which the lands are located ... the Secretary shall, to the extent he finds practical, keep apprised of ... local ... land use plans; assure that consideration is given to those ... local ... plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of ... local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands. Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him. Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.

43CFR1610.3-1 Coordination of planning efforts.

In addition to the public involvement prescribed by Section 1610.2 of this title the following coordination is to be accomplished with local governments.

Congress and the courts have provided the means by which county governments and resource users are to be involved in planning.

Section 12.06 AGENCY MANDATES:

National Environmental Protection Act 1969

16 U.S.C. 528 - Development and administration of renewable surface resources for multiple use and sustained yield of products and services; Congressional declaration of policy and purpose

> "It is the policy of the Congress that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes. ... Nothing herein shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish on the national forests."

BLM Authority to write commercial recreation permits-43 U.S.C 1740; 16 U.S.C 4601-6A

Executive Order 12630-prohibits "takings" by agency regulations/actions.

> Presidential Executive Order No. 12630 issued March 15, 1988 by President Reagan titled Governmental Actions and Interference with Constitutionally Protected Property Rights, States, in part, "Actions undertaken by government officials that result in a physical invasion or occupancy of private property, and regulations imposed on private property that substantially affect it's value or use, may constitute a taking of property. Further, governmental action may amount to a taking even though the action results in less than a complete deprivation of all use or value, or of all separate and distinct interests in the same private property and even if the action constituting a taking is temporary in nature."
>
> The E.O. further States, "Undue delays in decision making during which private property use is interfered with carry a risk of being held to be takings."
>
> The E.O. cannot legally prevent takings, but it directs the government to prevent unnecessary takings. An E.O. is not a statute but it is binding within the limits of existing law. Its authority is permanent unless it is amended or repealed by the issuing President.
>
> Recent Supreme Court decisions have imposed strict limits on how far government regulations can restrict the use of private property. Nollan v. California Coastal Commission 107 S.Ct 3141 (1987) and Lucas v. So. Carolina Coastal Council No. 91-453, June 29, 1992, have tightened the standard determining when a restriction on property use becomes a taking for which the

government must pay. These cases determine that even a temporary and/or partial deprivation of the economic use of property caused by a governmental action could amount to a taking. If a taking occurs, the government must prove that there is a public purpose that warrants the taking and must provide just financial compensation and due process. Undue delays in the government's decision-making process could lead to a takings according to these landmark cases.

The E.O. establishes a process that requires Evaluation of Risk and Avoidance of Unanticipated Takings be prepared by the Attorney general to be used by the agencies as a yardstick for making a TIA (Takings Implications Assessment.) It designates an official in an agency responsible for compliance with the E.O. Agencies are to assess the takings implications of proposed regulatory actions and address those actions in the light of takings implications to the OMB. Each agency must report annually an itemized compilation of all awards of just compensation for takings. The compliance by the federal agencies has been generally inadequate with the E.O. and TIA process. The county government should look to the E.O. as an important tool.

"Neither 'property' nor the value of property is a physical thing. Property is a set of defined options...It is that set of options which has economic value....It is the options and not the physical things, which are the 'property'-economically as well as legally...But because the public tends to think of property as tangible, physical things, this opens the way politically for government confiscation of property by forcibly taking away options while leaving the physical objects untouched." Thomas Sowell

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Executive Order 13132-guards against impacts of federalism on States.

Regulatory Flexibility Act (5 U.S.C 601 et seq.)-Ensures agency rules not have a significant economic effect on a substantial number of small entities such as small businesses.

Small Business Regulatory Enforcement Fairness Act 5 U.S.C 804 (2)-ensures agency regulations not cause major increases in costs or prices for consumers, individual industries or geographical regions.

Title 7 of Laws Applicable to the United States Department of Agriculture (1931). APHIS (7 U.S.C. 426) Predatory and Other Wild Animals; Eradication and Control:

". . .The Secretary of Agriculture may conduct a program of wildlife services with respect to injurious animal species and take any action the Secretary considers necessary in conducting the program. . .The Secretary of Agriculture is hereby authorized and directed to conduct such investigations, experiments, and tests as he may deem necessary in order to determine, demonstrate, and promulgate the

best methods of eradication, suppression, or bringing under control on national forests and other areas of the public domain as well as on State, Territory, or privately owned lands of mountain lions, wolves, coyotes, bobcats, prairie dogs, gophers, ground squirrels, jack rabbits, brown tree snakes, and other animals injurious to agriculture, horticulture, forestry, animal husbandry, wild game animals, fur bearing animals, and birds, and for the protection of stock and other domestic animals through the suppression of rabies and tularemia in predatory or other wild animals; and to conduct campaigns for the destruction or control of such animals: Provided, That in carrying out the provisions of this Act the Secretary of Agriculture may cooperate with States, individuals and public and private agencies, organizations and institutions."

7 U.S.C. 426b. Authorization of expenditures for the eradication and control of predatory and other wild animals.

7 U.S.C. 426c. Control of nuisance mammals and birds and those constituting reservoirs of zoonotic diseases.

Granger-Thye Act of 1950

Sec. 12. Use of grazing receipts for range improvements:

". . .the Secretary of Agriculture may prescribe, for. . .
(2) control of range destroying rodents. . .[funds protected as separate Treasury account]"

Article XIII. TIMBER

Section 13.01 GUIDELINES:

The policy hereby set forth for the achievement of the Goal and Objectives of this component item shall be consistent with the protection of Fremont County's historic:

1) custom,
2) culture,
3) economic viability, and
4) social stability.

Section 13.02 GOAL:

Maintain a healthy and productive forest while maximizing production of wood and forest products consistent with other forest uses and needs. To make forest decisions based on credible science.

Section 13.03 OBJECTIVES:

1. Maintain a diversity of age classes and species.
    A. Provide sustained and dependable supply of timber and forest products
    B. Improve wildlife habitat
    C. Prevent build-up of excessive fuel loads
    D. Reduce potential for insect and disease build-up
    E. Enhance aesthetic beauty of the forest
    F. Contribute to the economic and social welfare of Fremont County residents

2. Improve Forest Access
    A. Increase availability of forest products
    B. Improve fire suppression and prevention
    C. Enhance visitor recreation experience
    D. Allow more efficient management of other forest resources and uses

3. Improve Water Yields
    A. Design small patch cuts in the timber management prescriptions

4. Develop and maintain genetically superior seed trees
    A. Identify and save trees that are resistant to insects and disease, which have good form, and are fast growing

B. Develop program to collect superior seed and use in reforestation

4. Work with Shoshone National Forest to secure implementation of the Timber Component of the current (1986) Forest Management Plan.

Section 13.04 POLICY:

(a) FREMONT COUNTY CUSTOM:

The first timbering operations in Fremont Co. were in the vicinity of the South Pass gold strikes in the 1860s. Boards and timbers were needed for the construction of several towns as well as in the mines.

Development in the Wind River Valley soon followed with farmers, storekeepers and others settling in the areas that would become Lander and Ft. Washakie. Small saw milling operations were established in these areas to provide lumber and material for homes and buildings.

Settlement of the Dubois area began in the 1880s and small sawmill operations were started in the upper Wind River Valley by 1890. The tie cutting industry began in 1905, and ended in 1947. Millions of ties were floated down the Wind River to a treating plant in Riverton during the years this industry was active.

In the early 1960s, a large mill was built in Dubois and large scale timbering operations continued through the early 1980s.

The early residents of Fremont County were dependent on natural resources of the Federal lands. The timber related resources were available to them, usually free of charge for personal use, and at a small fee for commercial purposes. The USFS felt it was their duty and usually provided for the public timber and forest product needs. This "Public Service" attitude is no longer apparent and has resulted in a profound disruption of the customs and culture of Fremont County.

The people of Fremont County have a strong land ethic. They feel the forest should be managed for multiple use, including timber harvesting. It is ironic that the log home industry has to import dead logs or products from out of State while surrounded by dead and dying timber that is falling down and causing a fire hazard.

Fremont County people have always been largely self-sufficient due to the somewhat isolated location. They are an independent people and support timber management policies that improve and expand multiple use on federally or State managed lands and do not waste the natural resources.

(b) FREMONT COUNTY CULTURE:

The Federal Government manages approximately 54% of the land in Fremont County, including about 2.1 million acres by the Bureau of Land Management and 1.0 million acres, the Shoshone National Forest, by the US Forest Service. Nearly half, 459,718 acres, of the National Forest, is wilderness, and many more acres are excluded from the timber base for various multiple use reasons. About 50,346 acres are designated as suitable for timber harvesting on the Shoshone National Forest in Fremont County.

Timber management provides a source of materials for the forest products industries, posts and poles for fence construction, and an abundant source of firewood for local residents. Beyond these direct benefits, forest cover can be manipulated on lands suitable for timber production as part of a healthy ecosystem to produce multiple-use benefits. Timber management is important because it contributes to production of multiple-use benefits.

It is the culture from the early settlers, the early Scandinavian Tie Hacks, the small sawmill operators, and most present day residents, to utilize our heritage of natural resources and not waste or destroy them. Many find it difficult to understand why millions of board feet of timber are being lost to insects, disease, and fire, while at the same time the timber is largely unavailable for public use, even for salvage.

Gifford Pinchot, the first chief of the Forest Service and principal architect of early United States forest policy, was clearly concerned with local communities. In a 1907 publication aimed at informing the public about national forests, he wrote:

> "National Forests are made for and owned by the people. They should also be managed by the people. They are made, not to give the officers in charge of them a chance to work out theories, but to give the people who use them, and those who are affected by their use, a chance to work out their own best profit. This means that if National Forests are going to accomplish anything worth while [sic] the people must know all about them and must take a very active part in their management. The officers are paid by the people to act as their agents and to see that all the resources of the Forests are used in the best interest of everyone concerned" (Pinchot, 1907).

This was a vision of community forestry, motivated at least in part by a recognition that many local communities depend on national forest resources.

(c) FREMONT COUNTY ECONOMIC VIABILITY:

Fremont County does not have a viable timber industry at this time. The lack of a sustained Timber Program by the Shoshone National Forest and Bureau of Land Management since the mid 1980s has forced the death of the industry, with the exception of a few "one man" part-time operations. Timber earnings in the County have dropped by at least 94% since 1978 (Source: U.S. Department of Commerce).

The Forest Service has not sold a significant volume of timber to support or maintain the timber industry since the early 1980s. Several million board feet are lost each year to insects, disease and fire. Due to a lack of available timber from the National Forest, an industry that was once a major contributor to the economy of Fremont County no longer exists. In 1978 earnings from lumber and wood products was at a high; they have dropped dramatically since. In 1998 earnings were only 6% of the 1978 peak (Source: U.S. Department of Commerce). Unfortunately, once the equipment and facilities for timbering are closed down, a significant timber sale by the USFS may not be immediately helpful to the County economy as it takes significant time to tool up to begin processing again.

(d) FREMONT COUNTY SOCIAL STABILITY:

The social stability of western Fremont County was severely disrupted in the early to mid 1980s when the timber industry was lost. Since then, the economy of the Dubois area has stabilized based on tourism, a retirement population, and a service economy.

There are two or three part-time, one-man mills, and the larger Hickerson Mill in Lander remaining in Fremont County.

The milling capacity of the area has been lost, and it is doubtful it can be rebuilt unless a dependable supply of timber can be assured.

Adequate timber inventories exist to supply several sawmill operations, and there is potential for the timber industry to again be a significant contributor to the economy and stability of Fremont County.

The Shoshone National Forest must carry out the Timber Management Plans as written in their own current Forest Management Plan.

Section 13.05 REQUIREMENT FOR COORDINATION:

Laws requiring the Forest Service (FS) to consider county governments in its planning processes have become more explicit over time.

The Multiple Use and Sustained Yield Act of 1960: (Public Law 86–517; Approved June 12, 1960, As Amended Through Public Law 106–580, Dec. 31, 2000; 16 U.S.C. 528-531)

> Section 2, of the act, directs the Secretary of Agriculture "to develop and administer the renewable surface resources of the national forests for multiple use and sustained yield of the several products and services obtained there from." (16 U.S.C 529) However, the act merely authorized the Secretary of Agriculture "to cooperate with interested State and local governmental agencies and others in the development and management of the national forests" (16 U.S.C 530).

Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA): (Public Law 93–378; Approved August 17, 1974, As Amended Through Public Law 108–21, April 30, 2003; 16 U.S.C. 1600)

> This act, however, clearly requires Forest Service to coordinate with the County.
>
> Section 3, the RPA recognized the importance of renewable forest and range resources, and directed the Secretary of Agriculture to prepare a Renewable Resource Assessment.
>
> The RPA elevated the relationship between the FS and the county governments from one of cooperation to one of coordination with the following requirement:
>
> > Section 6 (a) "As a part of the Program provided for by section 4 of this Act, the Secretary of Agriculture shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, coordinated with the land and resource management planning processes of State and local governments and other Federal agencies." (16 U.S.C 1604 (a))

National Forest Management Act of 1976:

> Section 6 (a) of the RPA, quoted above, was not amended. The National Forest Management Act requires that each plan developed "be revised (A) from time to time when the Secretary finds conditions in a unit have significantly changed, but at least every fifteen years." (19 U.S.C 1604 (f) (5)) The FS must coordinate land use planning efforts with those of county governments under this act or through the NEPA process.

Section 13.06 AGENCY MANDATES:

The following citations, CFR's and quotes will serve as the legal basis and guidelines for the formulation of the Timber Component of the Fremont County Natural Resource Plan:

> Long ago, Western senators tried to abolish the forest reserves, which were all in the West, but were headed off by the Pettigrew Amendment to the Sundry Civil Act of June 4, 1897—or the Organic Act of 1897. The amendment opened the reserves to regulated use, saying:
>
> > "No national forest shall be established, except to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States; but it is not the purpose or intent of these provisions, or of said section, to authorize the inclusion therein of lands more valuable for the mineral therein, or for agricultural purposes, than for forest purposes." **(16 U.S.C. 475)**
>
> It gave the Secretary of Interior authority to provide for the sale of "dead, mature, or large growth of trees" after they were "marked and designated."
>
> "The Secretary of Agriculture may permit, under regulations to be prescribed by him, the use of timber and stone found upon national forests, free of charge, by bona fide settlers, miners, residents, and prospectors for minerals, for firewood, fencing, buildings, mining, prospecting, and other domestic purposes, as may be needed by such persons for such purposes; such timber to be used within the State or Territory, respectively, where such national forests may be located. (16 U.S.C. 477)

"History and Objects of Forest Reserves. Forest reserves are for the purpose of preserving a perpetual supply of timber for home industries, preventing destruction of the forest cover which regulates the flow of streams, and protecting local residents from unfair competition in the use of the range.... We know that the welfare of every community is dependant upon a cheap and plentiful supply of timber; that a forest cover is the most effective means of maintaining a regular stream flow for irrigation and other useful purposes, and the permanence of the livestock industry depends on the conservative use of the range" (Forest Service, United States Department of Agriculture, The Use Book, 13 (1906 ed)).

In 1944, the Sustained Yield Forest Management Act (58 Stat. 132) was passed to "promote the stability of forest industries, of employment, of communities and of taxable forest wealth through continuous supplies of timber" (16 U.S.C. 583). The act established a philosophical framework that rested on a neat equation: sustained yield ensures community stability, which (it implies) ensures the happiness and well-being of timber-dependent towns and the people in them.

The USFS has promulgated regulations for developing, adopting, and revising the land and resource management plans for the National Forest System. The regulations prescribe how land and resource management planning will be conducted on National Forest System lands. (36 CFR 219.1 (a)) The purposes and principles involved regarding planning coordination with county governments and preservation of culture and economic and community stability are articulated as follows:

> The resulting plans shall provide for multiple use and sustained yield of goods and services from the National Forest System in a way that maximizes long-term net public benefits in an environmentally sound manner.
>
> (b) Plans guide all natural resource management activities and establish management standards and guidelines for the National Forest System. They determine resource management practices, level of resource production and management, and the availability and suitability of lands for resource management.
>
> Regional and forest planning will be based on the following principles:
>
> > (5) Preservation of important historic, cultural, and natural aspects of our national heritage;
> > (9) Coordination with the land and resource planning efforts of other Federal agencies, State and local governments, and Indian Tribes;
> > (13) Management of National Forest System lands in a manner that is sensitive to economic efficiency; and
> > (14) Responsiveness to changing conditions of land and other resources and to changing social and economic demands of the American people (36 CFR 219.1 (a) (b) (5) (9) (13) (14)).

These regulations apply to the National Forest System, which includes special areas, such as wilderness, wild and scenic rivers, and national recreation areas, and national trails. Whenever the special areas require additional consideration by the Forest Service, this planning process applies. (36 CFR 219.2) The regulations stipulate that each forest supervisor shall develop a forest plan for administrative units of the National Forest System. (36 CFR 219.4 (3)) An administrative unit for this purpose can be a national forest, or all lands for which a forest supervisor has responsibility (e.g., a national forest and one or more special areas) or a combination of national forests within the jurisdiction of a single forest supervisor.

Specific processes and requirements for accomplishing the purposes and principles of planning coordination with county governments and the protection of culture and community stability are provided as follows:

> (a) The responsible line officer shall coordinate regional and forest planning with the equivalent and related planning efforts of other Federal agencies, State and local governments, and Indian tribes.

(c) The responsible line officer shall review the planning and land use policies of other Federal agencies, State and local governments, and Indian tribes. The results of this review shall be displayed in the environmental impact Statement for the plan (CFR 1502.16(c), 1506.2).

The review shall include---

(l) Consideration of the objectives of other Federal, State and Local governments, and Indians [sic] tribes, as expressed in their plans and policies;

(2) An assessment of the interrelated impacts of these plans and policies;

(3) A determination of how each Forest Service plan should deal with the impacts identified; and,

(4) Where conflicts with Forest Service planning are identified, consideration of alternatives for their resolution.

(d) In developing land and resource management plans, the responsible line officer shall meet with the designated State official (or designee) and representatives of other Federal agencies, local governments and Indian tribal governments at the beginning of the planning process to develop procedures for coordination. As a minimum, such conferences shall also be held after public issues and management concerns have been identified and prior to recommending the preferred alternative. Such conferences may be held in conjunction with other public participation activities, if the opportunity for government officials to participate in the planning process is not thereby reduced.

(e) In developing the forest plan, the responsible line officer shall seek input from other Federal, State and local governments, and universities to help resolve management concerns in the planning process and to identify areas where additional research is needed. This input should be included in the discussion of the research needs of the designated forest planning area.

(f) A program of monitoring and evaluation shall be conducted that includes consideration of the effects of National Forest management on land, resources, and communities adjacent to or near the National Forest being planned and the effects upon National Forest management of activities on nearby lands managed by other Federal or other government agencies or under the jurisdiction of local governments. (36 CFR 219.7 (a) (c) (1) (2) (3) (4) (d) (e) (f))

The agency regulations also reflect the specific requirements to protect the economic and community stability of a county. The preparation, revision, or significant amendment of a

forest plan includes the formulation of reasonable alternatives according to NEPA procedures. (36 CFR 219.12 (a) (b) (c) (d) (e) (f)) The alternatives must be in sufficient detail to provide the following information regarding economic and community stability:

The physical, biological, economic, and social effects of implementing each alternative considered in detail shall be estimated and compared according to NEPA procedures. These effects include those described in NEPA procedures (40 CFR 1502.14 and 15.02.16) and at least the following:

> (3) Direct and indirect benefits and costs, analyzed in sufficient detail to estimate—
>
> > (iii) The economic effects of alternatives, including impacts on present net value, total receipts to the Federal Government, direct benefits to users that are not measured in receipts to the Federal Government, receipt shares to State and local governments, income and employment in affected areas. (36 CFR 219.12 (g))
> >
> > The significant physical, biological, economic, and social effects of each management alternative shall be evaluated in detail (36 CFR 219.12 (h))

Further:
The evaluation shall include a comparative analysis of the aggregate effects of the management alternatives and shall compare present net value, social and economic impacts, outputs of goods and services, and overall protection and enhancement of environmental resources. (19 U.S.C 1604 (f) (5))

Upon implementation, the plan shall be evaluated to determine how well objectives have been met and how closely management standards and guidelines have been applied. Necessary changes in management direction, revisions, or amendments to the forest plan as necessary, shall be recommended to the forest supervisor. (36 CFR 219.12 (k))

Section 13.07 GUIDANCE:

The Lander District of the Bureau of Land Management lists about 65,000 acres of forested land with about 18,000 to 25,000 acres suitable for timber production. The BLM timber is mostly on Green Mountain in eastern Fremont County, with a few scattered patches in the Dubois area. (William Mack, forester, Lander District BLM)

The current Shoshone N.F. management plan approved in 1986 recognizes the need for good timber management, as well as existing problems. It includes the following quote:

> "Much of the timber in Fremont County is older, mature to over-mature. This makes trees on the forest highly susceptible to insect and disease attack."

The following goals are listed under the timber component in the current Shoshone N.F. Management Plan:

-- Implement an integrated pest management program to prevent and control insect infestations and disease
-- Improve tree age class and species diversity to benefit forest health, recreation experiences, and visual quality and wildlife habitat
-- Reduce the accumulation of natural fuels
-- Manage the timber resources on lands suitable for timber management to provide saw timber, round wood and firewood to meet resource management objectives
-- Provide timber sales of sufficient quantity and quality to attract investment by the timber industry to accomplish desired vegetation management
-- Implement appropriate silvicultural practices supported by site-specific inventory data and written prescriptions

These goals have largely been ignored since the plan was approved and implemented in 1986. Fremont County did see a slight increase salvage timber sales in 2003, which is hoped be the beginning of a trend.

(a) Age class diversity:

Much of the timber in Fremont County is older, mature to over-mature. This makes trees on the forest highly susceptible to insect and disease attacks, particularly in the harsher climates on the Wind River and Lander districts. Direct control of epidemics is an expensive, short-term solution. Replacing older trees with younger trees, through harvesting timber on those areas that are suitable, provides a means to fight existing problems while creating diversity in large blocks of trees of the same species and age class. Instead of a monoculture of trees, all susceptible at the same time, the Forest in the long term becomes a mosaic of species and age classes where only a small portion is susceptible in any decade. In this way, timber management not only provides direct benefits in terms of revenues, but also provides a means to improve the health of stands and avoid future insect and disease epidemics.

An additional benefit of changing current age class distribution is the opportunity to increase early age classes and create openings otherwise solid blocks of timber. This can significantly improve habitat needed by many wildlife species, including deer and elk. In this area, tentatively suitable timberland tends to occur in large blocks. Many of these blocks are along wildlife migration routes between summer and winter range. Creating openings and browse in areas surrounded by cover not only aids wildlife habitat, but takes some wildlife pressure off rangeland grazed by domestic livestock.

The aesthetic beauty of western Fremont County is important to thousands of

visitors every year, particularly because of its proximity to Yellowstone National Park. Most people enjoy a pattern of vegetation that includes many different ages and sizes of trees. By coordinating visual management with timber management, silvicultural treatments can be used to create desired diversity and enhance forest beauty. Timber management can provide recreation and visual quality outputs along with wood products: all at a lower cost than if attempted separately.

(b) Motorized access:

Dispersed motorized recreation is a very popular activity on the Forest, particularly on access routes to Yellowstone and Grand Teton National Parks. Dispersed non-motorized recreation is also very popular. As more people use existing roads and access areas, the quality of recreation experiences can decline. Providing roads through attractive and well-managed areas by coordinating timber management and travel management programs offers the opportunity to enhance dispersed recreation. Snowmobiling has been a popular winter sport on snow-closed timber roads since 1961, and often reaches levels of several hundred sleds a day. ATVs began using the timber roads in the early 1980s and numbers have significantly increased since then. Snowmobiles and ATV use on timber roads are necessary tools for loggers, foresters, ranchers, and other users in the use of federally managed lands. Survival equipment and tools have customarily been carried by users of the forest resource for safety and self-sufficiency.

A related resource management need is improved access for public firewood gathering. Much of the firewood along existing roads has been removed through public firewood programs. Improved Forest access as a result of timber management will substantially increase the supply of accessible firewood, Christmas trees, and other forest products.

(c) Water production:

Another benefit of timber management is increased water production. It is well documented that vegetation manipulation can increase water yields, particularly in arid parts of the west. There is some potential for this where small patch cuts can be made for enhancing water flow and yield. Integrating these cuts into a broader timber management program reduces the costs of creating desired openings.

(d) Insects and Disease:

Insects and disease act as both beneficial and destructive agents, and they are a part of forest ecosystems. They play an important role in microclimate energy balances and perpetuation of habitat for a variety of wildlife species. Conversely, vegetation mortality, defects, and growth reduction directly attributable to insects and disease, result in substantial economic and social costs. The resulting accumulation of heavy fuel loading from dead and down timber poses a very real threat for disastrous wildfire to the national forest and adjacent houses and private

lands.

Current use and management:

Forested areas are currently undergoing insect and disease problems from three dominant sources, discussed below.

MOUNTAIN PINE BEETLE (Dendroctonus ponderosae) is a serious pest on the Shoshone National Forest. An infestation in lodgepole pine has been occurring since the late 1960's. Silvicultural treatment is a means of reducing the acreage of susceptible trees and increasing stand diversity. By 1980, the beetle populations were of epidemic proportions and control measures began on National Forest System and private lands on a limited scale. They have been largely ineffective and losses from insects and disease continue to increase.

The Forest's timber management program in past years has not been at a sufficient level to apply the stocking control and harvesting of mature timber necessary to maintain healthy, vigorous stands in tentatively suitable timber lands. As a result, many areas now are susceptible to epidemic insect populations. Currently, lodgepole pine stands, which became established near the beginning of the twentieth century, are the most susceptible. Insect and disease losses are also increasing in white bark pine, a high elevation species in Fremont County whose seeds are an important food source for grizzly bears. Far more timber is being lost to insect and disease than is being annually harvested.

DWARF MISTLETOE (Arceuthobium spp.) is a widespread disease of lodgepole pine on the Forest.

COMMANDRA BLISTER RUST (Cronartium Comandrae) is prominent particularly in the Wind River drainage as a result of an epidemic that started in the late 1940's. As a result of the disease, large acreages of lodgepole pine exhibit dead tops and have lost significant timber volume.

The predominance of mature timber stands provides conditions suitable for a number of other diseases such a broom rusts, decaying agents and cankers. While none of these diseases cause unacceptable losses forest-wide, they have negative impact on other resources such as visual quality and recreation.

Demand trends. The long-term goal of the integrated pest management program must be prevention rather that emergency suppression of insects and diseases. A variety of silvicultural activities can help prevent insect and disease problems. They include clear cutting, slash disposal, sight preparation for regeneration, commercial and pre-commercial thinning, timber stand improvement and partial cutting. It is important to identify and prioritize timber stands according to susceptibility to insect and disease so

the highest risk stands are scheduled for treatment first. This will help ensure the maintenance of a healthy forest condition on that portion of forested land that is accessible and suitable.

(e) Genetic Improvement:

Tree Improvement. Increasing demands for multiple-use goods and services, including timber, as well as increasing management costs suggest a need to produce more high quality fiber per acre per year. One method of doing this is to use sound genetic principles in all vegetation management activities. This must be done on the Forest through careful selection of trees left in the overstory of shelter wood cuts, selection of trees to be cut in commercial and pre-commercial thinning and through application of selection harvests in all age stands. In each case, trees that appear to be superior are favored as seed source trees. Beyond this, a program for developing areas to produce genetically superior seeds must be initiated and maintained on the forests within Fremont County.

Article XIV. TRANSPORTATION; RIGHT OF WAY

Section 14.01 GUIDELINES:

The policy hereby set forth for the achievement of the Goal and Objectives of this component item shall be consistent with the protection of Fremont County's historic:

1) custom,
2) culture,
3) economic viability, and
4) social stability.

Section 14.02 GOAL:

Maintain the historic right to travel over, and across State and federally managed lands wherever necessary in pursuit of mining, ranching, farming, logging, recreational activities, motorized vehicle use, and all other historic uses. To employ sound science in decisions made regarding lands and resources in Fremont County.

Section 14.03 OBJECTIVES:

1) Keep all rights-of-way going to and inside of federally or State managed lands open for the enjoyment of the public
2) Identify mechanisms to help maintain the uses of Rights-of-Ways.
3) Enhance the opportunity for further economic development
4) Protect private property rights in Fremont County.
5) Access to and/or across federal and State managed lands within the county shall not entail encumbrances or restrictions on private property (inholders).

Section 14.04 POLICY:

(a) FREMONT COUNTY CUSTOM:

It has long been the custom of Fremont County citizens to access any and all land within the county for the use and economic viability of their economic endeavors. The use of horses, ATVs, snowmobiles, ORV's and other modes of transportation have long been recognized as a customary way to get from place to place in Fremont County. Customarily, in Fremont County, citizens have always been good neighbors and stewards by closing all gates that they have opened, This plan encourages that same kind of citizenship with regards to the general public.

(b) FREMONT COUNTY CULTURE:

The western culture of Fremont County has depended constantly on the ability to move around and across the County. It has historically been a long way between towns, ranches, recreational areas, mining areas, etc., and County residents are accustomed to traveling considerable distances in operating their businesses. The United States Congress in intending to promote the settlement of the western United States by establishment of highways, granted the right-of-way for the construction of highways over federally or State managed lands, not reserved for public uses in Section 8 of the Lode Mining Act of 1866, reenacted and recodified as Revised Statute 2477 (RS2477), 43 U.S.C. 932.

(c) FREMONT COUNTY ECONOMIC VIABILITY:

The means of making a living for many Fremont County citizens rests on the ability to move freely across State and federally managed lands.

(d) FREMONT COUNTY SOCIAL STABILITY:

The social stability of Fremont County depends on the ability of its citizens to access State and federally managed lands for all purposes. The loss of the use of rights-of-way for moving livestock, oil and gas exploration and development, recreation, timbering, and other historic uses creates the loss of the ability to stay economically viable and contributes to social disgust, unrest and instability.

Section 14.05 HISTORIC DEFINITIONS OF HIGHWAY:

(See also Article II Definitions)

1866 Bouviers Law Dictionary

Highway: A passage or road through the country, or some parts of it for the use of the people. The term highway is a generic name for all kinds of public ways.

Brande's, 1867

Highway: In English Law, a highway is a way over which the public at large have a right of passage, and includes a horse road, or a mere

footpath, as well as a carriage road. Any way common to all people, without distinction, is a highway.

1867 Burrills Law Dictionary

Highway: A public way or road; a way or passage open to all; a way over which the public at large have a right of passage. Called in some of the old books, high street. Every thoroughfare which is used by the public, and is in the language of the English books, "common to all the king's subjects" is a highway, whether it be a carriage-way, a horse-way, a foot-way or a navigable river. The word highway is the genesis of all public ways.

Section 14.06 CASE LAW THAT USES THE TERM "HIGHWAY":

In Colorado, the term 'highways' includes footpaths. Simon v. Pettit, 651 P.2d 418, 419 (Colo.Ct.App. 1982), aff'd, 687 P.2d 1299 (Colo.1984). "Highways" under 43 U.S.C. 932 can also be roads "formed by the passage of wagons, etc., over the natural soil." Central Pacific Railway Co. v. Alameda County, 284 U.S. 463, 467, 52 S.Ct. 225, 226, 76 L.Ed. 402 (1932). The trails and wagon roads over the lands which became part of the Colorado National Monument were sufficient to be "highways" under 43 U.S.C. 932 [R.S. 2477]. 634 F.Supp. at 1272. *

"The term highway is the generic name for all kinds of public ways, whether they be carriage-ways, bridle-ways, footways, bridges, turnpike roads, railroads, canals, ferries, or navigable rivers." Bouv. Law Dictionary, Rowle's Third Rev. p. 1438, Tit. Highway; Elliott, Roads and Streets, p. 1; 25 Am.Jur, 340. Parsons v. Wright, 27 S.E.2d 534 (N.C. 1943)

A highway is commonly defined as a passage, road, or street which every citizen has a right to use . . .. A highway includes every public thoroughfare, "whether it be by carriage way, a horse way, a foot way, or a navigable river." Summerhill v. Shannon, 361 S.W.2d 271 (Ark. 1962).

"Roads" and "highways" are generic terms, embracing all kinds of public ways, such as county and township roads, streets, alleys, township and plank roads, turnpike or gravel roads, tramways, ferries, canals, navigable rivers . . .. Strange v. Board of Com'rs of Grant County, 91 N.E. 42 (Ind. 1910).

Highways, as they were originally developed, were for the convenience and easy passage of persons on foot, on horseback, in vehicles drawn by horses or oxen, and also for the transportation of commodities by the same means. They were open to unrestricted use by all persons. City of Rochester v. Falk, 9 N.Y.S.2d 343

(1939)

The word "highway" as ordinarily used means a way over land open to the use of the general public without unreasonable distinction or discrimination, established in a mode provided by the laws of the State where located. Lovelace v. Hightower, 50 N.M. 50, 168 P.2d 864 (1946).

Travel and transportation of goods by wheeled vehicles is not the only use to which a highway may be put. One walking or riding horseback, or transporting goods by packhorse, over a way which the public is constantly using, is a use of such a way as a highway. Hamp v. Pend Oreille County, 172 P. 869, 870 (Wash. 1918).

"User is the requisite element, and it may be by any who have occasion to travel over public lands, and if the use be by only one, still it suffices." Wilkenson v. Dept. of Interior, 634 F.Supp. 1265, 1272 (D. Colo. 1986).

Section 14.07 REQUIREMENT FOR COORDINATION:

Outdoor Recreation Act 1963

Recreation on federally or State managed land means different things to different people or groups of people. The Outdoor Recreation Act of 1963 States that:

> "Congress finds and declares it to be desirable that all American people of present and future generations be assured adequate outdoor recreation resources, and that it is desirable for all levels of government and private interests to take prompt and coordinated action to the extent practicable without diminishing or affecting their respective powers and functions to conserve, develop, and utilize such resources for the benefit and enjoyment of the American people." (Stat. 49; 16 U.S.C. 460l through 460l–3)

Rangeland Renewable Resources Planning Act of 1974,

Sec. 3, 6(a) "As part of the program provided for by section 3 of this Act, the Secretary of Agriculture shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, coordinated with the land and resource management planning processes of State and Local governments and other federal agencies."

National Forest Management Act of 1976,

(B)(5) Preservation of important historic, cultural, and natural aspects of our national heritage
(9) "Coordination with the land and resource planning efforts of other federal agencies, State and local governments and Indian tribes;

Federal Land Policy and Management Act of 1976

FLPMA provides specific directives for federal agencies to coordinate public land use planning with county governments and to ensure that federal land use plans are consistent with local plans. The statute details federal agencies' mandate as follows:

Sec. 202. [43 U.S.C. 1712] (c) In the development and revision of land use plans, the Secretary shall-

> **(9)** to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management ... of the States and local governments within which the lands are located ... the Secretary shall, to the extent he finds practical, keep apprised of ... local ... land use plans; assure that consideration is given to those ... local ... plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of ... local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands. Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him. Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.

43CFR1610.3-1 Coordination of planning efforts.

In addition to the public involvement prescribed by Section 1610.2 of this title the following coordination is to be accomplished with local governments.

Section 14.08 WYOMING STATUTORY REQUIREMENTS:

(a) WYOMING SESSION LAWS 1895, CHAPTER 69:

Section 1. All roads within this State shall be public highways which have been declared by law to be national, State, territorial or county roads. All roads that have been designated or marked as highways on government maps or plats in the record of any land office of the United States within this State, and which have been publicly used as traveled highways, and which have not been closed or vacated by order of the board of county commissioners of the county wherein the same are located, and the board or officer charged by law with such duty shall keep the same open and in repair the same as in the case of roads regularly laid out and opened by order of the board of county commissioners."

(b) W.S. 24-1-104. Management and control of county roads.

All county roads shall be under the supervision, management and control of the board of the county commissioners of the county wherein such roads are located, and no county road shall hereafter be established, altered or vacated in any county in this State, except by authority of the board of the county commissioners of the county wherein such road is located, except as is otherwise provided by law.

(c) W.S. 24-3-101. Resolution by county commissioners; petition of county electors; alteration authority specified.

(a) The board of county commissioners of any county, may, on its own motion by resolution duly adopted, where it deems the public interest so requires, initiate the procedure for the establishment, vacation or alteration of a county highway, as the case may be, by setting forth in such resolution the point of commencement, the course and the point of termination of said road to be established, altered or vacated, as the case may be, and thereafter following out the provisions of article 2, chapter 52, Wyoming Revised Statutes, 1931, not inconsistent therewith.

(b) (i) Any person desiring the establishment, vacation or alteration of a county highway shall file in the office of the county clerk of the proper county, a petition signed by five (5) or more electors of the county residing within twenty-five (25) miles of the road proposed to be established, altered, or vacated, in substance as follows: To the Board of County Commissioners of .... County. The undersigned ask that a county highway, commencing at.... and running thence.... and terminating at.... be established (altered or vacated as the case may be).

(ii) With said petition shall be filed a list containing the names and also the known post office address of each person owning or having an interest in any land over which the proposed establishment, vacation or alteration of a county highway is to be made.

(c) In altering any county highway under this article or any other road dedicated by recorded plat as a public road, a board of county commissioners may change the designation of any road to a private road. If a board alters any road, it shall reserve the access rights of the area landowners and permit governmental agencies to retain access to that road for performing essential public services. It may also designate a nongovernmental entity to be responsible for the maintenance of any road altered pursuant to this section.

(d) IDENTIFICATION OF COUNTY ROADS:

W.S. 24-3-201. Purpose of procedure.

The legislature finds that due to inaccurate and inconsistent records, there exist roads which are seldom used, not maintained and are not identified as or believed by the public to be county roads but are, in fact, county roads. Recognizing the numerous difficulties resulting from the existence of such county roads, the legislature finds it in the best interest of the public to create a procedure to identify county roads, thereby altering and vacating these abandoned or unnecessary county roads without survey.

Section 14.09 AGENCY MANDATES:

Revised Statutes 2477 (R.S. 2477) States, in its entirety:

"Sec. 8. And be it further enacted, that the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted." 8 of the Act of July 26, 1866, 14 Stat. 253, later codified at 43 U.S.C. 932.

This statute has been interpreted innumerable times over the 130 years since its passage by State and federal courts and by the Department of Interior. These interpretations have consistently outlined fundamental, core principles, which have guided its application over the years. In particular, the statute has been applied universally by reference to State law. Furthermore, the definitions under State law of terms such as "highway" and "construction " have always been honored. In recent years, there has been a growing effort to ignore or twist these clear precedents. A major recent example is the regulations proposed several years ago by the Department of Interior. Even a casual review of the precedent outlined here demonstrates conclusively that they do not provide a fair

treatment of this legal history and the definitions, which were relied upon for the 110 years, that the offer under RS 2477 was open. The following outline provides just a few quotations from the vast body of administrative and court-made law and the legislative history of this statute.

This grant [R.S. 2477] becomes effective upon the construction or establishing of highways, in accordance with the State laws, over public lands not reserved for public uses. No application should be filed under this act, as no action on the part of the Federal Government is necessary (56 I.D. 533 (May 28, 1938).

These regulations were retained, virtually unchanged, for 110 years:

> No application should be filed under R.S. 2477, as no action on the part of the Government is necessary . . .. Grants of rights-of-way referred to in the preceding section become effective upon the construction or establishment of highways, in accordance with the State laws, over public lands, not reserved for public uses. 43 C.F.R. 2822.1-1, 2822.2-1 (October 1, 1974)(See also, 43 C.F.R. 244.54 (1938); 43 C.F.R. 244.58 (1963).

In 1986, the Department of Interior recognized its duty to honor prior, valid existing rights:

> "A right-of-way issued on or before October 21, 1976, pursuant to then existing statutory authority is covered by the provisions of this part unless administration under this part diminishes or reduces any rights conferred by the grant or the statute under which it was issued, in which event the provisions of the grant or the then existing statute shall apply" (43 U.S.C. 2801.4 (February 25, 1986).

The Department also recognized the role of State law when making representations to the courts:

> "The parties are in agreement that the right of way statute is applied by reference to State law to determine when the offer of grant has been accepted by the "construction of highways." Wilkenson v. Dept. of Interior of United States, 634 F.Supp. 1265, 1272 (D. Colo. 1986) (citation omitted).

State courts have also been consistent in their treatment of R.S. 2477 rights-of-way:

Under this act [R.S. 2477] highways could be established over public lands not reserved for public uses while they remained in the ownership of the government. Congress did not specify or limit the methods to be followed in the establishment of such highways. It was necessary, therefore, in order that a road should become a public highway, that it be established in accordance with the laws of the State in which it was located. Ball v. Stephens, 158 P.2d 207, 209 (Cal. Ct. App. 1945).

It has been held by numerous courts that the grant [under R.S. 2477] may be accepted by public use without formal action by public authorities, and that continued use of the road by the public for such length of time and under such circumstances as to clearly indicate an intention on the part of the public to accept the grant is sufficient. Lindsay Land & Livestock v. Churnos, 285 P. 646, 648 (Utah, l930).

By this act [R.S. 2477] the government consented that any of its lands not reserved for a public purpose might be taken and used for public roads. The statute was a standing offer of a free rights of way over the public domain, and as soon as it was accepted in an appropriate manner by the agents of the public, or the public itself, a highway was established. Streeter v. Stalnaker, 61 Neb. 205, 85 N.W. 47, 48 (1901).

Federal courts have concurred:

The salient issue is whether the scope of R.S. 2477 rights-of-way is a question of State or federal law . . .. Especially when an agency has followed a notorious, consistent, and long-standing interpretation, it may be presumed that Congress' silence denotes acquiescence: "[G]overnment is a practical affair, intended for practical men. Both officers, lawmakers, and citizens naturally adjust themselves to any long-continued action of the Executive Department, on the presumption that unauthorized acts would not have been allowed to be so often repeated as to crystallize into a regular practice. That presumption is not reasoning in a circle, but the basis of a wise and quieting rule that, in determining the meaning of a statute or the existence of a power, weight shall be given to the usage itself, --even when the validity of the practice is the subject of investigation." United States v. Midwest Oil Co., 236 U.S. 459, 472-73, 35 S.Ct. 309, 312- 13, 59 L.Ed. 673 (1915) . . . The perfection of an R.S. 2477 right-of-way admittedly is a different issue [from] its scope. However, all of the above-cited cases concern the conflict between an alleged R.S. 2477 right-of-way and a competing claim of right to the land. The cases subsume the question of scope into the question of perfection; and indeed a critical part of many of the State law definitions of perfection included the precise path of the purported roadway. Having considered the arguments of all parties, we conclude that the weight of federal regulations, State court precedent, and tacit congressional acquiescence compels the use of State law to define the scope of an R.S. 2477 right-of-way. Sierra Club v. Hodel 848 F.2d at 1080, 1083. (Citations omitted.)

Ordinarily, this expression of intent [by the State legislature] would constitute valid acceptance of the right-of-way granted in Section 932. That section acts as a present grant which takes effect as soon as it is accepted by the State . . .. All that is needed for acceptance is some "positive act on the part of the appropriate public authorities of the State, clearly manifesting an intention to accept . . . ." Wilderness Society v. Morton, 479 F.2d 842, 882 (D.C. Cir. 1973), (quoting Hamerly v. Denton, Alaska, 359 P.2d 121, 123 (1961); citing also Kirk v. Schultz, 63 Idaho 278, 282, 119 P.2d 266, 268 (1941); Koloen v. Pilot Mound Township, 33 N.D. 529, 539, 157 N.W. 672, 675 (1916); Streeter v. Stalnaker, 61 Neb. 205, 206, 85 N.W. 47, 48 (1901)).

"Under R.S. 2477, a right-of-way could be established by public use under terms provided by State law." Sierra Club v. Hodel, 675 F.Supp. at 604. "Whether the roads have been established under the provisions of R.S. 2477 is a question of New Mexico law." U.S. v. Jenks, 804 F.Supp. 232, 235 (D.N.M. 1992). "Whether a right of way has been established is a question of State law." Shultz v. Department of Army, U.S., 10 F.3d at 655.

10th circuit court of appeals on the importance of State law:

The United States Circuit Court of Appeals for the 10th Circuit, commenting on "more than four decades of agency precedent, subsequent BLM policy as expressed in the BLM Manual, and over a century of State court jurisprudence" on this issue:

> The adoption of a federal definition of R.S. 2477 roads would have very little practical value to BLM. State law has defined R.S. 2477 grants since the statute's inception. A new federal standard would necessitate the remeasurement and redemarcation of thousands of R.S. 2477 rights-of-way across the country, an administrative dust storm that would choke BLM's ability to manage the public lands . . . . That a change to a federal standard would adversely affect existing property relationships squarely refutes Sierra Club's allegation that the use of a State law standard unfairly prejudices the federal government. R.S. 2477 rightholders, on the one hand, and private landowners and BLM as custodian of the public lands, on the other, have developed property relationships around each particular State's definition of the scope of an R.S. 2477 road. The replacement of existing standards with an "actual construction" federal definition would disturb the expectations of all parties to these property relationships. Sierra Club v. Hodel, 848 F.2d at 1082-1083.

FLPMA admittedly embodies a congressional intent to centralize and systematize the management of public lands, a goal which might be advanced by establishing uniform sources and rules of law for rights-of-way in public lands. The policies supporting FLPMA, however, simply are not relevant to R.S. 2477's construction. It is incongruous to determine the source of interpretative law for one statute based on the goals and policies of a separate statute conceived 110 years later. Rather, the need for uniformity should be assessed in terms of Congress' intent at the time of R.S. 2477's passage. Id.

The Federal Land Policy Management Act of 1976 (FLPMA) States:

> Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this act. FLPMA 701(a), 43 U.S.C. 1701 note (a).
>
> All actions by the Secretary concerned under this Act shall be subject to valid existing rights. FLPMA 701(h), 43 U.S.C. 1701 note (h).

Nothing in this title [43 U.S.C. 1761 et seq.] shall have the effect of terminating any right-of-way or right-of-use heretofore issued, granted or permitted (FLPMA 509(a), 43 U.S.C. 1769(a)).

The Wyoming Wilderness Act of 1984:

Section 401(b) 5 - "unless expressly authorized by Congress, the Department of Agriculture shall not conduct any further Statewide roadless area review and evaluation of National Forest System lands in the State of Wyoming for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System."

Section 504 - "Congress does not intend that the designation of wilderness areas in the State of Wyoming lead to the creation of protective perimeters or buffer zones around each wilderness area. The fact that non-wilderness activities or uses can be seen or heard from within any wilderness area shall not, of itself, preclude such activities or uses up to the boundary of the wilderness area" P.L. 98-550 - Oct. 30, 1984.

Section 14.10 GUIDANCE:

Road closures, obliterations, re-construction, retirement, or by any other term used by federal agencies, will not occur where there may be possible RS2477 rights-of-way, without meaningful coordination with the Fremont County Commission.

Article XV. WATER

Section 15.01 GUIDELINES:

The policy hereby set forth for the achievement of the Goal and Objectives of this component item shall be consistent with the protection of Fremont County's historic:

1) custom,
2) culture,
3) economic viability, and;
4) social stability.

Section 15.02 GOAL:

To recognize and protect the provisions of the prior appropriation doctrine as adopted by the State of Wyoming inasmuch as that doctrine is employed in Fremont County, and to prevent agencies of the federal government from attempting to control or manipulate water supplies within Fremont County when no authority exists to do so.

Section 15.03 OBJECTIVE:

To be informed about water policy, water law, water use, and water development opportunities in Fremont County, and to be prepared to provide meaningful input whenever proposals to change the status quo arise. To require credible science to be used in any decisions made regarding water resources in Fremont County.

Section 15.04 POLICY:

(a) FREMONT COUNTY CUSTOM:

Fremont County citizens have complied with State law in regard to acquisition of State water rights since Statehood, and with territorial law prior to that. Water development activities in the county have provided citizen water supplies for municipal, industrial, agricultural, domestic, livestock, recreational, flood control, and numerous other uses. Many of these developments have legally occurred on federal lands at the invitation, consent and knowledge of the respective federal land management agencies operating under the political administration in power at the time. It is the custom of Fremont County citizens to continue to acquire and provide safe and adequate water supplies for the needs of her residents and to stay informed about, and engaged in, matters affecting those supplies. It is a custom for Fremont County to reject attempts by federal agencies to impose newly conceived land use permits, special use permits, and fees for water related activities that historically have had no need for regulation within the boundaries

of the County. From the beginning of irrigation in Fremont County, it has been the custom of irrigators to match their irrigation activities with the availability of the water supply. During spring runoff, irrigators have customarily filled their ditches to capacity in order to conduct efficient irrigation and store water in the soil profile along the streams and rivers. Then as streamflows recede, it has been the custom to cut back the amount of water in the ditches commensurately. This historic practice has allowed the delayed return of water to the streams until later in the summer, creating flows instream at late summer times when the streams would have been dry without these irrigation return flows. This local citizen knowledge of the streams and rivers has provided a system of self-regulation of water use to a great extent. It has also been the custom to responsibly use horses, ATVs, snowmobiles, or other ORV's to access reservoirs, ditches, headgates and other irrigation facilities to meet the legal obligation of monitoring and maintaining those facilities in a safe and sound manner. The maintenance of headgates and diversion structures at the points where irrigation facilities divert water from the streams and rivers is a historic custom rooted in the legal obligation to care for such structures as directed by Wyoming law.

(b) FREMONT COUNTY CULTURE:

Fremont County's culture in regard to use of its water supplies is varied and diverse today, but had its foundations in agriculture and ranching, and businesses that supported those endeavors. Nearly all the first water right permits for early uses of water in Fremont County were for irrigation, livestock watering, and domestic use in the cabins and homes of those ranchers and farmers, and it is those industries that generated most of the early settlement in the county. It is the policy of Fremont County to recognize and respect the contributions of that culture to the growth and development that has occurred up to the present time.

Fremont County's water-related culture is also rich with a love and respect for, and a dependence on, the hunting and fishing opportunities that have drawn much of its population to the county since the earliest times. The development of water facilities by those who secured those early water rights is a huge factor in the historic and continued distribution of wildlife across Fremont County, and in the culture supported by that wildlife. Similarly, water developments created by the mineral industry and the grazing industry are also indispensable in the protection, preservation, and broad dispersal of the species that make up our hunting and fishing culture. It is the policy of Fremont County to recognize the contribution of those industries to the preservation of huntable and fishable wildlife populations, and to support enhancement of those historic, previously-secured water supplies, and/or manipulate them within the framework of Wyoming law to meet the needs of the present, more-diverse culture of the county, while at the same time diligently protecting and defending the water needs of those founding industries. The use of endangered species and/or other federal mandates to curtail

the ability of Fremont County residents to use our water resources according to our historic culture is specifically rejected.

(c) FREMONT COUNTY ECONOMIC VIABILITY:

Every single citizen of Fremont County holds water rights in some manner or another (either directly, or indirectly through a service provider), and every citizen, as a water user, is dependent on the preservation of the existing system of water allocation. Similarly, every economic sector of Fremont County is dependent on her water resources in some way, and the county's present and future economy is directly tied to water of adequate quantity and quality being perpetually available to all those sectors. The present and future economic viability of the county depends on maintenance of unencumbered local access to those water supplies, and on recognition of the autonomy of the State and county governments as the legal mechanisms to provide water for the local economies and individuals, without unauthorized and unsolicited interference from the federal government. Fremont County rejects any attempts by outside interests to deny the economic and/or cultural benefits of secure water supplies to residents of the County.

The Wind River mountains generate in runoff from snowpack about 1.2 million acre-feet per year in Fremont County, over half of which is utilized in direct contribution to the economy of the County.

(d) FREMONT COUNTY SOCIAL STABILITY:

Fremont County's social stability has been greatly disrupted at several times in the past as a result of disagreements among county citizens over the use and allocation of the water supplies existing in the county. As Fremont is an arid county in an arid State, water supplies are precious and, even though allocations are specified by law, competition is keen for control of significant portions of the resource. These difficulties are destined to become even more acute as the county population increases and its economies expand, with a resulting and real social instability as opposing interest groups vie for power and single-purpose control. It is the policy of Fremont County to promote comity and harmony among its various residents in the various communities and economic sectors regarding the development, use, allocation, conservation, and understanding of the water supplies available. The County recognizes that failure to do so substantially increases its vulnerability to destructive social instability. The County also recognizes and supports the concept that storage of water to offset

drought in our arid environment creates flexibility and diversity as to the distribution of economic good, and generates social stability countywide.

Section 15.05 GUIDANCE:

"Water is State property. The water of all natural streams, springs, lakes or other collections of still water, within the boundaries of the State, are hereby declared to be the property of the State." *Constitution of the State of Wyoming, Article 8, Section 1, ratified November 5, 1889.*

"Control of water. Water being essential to industrial prosperity, of limited amount, and easy of diversion from its natural channels, its control must be in the State, which, in providing for its use, shall equally guard all the various interests involved." *Constitution of the State of Wyoming, Article 1, Section 31, ratified November 5, 1889.*

"Because Congress, in admitting Wyoming to the Union, 26 Stats. 222, ch.664, ratified the Wyoming Constitution, it clearly contemplated that whatever superior rights it might temporarily or permanently hold in the waters of this State, the underlying ownership and control would remain with the State." *Wyoming Supreme Court, State v. Owl Creek Irrigation District, et. al., (Big Horn I), (1988).*

"U.S. must submit to State administration." *United States v. Bell, Colo., quoted by Wyoming Supreme Court in State v. Owl Creek Irrigation District, et. al., (Big Horn I), (1988).*

"Under Wyoming law, the right to the use of water based on a prior appropriation for beneficial purposes is a "property right," so that no statute which the State might subsequently pass can abridge that property right or reduce its value without infringing upon the constitutional right of the owner." *Wyoming Supreme Court, Hughes v. Lincoln Land Company, 1939.*

"It is the policy of Congress that the authority of each State to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this Act. It is the further policy of Congress that nothing in this Act shall be construed to supersede or abrogate rights to quantities of water which have been established by any State." *Federal Water Pollution Control Act of 1972, as amended, 33 U.S.C. 466 et. seq. (Wallop Amendment).*

"Where an irrigating ditch was constructed over and across unoccupied public lands of the United States in 1889 and was used continuously thereafter for the purposes of irrigation, the right of way therefore across such public land accrued and became a vested right under Sections 2339 and 2340, U. S. Rev. Stat., 43 U.S.C.A. Section 661." *Wyoming Supreme Court, CB&Q Railroad Co. v. McPhillamey, (1911).*

"Prior to FLPMA one availed himself of Section 661 [of the Act of July 26, 1866, allowing "ditches and canals" a right-of-way across public lands] by merely constructing a ditch or canal, no application to any official of the United States beforehand being necessary for a right-of-way over public land. Section 509(a) of FLPMA, 43 U.S.C. Sec. 1769(a) (1976), provides in pertinent part: "Nothing in this subchapter shall have the effect of terminating any right-of-way or right-of-use heretofore issued, granted, or permitted." Clearly, since no consent or permission is required under Section 661 [of the 1866 Act] to initiate a right-of-way, one who has complied with Section 661 on or before October 21, 1976, the effective date of FLPMA, has a valid "right-of-way heretofore permitted" within the meaning of section 1769(a)." *R.W. Offerle, 77 IBLA 80, 84-85 (1983), quoted in IBLA 94-886, BLM v. Mayland, 141 IBLA 158 (1997).*

"Historically the reference to "ditches and canals" in the Act of July 26, 1866 was interpreted broadly to encompass rights-of-way for reservoirs, dams, flumes, pipes, and tunnels. See Roger G. Gervais, Patsy V. Gervais, 128 IBLA 43m 49-50 (1993), quoting Peck v. Howard, 167 P. 2d 753, 761 (Cal. App. 1946)." *IBLA 94-886, BLM v. Martin Mayland, 141 IBLA 158, (1997).*

"The use of these ditches [on the National Forest] to bring water to ranches and farms of the arid West is one of the oldest uses of the National Forests. These ditches have been vital to the economic and social development of the West." *Regional Forester, Gary E. Cargill, Rocky Mountain Region, in a letter to Representative Ben Nighthorse Campbell, July 1987, regarding P.L. 99-545, the "Ditch Bill".*

"I want to assure you that it is the policy of the Forest Service to ensure that private property rights, including water rights, will be recognized and protected in the course of special-use permitting decisions for existing water supply facilities. In addition, the Forest Service will recognize and respect the role of the States in water allocation and administration. I agree that the Forest Service should not take actions that reduce historical water supplies from facilities located on national forest lands." *Agriculture Secretary Edward Madigan, in a letter to Senator Malcolm Wallop, October 6, 1992, in response to Senator Wallop's questions about P.L.99-545, the "Ditch Bill."*

Article XVI. WILDERNESS

Section 16.01 Guidelines:

The policy hereby set forth for the achievement of the Goal and Objectives of this component item shall be consistent with the protection of Fremont County's historic:

1) custom,
2) culture,
3) economic viability, and
4) social stability.

Section 16.02 Goal:

Fremont County will take a proactive approach in the designation and management of wilderness areas in Fremont County.

Section 16.03 Objectives:

1.) Uphold the legal requirements and qualifications set forth by the Wilderness Act, and the Wyoming Wilderness Act of 1984 including those providing for the continuation of existing uses, and the regulation of existing uses only so as to prevent unnecessary or undue degradation of the environment.
2.) Fremont County advocates the expeditious review and determination of any Wilderness Study Areas or Areas of Critical Environmental Concern, in the county. The Objectives in this component also apply to other, as yet un-named, special study areas, which may be proposed in the future.
3.) Review current wilderness recommendations in relation to the impacts on natural resource based industries, the economic stability of the County, and on the custom and culture of the citizens of Fremont County.
4.) Eliminate multiple-use land being closed indefinitely in "study areas", even though the land does not meet the wilderness requirements and qualifications set forth by the Wilderness Act.
5.) Protect Wyoming's water resources and water adjudication system.
6.) Recognition of the fact that a wilderness designation does not affect State authority over water resources and Wyoming's substantive and procedural laws controlling appropriation and allocation of water resources remain the primary authorities over waters in Fremont County, and in any area within Fremont County that may be designated as a wilderness area.

7.) Protect any interests in ditches, reservoirs or water conveyance facilities and easements or rights or way associated with those interests, from impairment or diminution by any wilderness designation.
8.) Reaffirm the rights to access to enter, inspect, repair, and maintain those interests are not affected by any wilderness designation, including the use of mechanized vehicles and equipment for repairs and maintenance of such facilities.
9.) Protect historic uses of, and use levels in, wilderness areas. Require employment of credible science in all decisions regarding wilderness areas.

Section 16.04 Policy:

(a) Fremont County Custom:

Fremont County citizens have historically used wilderness areas for grazing, recreation, commercial guiding and for solitude. It is customary for people to use and enjoy the wilderness in Fremont County. Customarily, in Fremont County, citizens have always been good neighbors and stewards by closing all gates that they have opened, This plan encourages that same kind of citizenship with regards to the general public.

(b) Fremont County Culture:

Many locals are descendants of pioneers who traveled and used Fremont County wilderness areas and they have become skilled guides, search and rescue workers, cowboys and naturalists. Tribal members have historically used wilderness for hunting, fishing and commercial guiding as well. Fremont County residents have a culture of using wilderness and expecting it to be safe from dangerous carnivores.

(c) Fremont County Economic Viability:

Fremont County's economy relies heavily on the use of federally managed lands including wilderness areas. Wilderness recreation generates brisk economic activity not only for guides and wilderness schools, but also the many local sporting goods stores, motels, dude ranches and other retail businesses. It is the policy of Fremont County to mandate federal agencies to coordinate their management actions with the County Land Use Plan and provide a thorough, peer reviewed, County approved economic analyses before implementing federal actions in existing wilderness or prior to wilderness designation.

(d) Fremont County Social Stability:

The use of, and access to, wilderness is important to Fremont County families and communities. The County will not accept restrictions, imposed by government agencies on historic uses and access to the wilderness. The communities have significant investment backed expectations in the continued levels of wilderness use and they will be protected. Wilderness defines the very character of our people: independent, self reliant, rugged, remote, strong willed, individualistic and free.

Section 16.05 REQUIREMENT FOR COORDINATION:

Outdoor Recreation Act 1963

Recreation on federally or State managed land means different things to different people or groups of people. The Outdoor Recreation Act of 1963 States that:

"Congress finds and declares it to be desirable that all American people of present and future generations be assured adequate outdoor recreation resources, and that it is desirable for all levels of government and private interests to take prompt and coordinated action to the extent practicable without diminishing or affecting their respective powers and functions to conserve, develop, and utilize such resources for the benefit and enjoyment of the American people." (Stat. 49; 16 U.S.C. 460l through 460l–3)

Rangeland Renewable Resources Planning Act of 1974,

Sec. 3, 6(a) "As part of the program provided for by section 3 of this Act, the Secretary of Agriculture shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, coordinated with the land and resource management planning processes of State and Local governments and other federal agencies."

National Forest Management Act of 1976,

(B), (5) Preservation of important historic, cultural, and natural aspects of our national heritage

(9) "Coordination with the land and resource planning efforts of other federal agencies, State and local governments and Indian tribes;

Federal Land Policy and Management Act of 1976

FLPMA provides specific directives for federal agencies to coordinate public land use planning with county governments and to ensure that federal land use plans

are consistent with local plans. The statute details federal agencies' mandate as follows:

Sec. 202. [43 U.S.C. 1712] (c) In the development and revision of land use plans, the Secretary shall-

> **(9)** to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management ... of the States and local governments within which the lands are located ... the Secretary shall, to the extent he finds practical, keep apprised of ... local ... land use plans; assure that consideration is given to those ... local ... plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of ... local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands. Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him. Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.

43CFR1610.3-1 Coordination of planning efforts.

In addition to the public involvement prescribed by Section 1610.2 of this title the following coordination is to be accomplished with local governments.

Congress and the courts have provided the means by which county governments and resource users are to be involved in planning.

Section 16.06 Statutes:

The Wilderness Act of 1964

The Act created a National Wilderness Preservation System to be composed of federally managed lands designated by Congress as "wilderness areas." The Act defined a wilderness as "an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain." The definition States that a wilderness thus is in "contrast with those areas where man

and his own works dominate the landscape." The Act provides that all suitable wilderness areas should be inventoried by the federal agency charged with management responsibility for the particular area. This inventory and recommendations by the agency as to whether the areas should be established as wilderness areas were to be completed within ten (10) years of passage. In the Federal Land Policy Management Act of 1976, Congress established a clear directive that by 1991, the Secretary of the Interior must review all roadless areas of 5,000 acres or more on the federally managed lands (identified as having wilderness characteristics as described in the Wilderness Act) and give to the President a recommendation as to the suitability or non-suitability of each such area for preservation as wilderness.

Wyoming Wilderness Act-PUBLIC LAW 98-550 Oct 30, 1984,

"To designate certain national forest lands in the State of Wyoming for inclusion in the National Wilderness Preservation System, to release other forest lands for multiple use management, to withdraw designated wilderness areas in Wyoming from minerals activity, and for other purposes."

Section 401(b) 5 - "unless expressly authorized by Congress, the Department of Agriculture shall not conduct any further Statewide roadless area review and evaluation of National Forest System lands in the State of Wyoming for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System."

Section 504 - "Congress does not intend that the designation of wilderness areas in the State of Wyoming lead to the creation of protective perimeters or buffer zones around each wilderness area. The fact that non-wilderness activities or uses can be seen or heard from within any wilderness area shall not, of itself, preclude such activities or uses up to the boundary of the wilderness area" P.L. 98-550 - Oct. 30, 1984.

Section 16.07 GUIDANCE:

Fremont County will ensure that the following will occur with regards to Wilderness Study Areas:

A) "Lands subject to review and designation as wilderness.... prior to any recommendations for the designation of an area as wilderness the Secretary shall cause mineral surveys to be conducted by the United States Geological Survey and the United States Bureau of Mines to determine the mineral values, if any, that may be present in such areas" (43 U.S.C Sec 1782).

C) "Status of lands during period of review and determination.... continuation of existing mining and grazing uses and mineral leasing in the manner and degree in which the same was being conducted on October 21, 1976...Unless previously withdrawn from appropriation under the mining laws, such land shall continue to be subject to such appropriation during the period of review unless withdrawn by the Secretary" (43 U.S.C Sec. 1782).

Article XVII. WILDLIFE

Section 17.01 GUIDELINES:

The policy hereby set forth for the achievement of the Goal and Objectives of this component item shall be consistent with the protection of Fremont County's historic:

1) custom,
2) culture,
3) economic viability, and
4) social stability.

Section 17.02 GOAL:

The goal of this plan is to assert the rights granted under the laws of the United States of America and the State of Wyoming to a voice in the planning and regulation of the wildlife within the borders of Fremont County Wyoming. This policy should balance the principles of conservation of game species, protection of private property, aesthetics and harvest. Game populations should be managed for sustainable, harvestable surplus populations.

Section 17.03 OBJECTIVES:

All wildlife management agencies shall coordinate management activities with Fremont County.

Section 17.04 POLICY:

(a) FREMONT COUNTY CUSTOM:

Residents of Fremont County are fortunate to be the home of many species of wildlife. We have a grand cross section of the popular big game species with Bighorn Sheep, Elk, Mule and Whitetail deer and pronghorn present in numbers that present recreational opportunities for sport hunting. We participate in sport fishing and opportunities to enjoy all our non-game wildlife. The diversity of species is here, enough for a robust ecosystem with an ability to adapt to the presence of man and our decisions. It has long been the custom for Fremont County residents to enjoy the presence of wildlife in Fremont County through hunting, fishing, photography, viewing, trapping, and just being in contact with

those species. The responsible use of horses, ATVs, snowmobiles, and other ORV's has customarily placed county citizens in contact with the wildlife resources and provided ways to access the more remote areas of the county in pursuance of that goal.

(b) FREMONT COUNTY CULTURE:

Wildlife is perhaps the first element that attracted the white man to Fremont County. The earliest white inhabitants of Fremont County were the fur trappers. Central Fremont County boasts that it was the site of the first rendezvous, a method by which commerce in the fur trade was advanced. The trappers could bring their harvest to the rendezvous and sell their furs and purchase their supplies rather that travel east for hundreds of miles.

(c) FREMONT COUNTY ECONOMIC VIABILITY:

Wildlife is the basis for a large portion of our tourism economy and subsistence hunting has been a part of our economy since the earliest settlements. Tourism dollars brought to our county by wildlife recreation are important to the service sectors of sporting goods stores, outfitters, guides, dude ranches, meat processors, taxidermists, motels, restaurants and taverns. The economic viability of Fremont County rests directly upon the continued and enhanced use of the wildlife resource.

(d) FREMONT COUNTY SOCIAL STABILITY:

The people of our county value our wildlife a great deal. While some citizens of Fremont County derive an income from wildlife, the majority depends on the wildlife resource as a leisure time activity in addition to an aid to the care and feeding of their families. The rural lifestyle is exemplified by our outdoor opportunities, many of which involve wildlife.

Section 17.05 AGENCY MANDATES:

The Constitution of the United States provides in Article 10 of the Bill of Rights that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people." This is the basis by which our State approaches the management of wildlife.

Under §23-1-103...all wildlife in Wyoming is the property of the State. It is the purpose of this act and the policy of the State to provide an adequate and flexible system for control, propagation, management, protection and regulation of all Wyoming wildlife...

Section 17.06 REQUIREMENT FOR COORDINATION:

The Wyoming Game and Fish Department is the management agency for wildlife in the State of Wyoming (§23-1-302). This agency is guided by State statute Title 16, Chapter 4 to hold open meetings and provide for public input. Historically the Wyoming Game and Fish Department has held public meetings prior to making wildlife management decisions.

The Wyoming Joint Powers (§16-1-101) act allows for the cooperation of local government and State agencies in achieving common goals.

In addition the Wyoming Game and Fish Department must work in conjunction with the U.S. Fish and Wildlife to manage wildlife *habitat* that is designated as critical to endangered species. Such species hold a unique status in that they are property of the State but are afforded protection under federal law.

Section 17.07 GUIDANCE:

The numbers of species of wildlife in our county is broad. Various management methods apply to each species or group of species. It is not within the scope of this plan to set a policy for the management of individual species. The role of Fremont County as set forth in this plan is to keep our "foot in the door" for our citizens so as to add their voice of common sense and experience to those of our State Game and Fish Departments scientists in planning for the current and future diversity of wildlife in our county.

State and Federal government agencies shall coordinate with Fremont County to manage and enhance this invaluable resource. It is a key issue that we maintain our authority over the wildlife in our State without a dilution of that authority by concession to policies of federal agencies that we are opposed to.

Article XVIII. SEVERABILITY

If any provision of this plan or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this plan which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Article XIX. APPENDIX A: WYOMING LAWS

Section 19.01 Title 9 - Administration of the Government

(a) Chapter 4 - Public Funds

Article 4 – Taylor Grazing Act Funds
***9-4-403.** Money credited to range improvement fund; duties and liability of county treasure.
***9-4-404.** Expenditure of range improvement fund; cooperative agreements.

(b) Chapter 5 - Property and Buildings

Article 3 – Regulatory Takings
***9-5-301.** Short titles.
***9-5-302.** Definitions.
***9-5-303.** Guidelines and checklist for assessment of takings.
***9-5-304.** Agency responsible to ~~a~~evaluate takings.
***9-5-305.** Declaration of purpose.

Section 19.02 Title 11 - Agriculture, Livestock and Other Animals

(a) Chapter 6 - Predatory Animals

Article 1 – Control Generally
***11-6-101.** Permission to eradicate upon refusal of entry by property owner.
***11-6-102.** Application to County Commissioners; hearing; determination; limitation on use of firearms.
***11-6-105.** Issuance of aerial permits authorized.
1 *11-6-106 thru 313

(b) Chapter 19 - Contagious and Infectious Diseases Among Livestock

Article 1 – In General
***11-19-117.** Liability for damages caused by quarantine.

Article 2 – Tuberculin Test of Dairy Cattle
***11-19-214.** Sale of diseased cattle, reimbursement of owner.

(c) Chapter 20 - Brands

Article 1 – Branding and Ranging
***11-20-102.** Stock running at large to be branded.
***11-20-119.** Drover's stock; liability for injury to property; exceptions.

(d) Chapter 28 - Fences and Cattle guards

Article 1
***11-28-102.** Lawful fences generally.
***11-28-105.** Board of county commissioners to authorize lawful fences upon right of way.
***11-28-107.** Prohibited acts; penalties. (Open gates, cutting wire)
***11-28- 108.** Liability for breach into lawful enclosure by animals; civil action or arbitration.

(e) Chapter 31 - Dogs and Cats

Article 1 – In General
***11-31-105.** Killing sheep or other domestic animals; liability of owner.
***11-31-106.** Killing sheep or other domestic animals; destruction.
***11-31-107.** Running livestock; when killing authorized; liability to owner; exception.
a. ***11-31-108.** Running livestock; penalty for permitting.

(f) Chapter 33 - Livestock Districts

Article 1
***11-33-105.** Creation; order; mandatory condition of fences.

(g) Chapter 44 - Farm and Ranch Operations

Article 1
***11-44-101.** Short title.
***11-44-102.** Definitions.
***11-44-103.** Farm or ranch operations not considered a nuisance; conditions.

Section 19.03 Title 23 - Game and Fish

(a) Chapter 1 - Administration

Article 9 – Damage Caused by Game Animals or Game Birds
***23-1-901.** Owner of damaged property to report damages, claims for damages; time for filing; determination; appeal; arbitration.

(b) Chapter 3 - General Regulatory Provisions

Article 4 – Miscellaneous Acts Prohibited
***23-3-405.** Interference with lawful taking of wildlife prohibited; penalties; damages; injunction.

Section 19.04 Title 24 - Highways

(a) Chapter 9 - Establishment of Private Roads

Article 1
***24-9-104.** Water and timber ways.

Section 19.05 Title 36 - Public land

(a) Chapter 1 - General provisions

Article 1 – In General
***36-1-110.** Authority of director to effect and complete exchanges.

(b) Chapter 12 - State control of certain land

Article 1
***36-12-106.** Multiple use.

Section 19.06 Title 39 - Taxation and revenue

(a) Chapter 11 – Administration

Article 1
***39-11-105** Exemptions.

Section 19.07 Title 41 - Water

(a) Chapter 1 - General Provisions

(b) Chapter 2 - Planning and Development

(c) Chapter 3 - Water rights; administration and control

Article 1 - Generally
41-3-102. - Preferred uses; defined; order of preference.
Article 3 - Reservoirs

41-3-306. Instream stock use.
Article 9 – Underground Water
41-3-907. - Application; preferred right of appropriations for stock or domestic use. (Groundwater, preferred right for stock and domestic use)

(d) Chapter 4 - Board of Control; Adjudication of Water Rights

(e) Chapter 5 - Irrigation Generally

(f) Chapter 6 - Irrigation and Drainage District Generally

(g) Chapter 7 - Irrigation Districts

(h) Chapter 8 - Watershed Improvement Districts

(i) Chapter 9 - Drainage Districts

(j) Chapter 10 - Water and Sewer District Law

(k) Chapter 11 - Interstate Streams Commission

(l) Chapter 12 - Interstate Compacts

(m) Chapter 13 - Watercraft

(n) Chapter 14 - Storage of Water for Industrial and Municipal Uses

Section 19.08 Wyoming Constitution

(a) Article 19 - Section 1. Legislature to provide for protection of livestock and stock owners.

Article XX. APPENDIX B

Section 20.01 FREMONT COUNTY RESOLUTIONS:

(a) RESOLUTION 2002-03 - "UNACCEPTABLE SPECIES"

(b) RESOLUTION 2002-04 - "GRIZZLY BEARS DEEMED UNACCEPTABLE SPECIES"

(c) RESOLUTION 2002-05 - "WOLVES DEEMED UNACCEPTABLE SPECIES"

(d) RESOLUTION 2002-06 - "FOOD STORAGE ORDER"

(e) RESOLUTION 2002-12 - "GRAZING ON PUBLIC LAND AND FOREST RESERVES"

(f) RESOLUTION 2003-03 - "WOLVES ARE PREDATORS"

(g) RESOLUTION 2003-04 - "RE-ESTABLISHMENT AND RE-NAMING OF A LAND USE PLANNING COMMITTEE"

(h) RESOLUTION 2003-05 - "OCCUPANCY AND USE RESTRICTIONS OF MARCH 1, 2003"

(i) RESOLUTION 2003-15 - "OPPOSE GRAZING PERMIT BUYOUT"