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Weston County Natural Resource Management Plan



Natural Resource Management Plan
Y2 Consultants, LLC | DRU Consulting | Budd – Falen Law Office

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CHAPTER 1: INTRODUCTION

1.1 PURPOSE

Natural Resource Management Plan

A Natural Resource Management Plan (NRMP) is a document prepared and adopted by a local government that federal agencies are required to review and consider when making decisions that may affect the local area. Locally elected governments and elected officials have far-ranging and important responsibilities to their constituents, described by state statute as protecting their “health, safety, and welfare.” That responsibility includes specifically interacting with federal agencies on all federal issues impacting the local community and counties. Rural counties’ socioeconomic well-being, health, safety, and culture can be strongly impacted by the management of the surrounding federal and public lands. To give the locally elected government the strongest voice it can have during “government-to-government” interaction, local governments can formally adopt “local land use plans” (LUPs) or NRMPs. These plans establish local policy regarding the use and management of federal lands in their jurisdiction and can influence the development and implementation of federal policies, programs, and other types of federal decision-making regarding federal lands that affect a local community. NRMPs are intended to help protect the local citizens’ use of, and access to, federal and public lands and resources and to ensure the socioeconomic wellbeing, culture, and customs of a local community are adequately considered in federal decisions (Budd-Falen, 2018).

This County natural resource plan serves as a basis for communicating and coordinating with the federal government and its agencies on land and natural resource management issues. Counties are particularly well-suited to understand the impacts that federal land management decisions may have on the local economy, custom, and culture. Under Wyoming statute, a County is deemed to have special expertise on all subject matters for which it has statutory responsibility, including but not limited to, all subject matters directly or indirectly related to the health, safety, welfare, custom, culture, and socio-economic viability of a County (Wyo. Statute 18-5-208(a)).

These local LUPs are not zoning and do not regulate the use of private lands. When people think of LUPs, they typically think of the general planning document that counties use to determine zoning on private lands. An NRMP is a separate type of land use plan prepared by rural counties and conservation districts, containing policies relating to the management of federal and public land in the County and reflecting the local government’s position on federal decisions concerning those lands (Budd-Falen, 2018).

Local governments do not have jurisdiction over the federal government or federal land. NRMPs cannot require federal agencies to take specific actions. However, federal agencies and departments are mandated by various federal statutes to engage local governments during the decision-making process on federal plans, policies, and programs that will impact the management of land and natural resources within a community and ultimately affect the local tax base and lives of local citizens. Federal agencies are required to coordinate and consult with local governments and to give meaningful consideration to policies asserted in written plans



prepared and adopted by local governments concerning the management of federal lands in their area (Budd-Falen, 2018).

Statutory Requirements and Legal Framework

Federal agencies are required to identify and analyze the impacts on local economies and community culture when making decisions. NRMPs outline the present economic and cultural conditions and desired future conditions of a local community and demonstrate how those conditions are tied to activities on adjoining federal and public lands. The plan establishes the local government’s preferred policies for the planned use, management, protection, and preservation of the natural resources on the federal and public lands within its jurisdiction. The goal is to protect private property, the local tax base, and local custom and culture. An adopted NRMP is a critical tool that allows a local government to have a substantive impact on federal decisions, plans, policies, and programs. A written plan can play a key role in the success of a local government engaging the federal government (Budd-Falen, 2018).

Required engagement between federal agencies and local governments takes the form of “consistency review” under the National Environmental Policy Act (NEPA) and the Federal Lands Policy and Management Act (FLPMA), the requirement for “coordination” under both FLPMA and the National Forest Management Act (NFMA) and engaging local governments acting as a “cooperating agency” under NEPA, and a State Governor’s consistency review process.

The National Environmental Policy Act

The National Environmental Policy Act (NEPA) applies to “every major Federal action significantly affecting the quality of the human environment” (42 U.S.C. § 4332(1)(C)). The courts have interpreted this to generally mean that every time the federal government makes a decision for almost any action that may have an environmental impact, NEPA compliance is required. Some courts have even required agencies to follow NEPA when the agency spends a small amount of money on a project or program that they are not the lead agency (*See e.g. Citizens Alert Regarding the Environment v. United States Environmental Protection Agency*, 259 F.Supp.2d 9, 20 (D.D.C. 2003)). On July 15, 2020, the Council on Environmental Quality (CEQ) announced major regulation reforms to NEPA, including new rules trying to clarify what is a “major federal action.” (*See* 85 F.R. 43304 (July 16, 2020)). The CEQ regulations define a “Major Federal Action” as “an activity or decision subject to Federal control and responsibility” (40 C.F.R. § 1508.1(q)). However, those activities and decisions are limited to those decisions that are discretionary or in which the federal government has sufficient control and responsibility over the outcome of the project. This means that those projects that the government has a minor role in are not included. Further, minor actions that do not typically have a significant effect on the human environment (such as allowing certain range improvements on a grazing allotment) are categorically exempt from NEPA (40 C.F.R. § 1508.1(d)).

NEPA requires that federal agencies undertake an environmental analysis to determine whether a federal action has the potential to cause significant environmental effects. If a proposed major federal action is determined to significantly affect the quality of the human environment, federal agencies are required to prepare an Environmental Impact Statement (EIS). The regulatory



requirements for an EIS are more detailed and rigorous than the requirements for an Environmental Assessment (EA). There are several ways local governments can participate in the NEPA process depending on the type of federal decision, the level of commitment of the local government, and the goals of the local government.

First, local government can use these plans as part of the federal agency’s “consistency review” process. Under this provision, if the federal agency receives a local plan in the course of writing an EIS or EA, NEPA commands the federal agency to “discuss any inconsistency of a proposed action with any approved state or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the [environmental impact] statement should describe the extent to which the [federal] agency would reconcile its proposed action with the [local government] plan or law” (40 C.F.R. §§ 1506.2, 1506.2(d)). For the local government to take advantage of the consistency review requirements, a written and adopted local plan is required. With a written plan, this analysis is supposed to happen even when the local government does not know about the pending decision or action as long as the Natural Resource Management Plan was provided in advance to the reviewing federal agency. However, to best ensure that the agency adequately conducts consistency review, it is recommended that the County comment on pending decisions or actions and direct the agency’s attention to any inconsistencies with the plan.

NEPA requires that copies of comments from state or local governments accompany the EIS or EA throughout the review process (42 U.S.C. § 4332(c)). Written comments submitted by a local government not tied to a formally adopted NRMP require less consideration than those tied to an adopted NRMP.

Local governments can separately participate in the NEPA process as a “cooperating agency” (40 C.F.R. § 1508.5). “Cooperating agency status” requires federal agencies to work with local governments before any federal plan or proposal is presented to the general public. It does not require a written land use plan prepared by local governments. If a local government believes that a proposed federal action will impact the local government, and the local government wants to be involved in the federal process at its inception, the government may request “cooperating agency status” to the deciding federal agency. Should a local government request cooperating agency status for a particular agency decision (for example, the designation of critical habitat for a listed threatened or endangered species), the local government can participate in drafting portions of the relevant NEPA document. This can involve identifying appropriate scientific data, assisting with alternative development for the proposed federal action, and ensuring that the discussion of impacts to the local economy or the local citizens is accurate. An NRMP, while not required, can aid this process and analysis. Cooperating agency status can be reserved for more significant federal decisions likely to have a larger impact on a community and is not required for every federal action.

Pursuant to NEPA, an applicant for cooperating agency status must be a locally elected body such as a conservation district, board of supervisors, or a County commission; and possess “special expertise.” A local government’s special expertise is defined as the authority granted to a local governing body by state statute. Generally, in Wyoming, counties are authorized to participate



as cooperating agencies and have the special expertise regarding the “health, safety, welfare, custom, culture and socio-economic viability of the county.” Wyo. Stat. §§ 18-3-504(v); 18-5-208(a).

Cooperating agency status can be an expensive, time-consuming, and cumbersome process and may be particularly challenging for small rural communities with limited resources. An NRMP ensures that the federal agency addresses the County’s policies for virtually every federal decision without the burden of cooperating agency status.

The National Forest Management Act

The National Forest Management Act (NFMA) governs the U.S. Forest Service (USFS) and requires the agency to “coordinate”. The NFMA requirements are as follows:

[T]he 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)).

The fact that the USFS is directed to “coordinate” with local governments implies, by its plain meaning, that the USFS **must** engage in a process that involves more than simply “considering” the plans and policies of local governments; it must attempt to achieve compatibility between USFS plans and local land use plans.

The USFS is also obligated to perform a consistency review. For the development of forest plans, the Forest Service shall review the planning and land use policies of State and local governments where relevant to the plan area. The results of the review shall be displayed in the EIS. 36 C.F.R. 219.4(b)(2). Such review of the plans and policies of State and local governments shall include consideration of:

- (1) The objectives as expressed in local plans and policies
- (2) The compatibility and interrelated impacts of these plans and policies
- (3) Opportunities to address impacts identified and to contribute to joint objectives
- (4) Opportunities to reduce or resolve conflicts, within the context of developing desired future conditions. 36 C.F.R. § 219.4(b)(2)(i) – (iv).

Additionally, the USFS is obligated to consider and provide for "community stability" in its decision-making processes. S. Rept. No. 105.22; 30 Cong. Rec. 984 (1897); *The Use Book* at 17; *see also* 36 C.F.R. § 219.6(b)(6) (“The Forest Service land use plan must provide for social, economic, and cultural sustainability”). "Community stability" is defined as a combination of local custom, culture, and economic preservation. As described by the Forest Service:



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 dependent upon a cheap and plentiful supply of timber; that a forest cover is the most effective means of maintaining a regular streamflow for irrigation and other useful purposes, and the permanence of the livestock industry depends upon the conservative use of the range.

Forest Service, United States Department of Agriculture, *The Use Book*, 13 (1906 ed.). Thus, in addition to providing for coordination and attempting to achieve consistency with local land use plans, the USFS is required to understand the cultural and economic drivers of a community and its plans must attempt to protect those drivers whenever possible.

The Federal Land Policy and Management Act

The Federal Land Policy and Management Act (FLPMA), which governs the Bureau of Land Management (BLM), provides detailed requirements for “coordination” and “consistency” with local land use plans. With regard to the requirements for “coordination”, FLPMA states that the BLM **must**:

To the extent consistent with laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the State and local governments within which the lands are located [...] by considering the policies of approved State and tribal land resource management programs (43 U.S.C. § 1712(c)(9)).

Such coordination is to be achieved by:

- To the extent practicable, the BLM must stay apprised of local land use plans.
- The BLM must assure that local land use plans germane to the development of BLM land use plans are given consideration.
- To the extent practicable, the BLM must assist in resolving inconsistencies between local and BLM land use plans.
- The BLM must provide for the meaningful involvement of local governments in the development of BLM land use programs, regulations, and decisions. This includes early notification of proposed decisions that may impact non-federal lands. (43 U.S.C. § 1712(c)(9)).

Additionally, FLPMA requires BLM land use plans to be consistent with local land use plans, provided that achieving consistency does not result in a violation of federal law. FLPMA states: “Land use plans of the Secretary [of the Interior,] 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” (43 U.S.C. § 1712(c)(9)). BLM regulations further strengthen this by requiring that State



and local governments shall have at least 30 days to review and comment on BLM land and resources management plans. Should they notify the Field Manager, in writing, of what they believe to be specific inconsistencies between the Bureau of Land Management resource management plan and their officially approved and adopted resources related plans, the resource management plan documentation shall show how those inconsistencies were addressed and, if possible, resolved. 43 C.F.R. 1610.3-1(f). However, the BLM has no duty to make its plan consistent with a local government plan, if the BLM is not notified by the local government of the existence of its local plan. 43 C.F.R. § 1610.3-2(c). Thus, it is important that the local government provides the BLM notice of the existence of the local land use plan.

In other words, FLPMA requires both “coordination” and “consistency review.” Coordination should include both regularly scheduled meetings between the various local governments and BLM managers, as well as inviting local BLM staff to local government meetings (Bureau of Land Management, 2012). Pursuant to FLPMA’s consistency review requirement, if a BLM land use plan is inconsistent with a local land use plan, the BLM owes an explanation of how achieving consistency would result in a violation of federal law. (43 U.S.C. § 1712(c)(9)).

Governor’s Consistency Review Process

FLPMA also requires that the BLM provide for a governor’s consistency review as part of their land use planning process (43 C.F.R. § 1610.3-2(e)). State governors are entitled to an additional and entirely separate review of BLM land use plans, revisions, and amendments; this provides an opportunity to identify any inconsistencies with state or local plans. If the governor’s comments result in changes to the plan, the public should be re-engaged in the process. The governor may also use policies in the NRMP in their review of the proposed federal action. The Governor’s office has traditionally included counties during the governor’s consistency review by the Governor’s Consistency Team whenever an agency action or decision may affect a specific county and its citizens.

1.2 WESTON COUNTY NATURAL RESOURCE MANAGEMENT PLAN PROCESS

1.2.1 Plan Organization

This plan considers the current conditions of federal resources, County objectives for each resource, and how the County would like to see those objectives achieved. For all federal resources in the County, this plan addresses the following:

- **Resource Assessment and Legal Framework.** Includes background and detailed information on the resource, including qualitative as well as quantitative information. The assessment includes an evaluation of the importance of the resource to the County, location, quality and size, as well as a map of the resource, where appropriate. The Resource Assessment relies on the best data available at the time of publication, though new data collection or research is not required. The Resource Assessment addresses the question, “What is the state of the resource now?” This section does not describe how the County interprets or proposes to use a particular resource or topic. This section describes how federal agencies are interpreting federal laws, guidance, and handbooks.



- **Resource Management Objectives.** Describes general goals in the form of broad policy statements regarding the use, development, and protection of each resource. Resource Management Objectives address the question, “What does the County want for and from this resource?”
- **Priorities.** Describes specific priorities on how to achieve the County’s Resource Management Objective for each resource. Priorities tier to Resource Management Objectives for each resource and address the question, “How would the County like to see its objectives achieved?” The general agreement or disagreement with the interpretation described in the Resource Assessment section should be used as the defining direction for the priority statements.

1.2.2 Process

Consistent with Wyo. Stat. § 9-4-218(a)(viii)(D), the County developed this plan in public meetings in accordance with Wyo. Stat §§ 16-4-401 through 16-4-408, allowing for participation and contribution from the public. This plan is based on criteria developed by the Office of the Governor of the State of Wyoming in consultation with the counties, consistent with Wyo. Stat. § 9-4-218(a)(viii)(B).

This plan is an update to the 1977 Weston County Land Use Plan which was referenced for the development of this plan. The draft document was released for a 30-day public comment period beginning on February 25, 2022, and ending on March 28, 2022. Written comments received during the public comment period were analyzed and incorporated into the final plan as appropriate with direction from the Weston County Commissioners. A public informational meeting was held in Newcastle in September 2020 for the plan and a public meeting was held during the 30-day public comment period in Newcastle on March 15, 2022. These meetings were held to ensure the public had the opportunity to participate and contribute to the plan as well as ask questions regarding the plan. The final plan was presented to the Weston County Board of County Commissioners for final adoption in late spring 2022.

1.2.3 Amending the Natural Resource Management Plan

This plan can be amended following the same process for public involvement and adoption as described in the previous section. It is recommended to review and update the plan at a determined interval to ensure it is the most up-to-date with changing natural resource policies. The Weston County Commissioners will determine what the appropriate interval is for this review and update.

1.2.4 County Expectations for Natural Resource Management Plan

While the statutes and regulations outlined above spell out the legal requirements of the federal agencies in their duties in dealing with local governments, the County recognizes that part of this land use planning process is to develop a solid working relationship with the federal agencies doing business in Weston County. The County also recognizes that “coordination,” “cooperating agency status” and “consistency review” are required actions on behalf of both the federal agencies and the local governments. To that end, the County commits to the following actions:



1. Within 30 days of the date of adoption of this plan, Weston County will inform the federal agencies of the date, time, and location of their regularly scheduled meetings with an open invitation that federal agency personnel should attend such meetings if there are issues to discuss. Meetings will be scheduled on a biannual basis.
2. Within 30 days of the date of adoption of this plan, Weston County will transmit a copy of this local land use plan to the state, regional, and local federal agency offices doing business within Weston County for their consideration as part of any consistency review that is required pursuant to federal statute.
3. Within 30 days of the adoption of this plan, Weston County will contact the BLM, USFS, and any other agency offices to determine a protocol for informal communication that should occur so that each is apprised of issues and concerns as early as possible.
4. In a timely manner, Weston County will review NEPA documents to determine if they will request “cooperating agency status” and will consider entering into Memorandums of Understanding (MOU) or Memorandums of Agreement (MOA) as appropriate. The County reserves the right to negotiate an MOU or MOA on a case-by-case basis, although an MOU or MOA is not appropriate nor necessary in all cases.

1.2.4.1 County Expectations Resource Management Objectives:

- A. Weston County has an established relationship with local federal agencies in which the agencies regularly coordinate and allow the County to participate as a cooperating agency for any federal action as the County deems appropriate.
- B. The Weston County Natural Resource Management Plan (NRMP) is reviewed by the federal agencies while generating their land use plans to ensure that the proposed land use plan is coordinated with this NRMP to the greatest extent possible.
- C. The federal agencies conduct a consistency review with the Weston County Natural Resource Management Plan for every proposed National Environmental Policy Act decision the agency makes that may affect the County, the natural resources within the County, or its citizens.
- D. Federal agencies consider the economic well-being and custom and culture of Weston County and its citizens when making decisions affecting natural resources within the County.

1.2.4.2 County Expectations Priority Statements:

1. Federal agencies should inform Weston County of all proposed projects, decisions, and actions that may affect the County and allow the County to participate as a cooperating agency and coordinate with agencies at the earliest time in the planning process.
2. Federal agencies should give regular (where regular is defined as not less than quarterly) updates on the permit status for current and proposed projects within Weston County’s jurisdiction and support reasonable timelines and explanations for issuance of delays from permitting agencies.
3. Federal agencies should achieve a sustainable land use balance between economic growth, energy development, recreation, agriculture, conservation use of lands, quality of life, Weston County’s custom and culture, and the environment by coordinating with the County on all decisions.

4. Federal agencies should maintain the culture of open access, multiple use, agriculture, and rural communities within Weston County.
5. Federal agencies should promote projects that improve the health and sustainability of public lands within Weston County.
6. A full analysis of the impact each alternative and subsequent “decision” will have on the local economy should be conducted by the federal agencies. If it is determined that the alternative will have significant negative impact on the local economy, the alternative/decision is not supported.
7. Federal agencies should inform and encourage those impacted by decisions to substantively participate in scoping processes on a National Environmental Policy Act decision.

1.3 CREDIBLE DATA

To the greatest extent possible, data should drive all land use planning decisions. In this plan, “data” refers to information that meets, at a minimum, the Federal Data Quality Act (FDQA). The FDQA directs the Office of Management and Budget (OMB) to issue government-wide guidelines that “provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies” (Sec. 552(a) Pub. Law. 106-554; HR 5658; 114 Stat. 2763 (2000)).

The OMB guidelines apply to all federal agencies and require that information disseminated by the Federal government will meet basic informational quality standards (66 Fed. Reg. 49718, Sept. 28, 2001; see also 67 Fed. Reg. 8452, Feb. 22, 2002).

This “standard of quality” essentially requires that data used and published by all federal agencies meet four elements. These elements include (66 Fed. Reg. at 49718):

- a) Quality,
- b) Utility (i.e., referring to the usefulness of the data for its intended purpose),
- c) Objectivity (i.e., the data must be accurate, reliable, and unbiased), and
- d) Integrity.

In addition to following the OMB guidelines, all federal agencies were to issue data quality guidelines by October 1, 2002 (67 Fed. Reg. 8452).

In 2004, the OMB issued a memorandum requiring that, after June 15, 2005, influential scientific information representing the views of the department or agency cannot be disseminated by the federal government until it has been “peer-reviewed” by qualified specialists (Office of Management and Budget, 2004). This requirement does not specifically require outside peer review, but an internal review.

Many federal agencies and some state agencies have respective handbooks that lay out their credible data standards. A list and links to these handbooks are provided below:



- BLM [1283 Data Administration and Management \(Public\) 2012](#)¹
- Bureau of Reclamation – [Quality of Information](#)²
- Environmental Protection Agency (EPA) - [EPA Quality System Guidelines](#)³
- U.S. Army Corps of Engineers (USACE) – [Information Management Enterprise Data Management Policy Corporate Information](#)⁴
- USFS – [Forest Service Handbook 1909.12 – Land Management Planning Handbook Chapter 40 – Key Processes Supporting Land Management Planning](#)⁵
- U.S. Fish and Wildlife Service (USFWS) – [Data Standards](#)⁶
- Wyoming Department of Environmental Quality (WDEQ) – [WDEQ Standards](#)⁷

1.3.1 Credible Data Resource Management Objective:

- A. Credible data has a universal meaning for all federal agencies in Weston County and is the basis for all agency decisions within the County.

1.3.2 Credible Data Priority Statements:

1. Federal and state agencies should use credible scientific data in all federal land use decisions made within Weston County.
2. Federal and state agencies should include quantitative data in land use planning processes that meet credible data criteria, even if the data were not produced by a federal agency.
3. Federal agencies should adopt a universal definition of credible data consistent with the Weston County Natural Resource Management Plan and federal law.
4. Federal and state agencies should only use and consider data that is legally collected and meets the minimum criteria described in their respective handbooks when making land management decisions unless other criteria are agreed upon between Weston County and federal agencies.
5. Federal agencies should work with cooperating agencies in making sound natural resource decisions that are scientifically based, legally defensible, sensitive to resource health, and responsive to multiple-interest users.
6. Federal agencies should be transparent in their decision-making and provide the source for all data and studies relied upon for all decisions. Any studies not available to the public should either be made available for public review or not relied upon.

CHAPTER 2: WESTON COUNTY CUSTOM AND CULTURE

2.1 WESTON COUNTY INTRODUCTION AND OVERVIEW

2.2.2 Weston County Overview

Weston County is located in the northeastern corner of Wyoming on the edge of the Black Hills. It is bordered by Crook County to the north, Campbell and Converse counties to the west, Niobrara County to the south, and South Dakota to the east. The closest urban areas are Rapid City, South Dakota, about 80 miles to the east; and Gillette, Wyoming, about 75 miles to the west.

Major highways serving Weston County include U.S. Route 85 traversing the County from north to south in the eastern quarter of the County and U.S. Route 16 which bisects the northeastern third of the County in a northwesterly-southeasterly direction. Rail facilities serving the County are the Burlington Northern Santa Fe which parallels U.S. Route 16 as it crosses the County. Public airports are located in Newcastle and Upton.

Weston County is the 18th largest county in Wyoming and spans approximately 1,541,100 acres (2,408 square miles). Twenty percent (20%) of the land in Weston County is federally owned, with the largest portions being held by the USFS at 15% (230,976 acres) followed by the BLM at 5% (74,044 acres). Approximately 8% (120,992 acres) of lands within the County are state-managed.

According to the 2019 U.S. Census data, the total population of Weston County is 6,927 persons. The population lives in the two incorporated towns of Newcastle and Upton and also throughout the County in rural areas. There are three unincorporated towns in the County: Hill View Heights, Osage, and Four Corners (Figure 1).



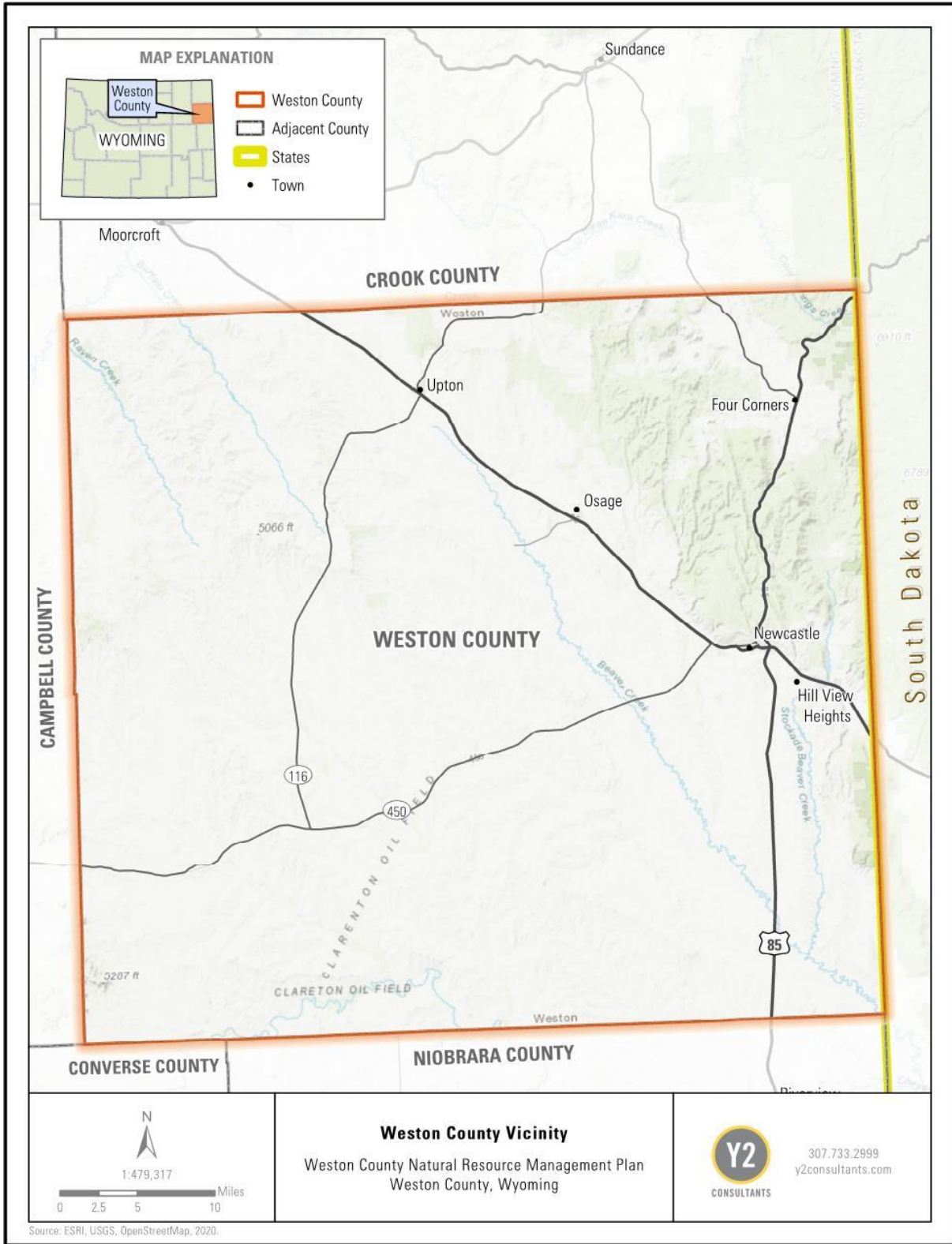


Figure 1. Vicinity map of Weston County.

2.1.1 Weston County History, Customs, and Culture

Until the mid-1870s, northeastern Wyoming had been reserved as “Indian Territory”. The Custer Expedition explored the Black Hills in 1874 and discovered gold on French Creek, South Dakota on July 30, 1874. With the news of the discovery, miners poured into the territory, opening the Black Hills to settlement.

In 1866, the first cattle drive was made from Texas to Montana. In subsequent years, many thousands of longhorn cattle came up the Texas trail through this part of Wyoming, despite the constant hazards of Indian attack. After 1876, ranches were established along this trail, and stock cattle were obtained from the trail herds.

Transportation facilities began to develop. The Cheyenne-Black Hills stage was established to link Black Hills goldfields with the Union Pacific Railroad at Cheyenne some 200 miles to the south. Freight outfits pulled by horses, mules, and oxen operated along the same route.

In the late 1880s, Frank W. Mondell, an engineer for the Chicago, Burlington & Quincy Railroad (CB&Q), located the Cambria Coalfields. The CB&Q was extended from Alliance, Nebraska and reached Newcastle in November 1890. Several years before the coal discovery, oil springs were found in the same general area. In 1891, several shallow wells were sunk, and the mining company patented the townsite of Newcastle as an oil placer claim. Newcastle, the first major town in the County, was initially established as a shipping and service center to serve the new coal mining camp at Cambria. Newcastle was incorporated in 1889 and Weston County was created from a portion of Crook County on March 12, 1890, with Newcastle as the County Seat. Cambria produced the only hard coal in the western region, and it was in high demand. The mine flourished for 39 years, producing over 12 million tons of coal.

Oil was first discovered in the Osage field in 1918. Clareton, Fiddler Creek, and other oil fields sparked a major oil boom through the 1940s and into the late 1950s, and refineries were built at Newcastle and Osage.

In 1914, the Black and Yellow highway was established linking Minneapolis with the Black Hills and Yellowstone Park through Weston County. The tourist industry has since grown, with the County serving as one of the western gateways to the Black Hills.

Homesteading, which had been occurring in the County all along, increased significantly during the World War I era. Many, as they encountered the difficulty of surviving on small acreages, were left in despair. Dry-land wheat farming was established in the 1880s and grew steadily. As lumber was needed by settlers and the mines, several sawmills were established. As the need for bentonite developed, the County’s extensive deposits were among the first developed in the State.

Today, Weston County still relies heavily on mining, oil and gas, and agriculture. The boom-bust cycle continues as markets shift up and down. Many residents still own cattle and sheep ranches. The Weston County Health Services in Newcastle employs medical and social workers. The Northern Wyoming Mental Health Association, also in Newcastle, was established in April 1961



to provide care for community members, specifically war veterans, and the 41-bed Weston County Manor opened in 1969 to assist elderly members of Weston County. Both facilities continue to serve the community today. The Wyoming Department of Corrections operates the Wyoming Honor Conservation Camp & Wyoming Boot Camp, which is located just north of Newcastle and provides work experience for prisoners who have met good behavior standards. (Lebsack, 2014)

Participation in federal decision-making has also been a major component of Weston County's custom and culture in 1994 the Weston County Board of County Commissioners adopted two resolutions detailing their expectations for agency cooperation and coordination. Those resolutions are attached to this Plan under Appendix C.

2.2 CULTURAL, HISTORICAL, & PALEONTOLOGICAL RESOURCES

2.2.1 History, Custom, and Culture

Weston County has a rich history that includes Indigenous Peoples, trappers, sportsmen, railroad workers, soldiers, ranchers, and miners. This varied history makes Weston County a unique place for cultural, historical, and paleontological resources.

The earliest inhabitants of the area were Indigenous Peoples. The Kiowa, Crow, Cheyenne, and Lakota were among the tribes that lived throughout the Black Hills area. Fur trading entered the area in the early 1800s. In 1854, the County area became part of the Nebraska Territory. After multiple changes in territory designations, the area was finally included in the Territory of Wyoming in 1868.

With the discovery of gold in 1874, settlers began pressuring the government to persuade the tribes to move from the area. In 1876, military campaigns moved tribes from the northeastern Wyoming Territory for the first time since it had been established. The following year the cattle industry entered the area on a large scale. Livestock, specifically cattle, became a central industry for the area. In the late 1800s, the discovery of coal resources and the development of the railroad began to develop more towns in the area including Newcastle and Cambria.

The oil industry began booming in Weston County in the 1890s with the development of several oil wells. With the building of refineries in Osage, Newcastle, Four Corners, Red Butte, Thornton, and other smaller towns these areas boomed while the oil demand was high until the early 1920s.

Weston County was formed in 1890, named for John Weston for his discovery of coal deposits in the County. Weston County experienced early economic struggles in the form of debt holdover from dividing from Crook County. The County struggled with excess debt, declined tax revenues, and lawsuits from its formation until 1901. (Lebasck, 2014)

2.2.2 Resource Assessment and Legal Framework

Weston County's traditional lifestyle has centered on agricultural pursuits and resource-based industries for generations. Preservation of the remaining historic sites is important to maintain



and preserve the cultures of historic and present Weston County. Historic preservation of property enhances economic values and provides the basis for heritage tourism.

Historic and Archeological Resources

Two acts primarily protect historic and archeological resources. The National Historic Preservation Act (NHPA) was passed in 1966 and it authorized the Secretary of Interior to maintain and expand a National Register of Historic Places (NRHP). This act established policy for the protection and preservation of sites (e.g., districts, buildings, structures, and objects) that are placed on the National Register of Historic Places. Under NHPA, federal agencies are required to evaluate the effects of actions on any designated 'historic properties' and follow the regulations set by the Advisory Council on Historic Preservation (ACHP) (36 CFR 800). (National Preservation Institute, 2020).

In order for listing in the NRHP, a property or site must usually be at least 50 years old and have historic significance within one or more of the four criteria for evaluation. The criteria relate to a property's association with important events, people, design or construction, or information potential. The NRHP criteria recognize these values embodied in buildings, structures, districts, sites, and objects. The four criteria are as follows:

- That are associated with events that have made a significant contribution to the broad patterns of our history; or
- That are associated with the lives of persons significant in our past; or
- That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- That have yielded or may be likely to yield, information important in prehistory or history. (Wyoming SHPO, n.d.)

Traditional Cultural Property (TCP) are included in the NRHP and are properties eligible for inclusion based on associations with the cultural practices, traditions, beliefs, lifeways, arts, crafts, or social institutions of a living community. TCPs are rooted in a traditional community's history and are important in maintaining the continuing cultural identity of the community. (NPS, 2012)

The Secretary of the Interior has the ultimate decision-making authority when deciding whether a site is listed in the National Register, however, local governments, including counties can significantly influence the process. Local governments certified by the State Historic Preservation Officer (SHPO) are entitled to prepare a report stating whether a site nominated in its jurisdiction is eligible in its opinion for listing in the National Historic Register (See NHPA Section 101(c)).

Perhaps most influential of federal actions, Section 106 of the NHPA grants legal status to historic preservation in federal planning, decision making, and project execution. Section 106 applies when two thresholds are met 1) there is a federal or federally licensed action, including grants,



licenses, and permits; and 2) that action has the potential to affect properties listed in or eligible for listing in the National Register of Historic Places.

Section 106 requires all federal agencies to take into account the effects of their actions on historic properties. The responsible federal agency must consult with appropriate state and local officials, Indian tribes, applicants for federal assistance, and members of the public and consider their views and concerns about historic preservation issues when making final project decisions.

Although all agencies must follow the NHPA when it has a degree of control over a project, the NHPA does not impose general obligations on federal agencies to affirmatively protect preservation interests. *Waterford Citizens' Ass'n v. Reilly*, 970 F.2d 1287, 1291 (4th Cir. 1992). Rather, the NHPA only requires that federal agencies keep the Advisory Council informed of the effect of federal undertakings and allow the Committee to make suggestions to mitigate adverse impacts on the historic sites under its protection. *Id.* In turn, the NHPA ultimately was created to discourage federal agencies from “ignoring preservation values in projects they initiate, approve funds for, or otherwise control.” *Id.*

Effects are resolved by mutual agreement, usually among the affected state’s SHPO or the Tribal Historic Preservation Officer (THPO), the federal agency, and any other involved parties. The ACHP may participate in controversial or precedent-setting situations. In 2014 the act was amended, and the codified law was moved from Title 16 to Title 54 and retitled the Historic Preservation Act. However, the substance of the act remained the same, so the listing criteria for placement of sites in the National Historic Register and the requirements under Section 106 still remain.

Currently, Weston County has six sites (not all are publicly accessible) listed in the National Register, including: (Wyoming SHPO, n.d.)

Table 1. National Historic Register sites in Weston County (updated as of 2021).

National Register Historic Site	Location	Site Owner
Cambria Casino	Newcastle	Private
Jenney Stockade Site	Newcastle	Private
Newcastle Commercial District	Newcastle	Private, Local, Federal
U.S. Post Office (Newcastle Main)	Newcastle	Federal
Weston County Courthouse	Newcastle	Local
Wyoming Army National Guard Calvary Stable	Newcastle	State

The Archaeological Resources Protection Act (ARPA) of 1979 provides regulations on the management of historic sites on federal land and the issuance of permits to excavate archeological discoveries.



Paleontological Resources

There are multiple paleontological resources within Weston County. The largest known resource is the Cretaceous Lance Creek Formation, where hundreds of *Triceratops* fossils have been found including at least one hundred skulls. The *Triceratops* genus was defined in 1889 using materials pulled from this formation within the County and discoveries continue to be made due to finds in this area (Clearinghouse, n.d.; Paleon Foundation, 2019).

The Paleon, a museum located in Glenrock, collects fossils from several established quarries on both private and public land across northeast Wyoming. The Paleon also acts as an educational and tourist location, hosting digs for ‘paleo-vacationers’ (Paleon Foundation, 2019). Fossils are considered the property of the property owner of the site the fossil was found. For this reason, when there is a substantial find, the paleontology museum and/or foundation will often draft up legal paperwork agreeing to recover and preserve the fossil in exchange for the specimen to then be donated to the museum. On public land, paperwork must be filed with the managing agency prior to recovery (Paleon Foundation, 2019).

Paleo Park is an example of paleontological resources present in southern Weston County. Paleo Park, located near Newcastle, provides tours and fossil prospecting opportunities along the exposed Lance Creek Formation for those that come to visit the ranch. In addition to the many fossils displayed at the ranch lodge, there have been several large finds, including two near-complete *Triceratops* specimens, that have been donated to museums. All fossils found at Paleo Park belong to the owners of the Zerbst Ranch, however, as part of the tour they allow visitors to take some of their finds home (*History of Paleo Park*, n.d.).

The Paleontological Resource Preservation Act (PRPA) was enacted in 2009, directing multiple federal agencies to establish comprehensive management plans for paleontological resources. PRPA applies to the USFS, BLM, BOR, NPS, and the USFWS. For information concerning each agency’s plan regarding paleontological resources refer to their websites below (Bureau of Land Management, 2016b; National Park Service, 2020).

- [Forest Service, fossils and paleontology](#)⁸
- [Bureau of Reclamation, fossil resources](#)⁹
- [U.S. Fish and Wildlife Service, historic preservation](#)¹⁰
- [Bureau of Land Management, Paleontology](#)¹¹

2.2.3 Cultural/Historical/Paleontological Resources Resource Management

Objectives:

- A. Cultural, historical, geological, and paleontological resources are preserved and protected for current and future public education and enjoyment.
- B. Existing property rights are considered when managing cultural, historical, geological, and paleontological resources within Weston County.
- C. Weston County is coordinated with concerning the designation and management of all cultural, historical, geological, and paleontological resources.



- D. Split estate mineral development within Weston County is not impeded by cultural surveys.

2.2.4 Cultural/Historical/Paleontological Resources Priority Statements:

1. All federal agencies should communicate with Weston County on known or potentially significant cultural resources within the County and allow the County to participate in the management and protection of the resource where appropriate.
2. Weston County supports and encourages making significant local cultural resources available for research and education, and strongly urges the protection of those cultural resources where appropriate.
3. Weston County should be consulted on any buffer zones implemented for the protection of historical and cultural resources. Weston County supports private property rights as paramount for cultural, historical, geological, and paleontological resources thought to be on private lands.
4. Weston County supports responsible stewardship of cultural sites on federal lands balancing resource protection with current and future multiple uses that dictate the custom and culture of the County.
5. Weston County requests to be recognized by federal agencies as a consulting party under Section 106 of the National Historic Preservation Act and subsequent amendment.
6. Federal agencies should support development including roads, pipelines, and powerlines that may cross trails in areas where previous disturbance has occurred and/or where the trail segment has lost the characteristics that contribute to its National Register significance.

CHAPTER 3: LAND USE

3.1 LAND USE

3.1.1 Conservation Districts

During the 1930s, the Dust Bowl made the need to conserve natural resources, particularly soil, very clear. The Soil Conservation Act of 1935 created the Soil Conservation Service, now termed the Natural Resource Conservation Service (NRCS), to develop and implement soil erosion control programs (WACD, n.d.). In 1941, the Wyoming State Legislature passed an enabling act, which established conservation districts in Wyoming. Conservation districts were to direct programs protecting local renewable natural resources. Wyoming now has 34 conservation districts in 23 counties (WACD, n.d.).

Weston County has one conservation District: Weston County Natural Resource District. The District was organized in 1960 and received certification from the Secretary of State on January 16, 1961, under the name Beaver Skull Conservation District. A name change to Weston County Natural Resource District was designated on April 15, 1994, by the Secretary of the State of Wyoming. (Weston County Natural Resource District, 2021)

The original District Boundary was land in Weston County that lies east of Highway 85 and north of Highway 16. Landowners inside this area at the time of creation had the option to opt-out of the district. Additionally, landowners outside this area were given the opportunity to opt-in. All land additions to the district since that time, have been done voluntarily at landowner request. Any land in Weston County lying outside the District boundaries can be added voluntarily by landowners to the District at any time. (Weston County Natural Resource District, 2021)

The District is governed by a board of five supervisors. Supervisors are locally elected officials who serve without pay. By state statute three are rural, one is urban, and one is designated as at-large. They are elected to staggered four-year terms.

3.1.2 Bureau of Land Management

The Bureau of Land Management (BLM) manages approximately 5% of the land in Weston County. Weston County is included in the High Plains District Office and a field office is located in Newcastle. The Newcastle BLM Field Office manages approximately 292,000 surface acres in northeast Wyoming and 6,600 acres in Nebraska. The Office oversees approximately 1.6 million acres of split estate within the three counties it covers in Wyoming and 240,000 acres of split estate in Nebraska. The major programs in the Newcastle Field Office are oil and gas exploration and development, livestock grazing, and lands and realty. The Newcastle Resource Management Plan (RMP) was approved in a record of decision signed in September 2000 (BLM, n.d.-a).

The BLM we know today was established in 1946 by combining the General Lands Office (GLO) and the U.S. Grazing Service. The GLO was created in 1812 and was responsible for all federal land sales, patents, and entries established within the Treasury Department to oversee the disposition of ceded and acquired lands (Bureau of Land Management, 2016a). In 1934, the Taylor Grazing Act authorized grazing districts, regulation of grazing, and public rangeland



improvements in Western states and established the Division of Grazing (later renamed U.S. Grazing Service) within the Department of the Interior.

The Federal Land Policy and Management Act (FLPMA) is the BLM’s governing document outlining the management responsibilities of the BLM to balance public access and multiple-uses with the protection and preservation of the quality of the lands and its resources (43 USC § 1732) (FLPMA, 1976). FLPMA requires the BLM to administer federal lands “on the basis of multiple use and sustained yield” of all resources (FLPMA, 1976).

3.1.3 United States Forest Service

The U.S. Forest Service (USFS) manages approximately 15% of the total land in Weston County and includes forest lands that are part of the Black Hills National Forest and the Thunder Basin National Grasslands.

In 1876, United States forest management was formalized with the creation of the office of Special Agent within the Department of Agriculture to assess the quality and condition of U.S. forests. In 1881, the Division of Forestry was added to the Department of Agriculture. In 1891, Congress passed the Forest Reserve Act allowing the President to designate western lands as “forest reserves” to be managed by the Department of the Interior. Western communities strongly opposed forest designations because the development and use of “reserved lands” were prohibited. In 1897, Congress adopted the Organic Administration Act of 1897 (OAA) to protect the use of forest reserves for local citizens. The OAA declared that forest reserves would be created either to protect water resources for local communities and agriculture, and/or to provide a continuous supply of timber. Thus, the purposes for which forests were to be used changed from the land being reserved from local communities to the land being used for economic development by local communities. Responsibility for forest reserves was transferred to the Department of Agriculture with the Transfer Act of 1905 and the establishment of the USFS. The Multiple-Use Sustained-Yield Act of 1960 (MUSY) requires that forests be managed for various non-timber uses (MUSY of 1960, 1960). This idea was further codified in the National Forest Management Act (NFMA) (16 U.S.C. § 1601(d)).

Black Hills National Forest

Approximately 6,257 acres of the Black Hills National Forest lie within Weston County and is headquartered in Custer, South Dakota. This area falls within Region 2 of the USFS which is headquartered in Golden, CO. The Bearlodge Ranger District is located in Sundance, Wyoming and manages Black Hills National Forest lands within Weston County (Lebasck, 2014). The Bearlodge District totals approximately 200,000 acres in the northern part of the Black Hills within Wyoming.

The Land and Resource Management Plan for the Black Hills National Forest was approved in 1997 and a Phase II Amendment was approved in 2005.

Thunder Basin National Grasslands

Approximately 69,206 acres of the Thunder Basin National Grasslands (TBNG), part of the Medicine Bow-Routt National Forest & Thunder Basin National Grassland, lie within Weston



County. The Thunder Basin National Grasslands is headquartered in Laramie, Wyoming with the Douglas, Wyoming Ranger District being the closest ranger district.

The TBNG was created in 1934 as the Northeastern Wyoming Land Utilization Project under the Agricultural Adjustment Administration and administered by the Farm Security Administration, Bureau of Agriculture, and the Soil Conservation Service. The lands were transferred from the Soil Conservation Service to USFS in 1954. The TBNG was designated with permanent National Forest System status in 1960. The TBNG is divided into three units for grazing administration, with each unit having a grazing association. These associations include the Inyan Kara Grazing Association Based out of Weston County, the Thunder Basin Grazing Association based out of Converse County, and the Spring Creek Grazing Association based out of Campbell County. These associations were established during the mid-1930s and still exist today. In 1987, the TBNG was combined with Laramie Peak Ranger District into the Douglas Ranger District, and in 1993 was consolidated into the Medicine Bow-Routt National Forest.

The National Forest Management Act requires that each national forest and grassland be governed by a management plan. The Revised Land and Resource Management Plan (LRMP) for the Medicine Bow National Forest was approved in 2003. Three amendments have been made to the Medicine Bow National Forest RMP and modified specific activities in the 2003 Revised LRMP. These amendments include the Southern Rockies Lynx Management Direction Amendment (2008), Energy Policy Act (EPAAct) of 2005 Section 368 Westside Energy Corridor Amendment, and Site-specific Amendment Travel Management – Eastern Snowy Range EA (2007).

The Land and Resource Management Plan (LRMP) for the TBNG was approved in 2002. The TBNG finalized the [TBNG Prairie Dog Management Strategy and Land and Resource Management Plan Amendment](#)¹² in December of 2020. Two previous amendments are also a part of the LRMP, the 2001 TBNG Land and Resource Management Plan Amendment which allows for approval of a construction permit and granting of authorization for operation and maintenance of the rail line on portions of the TBNG, and the 2001 Teckla to Antelope Coal Mine 69kV Power Line Amendment which allowed construction of an overhead 69kV power line within the minimum standard of ¼ mile of an active raptor nest.

3.1.4 Bankhead-Jones Farm Tenant Act

History, Custom, and Culture

The TBNG, along with all 20 National Grasslands in the U.S., was created through the Bankhead-Jones Farm Tenant Act (BJFTA) which authorized the federal government to acquire damaged lands for rehabilitation after the Dust Bowl.

The BJFTA originally contained four titles. Title I authorized loans to farm tenants, laborers, sharecroppers, and others for the purchase of farms. Title II authorized rehabilitation loans and the voluntary adjustment of indebtedness between farm debtors and their creditors. Title III gave the Secretary of Agriculture a broad mandate to acquire sub-marginal lands (lands not suitable for farming) by purchase or donation. It resulted in the formal establishment of the formerly ad



hoc Land Utilization Program and set forth the purpose and direction of the program. Section 33 of Title III also authorized payment to counties of 25% of the net revenues received on lands acquired under BJFTA from grazing, forestry, mining, and energy development. Title IV established the Farm Security Administration to implement and administer the Act. There have been major changes to the Bankhead-Jones Act since its enactment including the repeal of Titles I, II, and IV by Congress in the Agricultural Act of 1961 (Olson, 1997). Title III, however, remains in effect. It has been amended several times by Congress and today Section 31, which sets forth the purpose of the program and the permitted uses for the acquired lands administered under BJFTA, states:

The Secretary is authorized and directed to develop a program of land conservation and land utilization, in order thereby to correct maladjustments in land use, and thus assist in controlling soil erosion, reforestation, preserving natural resources, protecting fish and wildlife, developing and protecting recreational facilities, mitigating floods, preventing impairment of dams and reservoirs, developing energy resources, conserving surface and subsurface moisture, protecting the watersheds of navigable streams, and protecting the public lands, health, safety, and welfare, but not to build industrial parks or establish private industrial or commercial enterprises. (71 U.S.C. § 1010) (Olson, 1997)

Resource Assessment and Legal Framework

The authority to manage national grasslands such as the TBNG comes from the 1937 Bankhead-Jones Farm Tenant Act (BJFTA) (7 U.S.C. §§ 1010–1012). The BJFTA authorizes the Secretary of Agriculture, through the USFS, to:

Develop a program of land conservation and land utilization, in order thereby to correct maladjustments in land use, and thus assist in controlling soil erosion, reforestation, preserving natural resources, protecting fish and wildlife, developing and protecting recreational facilities, mitigating floods, preventing impairment of dams and reservoirs, developing energy resources, conserving surface and subsurface moisture, protecting the watersheds of navigable streams, and protecting the public lands, health, safety, and welfare, but not to build industrial parks or establish private industrial or commercial enterprises.

The BJFTA was originally enacted to address agricultural problems caused and exacerbated by the Great Depression and Dust Bowl and continues to be one of the principal laws governing the Forest Service’s administration of the national grasslands today. However, a number of other laws provide additional direction for grassland management:

- The Granger-Thye Act of 1950 established a new direction for some aspects of National Forest System management (16 U.S.C. § 572 et seq.). This Act authorized: (a) the use of grazing fee receipts for rangeland improvement; (b) the Forest Service to issue grazing permits for terms up to 10 years; (c) the Forest Service to participate in funding cooperative forestry and rangeland resource improvements; (d) the establishment of grazing advisory boards; and (e) the Forest Service to assist with work on private

forestlands. Shortly after the Granger-Thye Act of 1950, the Department of Agriculture, in 1954, turned the management of the national grasslands over to the Forest Service.

- NEPA requires federal agencies to evaluate and disclose the environmental impact of “major federal actions significantly affecting the quality of the human environment” (42 U.S.C. §§ 4321 et seq.). In short, NEPA is a procedural statute that generally outlines the steps a federal agency must take when planning a project, though other federal statutes specific to a particular agency or type of project may require additional procedures.
- The 1973 Endangered Species Act (ESA) generally requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of the designated critical habitat of such species (16 U.S.C. §§ 1531 et seq.).
- The Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA) requires, among other things, the Forest Service to develop land and resource management plans for units of the National Forest System. Congress added more specific requirements to the Forest Service planning obligations in the NFMA (16 U.S.C. §§ 1600 et seq.). Specifically, the NFMA:

Forest Service regulations governing management of the national grasslands are found at 36 C.F.R. Part 213 (the 213 Regulations). Relevant provisions of the 213 Regulations provide:

The national grasslands shall be “permanently held by the Department of Agriculture for administration under the provisions *and purposes* of Title III of the Bankhead–Jones Farm Tenant Act,” and “administered under sound and progressive principles of land conservation and multiple use, *and to promote development of grassland agriculture and sustained-yield management of the forage. . . .*” (36 C.F.R. §§ 213.1(b) and (c) (emphasis added)).

Grassland resources “shall be managed so as to maintain and improve soil and vegetative cover, and to demonstrate sound and practical principles of land use for the areas in which they are located” (36 C.F.R. § 213.1(d)). The Chief of the Forest Service also must, to the extent feasible, enact management policies that “exert a favorable influence for securing sound land conservation practices on associated private lands” (36 C.F.R. § 213.1(d)).

Additionally, the 213 Regulations explicitly provide that other regulations applicable to national forests, including those governing livestock grazing, are incorporated and applied to regulate the protection, use, occupancy, and administration of the national grasslands to the extent they are consistent with the provisions of the BJFTA (36 C.F.R §§ 222 et seq. and 36 C.F.R. § 213.3(a)).

3.1.5 Other Federal Agencies

At the time that this plan was adopted there were no other federal agencies' lands within Weston County.



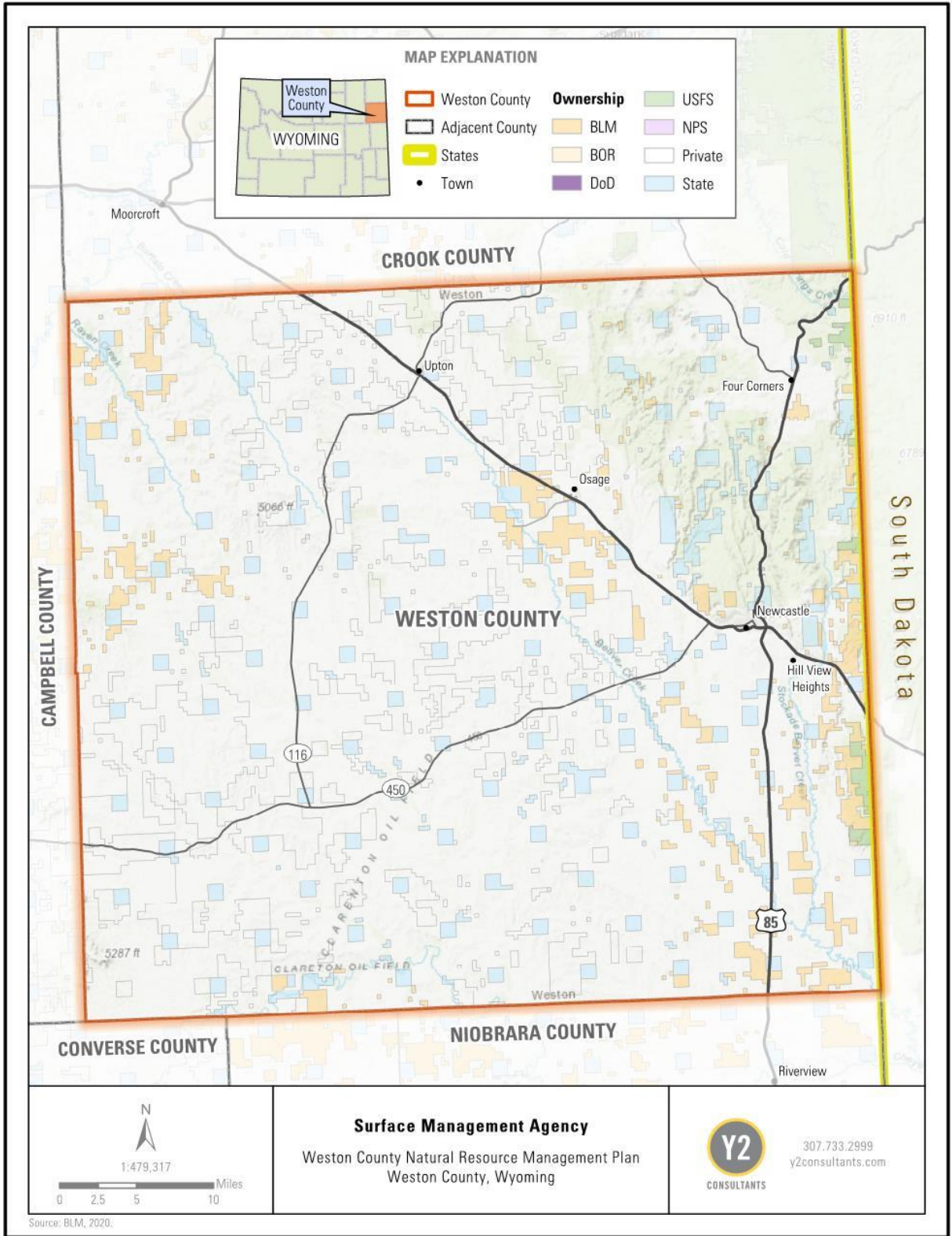


Figure 2. Weston County surface ownership map.

3.1.6 Land Use Resource Management Objective:

- A. The basis for management of all public lands within Weston County is multiple-use management and the management limitations identified in the land management agencies' Resource Management Plan or Land Use Plan.

3.1.7 Land Use Priority Statements:

1. Federal agencies should conduct any National Environmental Policy Act analysis using multiple-use principles that take into consideration all resources.
2. Weston County shall be notified and allowed to participate as a cooperating agency on National Environmental Policy Act projects that may influence the economic stability of the County and its residents.
3. Federal agencies should support decisions that ensure the socioeconomic well-being of Weston County citizens, maintain the culture and customs of the constituents, and consider natural resource health.
4. Federal agencies should consider the affects their decisions will make to neighboring private and state lands within Weston County.
5. When an agency decision or proposed alternative will have a negative impact to the current use of neighboring lands, that proposed decision or alternative is not supported by Weston County.
6. Federal agencies should coordinate with and accommodate reclamation needs of neighboring landowners whenever a project will affect adjacent lands.
7. Federal agencies should protect and enhance access for the enjoyment of federal and state managed lands in Weston County.
8. Weston County does not support the creation of additional federal lands within the County.
9. Ensure there is no net loss of private lands in Weston County, which shall be measured in acreage and fair market value.
10. Federal agencies should abide by the requests set forth in Weston County Board of County Commissioner Resolutions 94-10 and 94-12.

3.2 TRANSPORTATION AND LAND ACCESS

3.2.1 History, Custom, and Culture

Weston County itself relies on access to public lands to protect the health, safety, and general welfare of the people within its jurisdiction. This includes, but is not limited to, fire protection, search and rescue, flood control, law enforcement, economic development, transportation of goods and services, and the maintenance of County improvements.

U.S. Highway 85, or CanAmm Highway, runs north to south along the eastern third of the County. U.S. Highway 16 crosses the northeastern corner of the County at a diagonal from the northern border south through the town of Upton, through the city of Newcastle, and to the eastern border of the County. There are multiple smaller highways and county roads that also span the County.

These highways, county roads, and railroads all allow products and services to move throughout the county, state, and nation. Tourists travel through the County to various destinations and to get across the state. There is also a significant amount of oil and gas traffic utilizing these corridors to convey production from across the county. Agricultural products are also heavily transported across the county and state using the network of roads. County roads are extremely important for moving agricultural products and industrial products for the mining and oil/gas industries.

It is vital to the sustainability of the livestock industry in Weston County that grazing areas, and the stock trails that connect them, be open and accessible. Livestock “trailed” from one grazing area to another must access the grazing areas as well as lands in between. Historical use of stock trails and grazing areas has fluctuated over the years, depending on market prices, and weather conditions, but the need for access availability has remained constant.

3.2.2 Resource Assessment and Legal Framework

Congress, as the constitutional manager of the federal lands, has made it clear through natural resource statutes that the general public must have use of and access to the federal lands. It is vital to the County’s interests and performance of duties that full and complete access to the federal lands continues. The BLM and USFS both have specific provisions they must follow when considering the closure of roads and trails. These provisions require that such activity be conducted in coordination with the County prior to such action being taken.

Bureau of Land Management

BLM land is enjoyed by the public for numerous recreational activities. The BLM must follow various federal laws regarding the management of transportation and travel on federal lands. FLPMA is the BLM’s governing document outlining the management responsibilities of the BLM to balance public access and multiple-uses with the protection and preservation of the quality of the lands and its resources (FLPMA, 1976). Due to the importance of transportation when making the balance of preservation with multiple use management, the BLM must now incorporate travel and transportation management decisions into all new and revised RMPs to address needs concerning resource management and resource use goals and objectives (BLM, 2016a). Travel



Management Plans (TMPs) are the primary implementation-level decision documents laying out the management of BLM’s travel network and transportation systems. All decisions made in TMPs are implementation-level decisions and should be tied to the goals, objectives, and management actions contained within the RMP. The BLM is required to coordinate “inventory” with the County (43 USC § 1712) (FLPMA, 1976).

United States Forest Service

The federal lands managed by the USFS in the County are to be managed for multiple-use and sustained-yield uses (16 USC 1601(d)) (Multiple-Use Sustained-Yield Act of 1960, 1960) including, but not limited to agriculture (farming, irrigation, livestock grazing); recreation (motorized and non-motorized transport and activities, such as hunting, fishing, water and land sports, hiking, etc.); industry (mining, power production, oil and gas production/exploration, and timbering); intangible values (historical and cultural sites, access to open space, aesthetic values, conservation); and weed, pest, and predator control.

The USFS is directed to coordinate the preparation of Travel Management Plans with the County (36 CFR 212).

“The responsible official shall coordinate with appropriate Federal, State, County, and other local governmental entities and tribal governments when designating National Forest System roads, National Forest System trails, and areas on National Forest System lands pursuant to this subpart” (36 CFR 212.53).

“Designations of National Forest System roads, National Forest System trails, and areas on National Forest System lands pursuant to §212.51 may be revised as needed to meet changing conditions. Revisions of designations shall be made in accordance with the requirements for public involvement in §212.52, the requirements for coordination with governmental entities in §212.53, and the criteria in §212.55,” (36 CFR 212.54).

It is understood that the federal definition of “roadless” does not mean that there are no roads present, but rather that the area is managed to prohibit the construction of new roads, or the reconstruction of existing roads. Existing roads within roadless areas can continue to be maintained. Refer to the 2001 Roadless Rule for additional [information](#)¹³. The U.S. Department of Agriculture (USDA) classifies roads within National Forests by five levels of maintenance: 1, 2, 3, 4, and 5. Level 1 roads refer to roads closed to motorized vehicles. Level 2 roads are maintained for high clearance vehicles, and Level 3-5 roads are maintained for standard passenger cars during the season of use. Refer to the Forest Service Guidelines for Road Maintenance Levels for additional [information](#)¹⁴.

Federal Highway Administration

The Federal Highway Administration (FHWA) is an agency within the U.S. Department of Transportation and was created in 1966.



“The mission of FHWA is to enable and empower the strengthening of a world-class highway system that promotes safety, mobility, and economic growth, while enhancing the quality of life of all Americans” (Office of Federal Lands Highway, 2018).

Under this mission, the FHWA provides resources to municipalities across the nation in the form of indirect and direct methods. Indirectly, the FHWA provides valuable research and design guidance on numerous topics to push the industry towards a safer, more efficient, and holistic network. Directly, the FHWA provides grants to the local Department of Transportation divisions to facilitate project design and construction based upon merit. These grants are distributed through the Federal Highway-Aid Program.

Alongside the FHWA, numerous programs were created under the Federal Lands Highway Division (FLHD) to specifically service certain groups and were reauthorized under the Fixing America’s Surface Transportation (FAST) Act. These programs are:

- Federal Lands Access Program (FLAP): “established in 23 U.S.C. 204 to improve transportation facilities that provide access to, are adjacent to, or are located within, federal lands. The FLAP supplements state and local resources for public roads, transit systems, and other transportation facilities, with an emphasis on high-use recreation sites and economic generators” (Office of Federal Lands Highway, 2018).
- Federal Lands Transportation Program (FLTP): “established in 23 U.S.C. 203 to improve the transportation infrastructure owned and maintained by federal land management agencies including NPS, USFWS, USFS, BLM, U.S. Army Corps of Engineers (USACE), BOR, and independent federal agencies with land and natural resource management responsibilities”(Office of Federal Lands Highway, 2018).
- Nationally Significant Federal Lands and Tribal Projects Program (NSFLTP): “...provides funding for the construction, reconstruction, and rehabilitation of nationally significant projects within, adjacent to, or accessing Federal and tribal lands. This program provides an opportunity to address significant challenges across the nation for transportation facilities that serve Federal and tribal lands” (Office of Federal Lands Highway, 2018).
- Emergency Relief for Federally Owned Roads (ERFO): “established to assist federal agencies with the repair or reconstruction of tribal transportation facilities, federal lands transportation facilities, and other federally owned roads that are open to public travel, which are found to have suffered serious damage by a natural disaster over a wide area or by a catastrophic failure” (Office of Federal Lands Highway, 2018).

The Wyoming Department of Transportation (WYDOT) can work directly with any of the above programs to help secure funding and has annually. Through the FLAP program alone, Wyoming has secured \$73.3 million spread across 16 projects from 2013 to 2022.

Revised Statute 2477

In 1866, Congress enacted a law to provide and protect access across federal lands for miners and others reliant upon water to earn their livelihood. Section 8 of Revised Statute 2477 (“R.S. 2477”) provided simply that, “the right-of-way for the construction of highways over public land,



not reserved for public uses, is hereby granted” (the Act of July 26, 1866, § 8, ch. 262, 14 STAT. 251,253 (1866) (formerly codified at 43 U.S.C. § 932)). The grant was originally section 8 of the Mining Act of 1866, which became section 2477 of the Revised Statutes; hence the grant is commonly referred to as R.S. 2477. Weston County miners and ranchers developed such rights-of-way in the form of roads and trails, which continue to be used today.

The grant is self-executing and an R.S. 2477 right-of-way comes into existence “automatically” when the requisite elements are met (*See, Shultz v. Dep’t of Army*, 10 F.3d 649, 655 (9th Cir. 1993)). One hundred and ten years after its enactment, R.S. 2477 was repealed with the passage of the Federal Land Policy and Management Act of 1976 (“FLPMA”), 43 U.S.C. § 1701 *et seq.* *See*, 43 U.S.C. § 932, repealed by Pub. L. No. 94-579, § 706(a), 90 STAT. 2743, 2793 (1976). Even though FLPMA repealed R.S. 2477, FLPMA explicitly preserved any rights-of-way that existed before October 21, 1976, the date of FLPMA’s enactment (*See*, 43 U.S.C. § 1769(a) (stating that nothing “in this subchapter shall have the effect of terminating any right-of-way or right-of-use heretofore issued, granted, or permitted”) (*see also*, 43 U.S.C. § 1701, Savings Provision (a) and (h)). Therefore, R.S. 2477 rights-of-way which were perfected prior to October 21, 1976 are valid even after the repeal of R.S. 2477. In order for a road to qualify as a R.S. 2477 right-of-way in Wyoming, the road must have been established by a board of county commissioners under the procedures established in Wyoming’s county road statutes. *See Yeager v. Forbes*, 78 P.3d at 254.

Coordination between the government agency and the holder of the R.S. 2477 right-of-way is a necessity. The courts have clearly stated that both the holder of the dominant and servient estate must exercise their rights to not interfere with the other. *SUWA*, 425 F.3d at 746 *citing* *Hodel*, 848 F.2d at 1083. Thus, there must be a system of coordination between the federal agency and the holder of the R.S. 2477 right-of-way whenever there may be an action that may affect the rights or use of the other. *Id.* The repeal of R.S. 2477 “froze” the scope of the R.S. 2477 right-of-way. Thus, the scope of the R.S. 2477 right-of-way is limited by the established usage of the route as of the date of the repeal of the statute (*Southern Utah Wilderness Alliance v. Bureau of Land Management*, 425 F.3d 735, 746 (10th Cir. 2005, as amended 2006)). In relation to the roads at issue here, this scope would be access to, and between private land sections. Further, the courts have also clearly demarcated that the use of an R.S. 2477 right-of-way is a question of scope on a case-by-case basis, considering state law, that will allow for the use that is reasonable and necessary for the type of use to which the road has been put until 1976. *SUWA*, 425 F.3d at 746. This, however, does not mean that the road had to be maintained in precisely the same condition it was in on October 21, 1976; rather, it could be improved “as necessary to meet the exigencies of increased travel,” so long as this was done “in the light of traditional uses to which the right-of-way was put” as of repeal of the statute in 1976. *Hodel*, 848 F.2d at 1083.

As discussed earlier, an R.S. 2477 grant is self-executing and the right-of-way comes into existence “automatically” when the requisite state law elements are met (*See, Shultz v. Dep’t of Army*, 10 F.3d 649, 655 (9th Cir. 1993)). Thus, adjudication of R.S. 2477 rights is not a prerequisite to their existence unless the agency contests the existence of the grant. In cases where the federal agency contests the existence of an R.S. 2477 right-of-way, a claim against the United States would need to be made under the Quiet Title Act (28 U.S.C.A. § 2409a). The Quiet Title



Act provides that the United States may be named as a party defendant in a civil action to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water right (28 U.S.C.A. § 2409a(a)). In such an action, a plaintiff must demonstrate with particularity the nature of the right, title, or interest which the plaintiff claims in the real property, the circumstances under which it was acquired, and the right, title, or interest claimed by the United States (28 U.S.C.A. § 2409a(d)).

Some of the County roads that cross through public lands within the County likely fall under R.S. 2477.

3.2.3 Transportation and Access Resource Management Objective:

- A. There is full and open access to and across Weston County federal lands for local purposes such as safety, health, economic use, and use of recreation is maintained and expanded where possible.
- B. Access to public lands within Weston County is maintained and expanded where possible.
- C. Private property rights are protected in Weston County while facilitating rights of access.

3.2.4 Transportation and Access Priority Statements:

1. Weston County supports the designation of all currently open motorized and non-motorized trails, rights of way, and roads as open transportation networks.
2. No road, trail, or RS 2477 right of way within Weston County shall be closed unless public safety or health demands its closing and the proper analysis and disclosure, in consultation with the County and private property owners, is completed prior to closure.
3. Legal public access to the federal lands for all beneficial uses should be supported as long as it does not infringe on private property rights.
4. All formally established BLM and USFS public roads and rights of way in Weston County shall be considered valid unless formally abandoned, even if not presently maintained. Public trails shall be considered “public roads and highways”.
5. Weston County should be notified of any temporary road closures.
6. Weston County considers any long-term (greater than one year) road closure a major federal action that significantly affects the quality of the human environment. Thus, a road on federal lands may not be closed until a full NEPA analysis has been completed including public review and coordination with Weston County. Should the agency believe that a road closure falls under a categorical exemption, the County shall be consulted.
7. Weston County considers all stock trails to be R.S. 2477 roads and these roads are not abandoned unless abandonment is explicitly established by the County.
8. Weston County requests that any planning process or activity that restricts, eliminates, or increases access to federal lands first notify and allow the County to initiate coordination and cooperation to resolve any potential conflicts with the County’s objectives, principles, and policies, prior to taking action.
9. Preserve stock trails as valid access routes for the purpose of trailing livestock between grazing areas.
10. Restrictive management of roadless areas is discouraged by Weston County and multiple uses should instead be allowed.

11. Weston County supports the construction of temporary roads necessary to service natural resource development.

3.3 SPECIAL DESIGNATION AND MANAGEMENT AREAS

3.3.1 History, Custom, and Culture

Public lands and access to them have always been an important part of the history, custom, and culture of Weston County. It is important to the citizens of Weston County that these public lands remain available for multiple use that helps improve the economic and social diversity of the county and its constituents. Special designation areas can preserve these areas for the future but must be balanced with multiple use and resource use that is important to the viability of Weston County.

3.3.2 Resource Assessment and Legal Framework

There are a few special designation and management areas within Weston County. Figure 3 depicts the special management and designation areas within the County.

Areas of Critical Environmental Concern

Areas of Critical Environmental Concern (ACEC) are BLM-managed areas “where special management attention is needed to protect important historical, cultural, and scenic values, or fish and wildlife or other natural resources (BLM, 2016b). An ACEC may also be designated to protect human life and safety from natural hazards (BLM, 2016b). An ACEC designation must go through the NEPA land use planning process. An ACEC designation may be revisited through subsequent land use planning, revision, or amendment. ACECs and other special designations may compete with the natural resource-based businesses that are important to the County’s economy, like grazing and mining.

There is currently one ACEC in Weston County: the Whoopup Canyon ACEC which encompasses approximately 1,439 acres. The Whoopup Canyon ACEC contains one of the major petroglyphs sites found in North America. The site has over 100 panels of pecked hunting scenes along a four-mile stretch of the canyon. The small solid-pecked petroglyphs depict elk, deer, mountain sheep, antelope, canids, and other animals. Human figures hold weapons, staffs, and other objects that stand alongside or among the animals. Lands within the ACEC are closed to both motorized and non-motorized vehicle use, except for administrative purposes. The objective of the area is to protect and study rock art in the Whoopup Canyon area; expand public education and interpretation in the area; protect cultural resource values from degradation, and provide for wildlife and scenic values; and Native American concerns (BLM Newcastle Field Office, 2000).

Special Recreation Management Areas

The BLM’s land use plans may designate Special Recreation Management Areas (SRMAs) to provide specific management for recreation opportunities, such as developing trailhead areas for hikers, mountain bikers, or off-road vehicle users. SRMAs are BLM administrative units where a commitment has been made to prioritize recreation by managing for specific recreation opportunities and settings on a sustained or enhanced, long-term basis. SRMAs are managed for their unique value, importance, and/or distinctiveness; to protect and enhance a targeted set of



activities, experiences, benefits, and desired resource setting characteristics; as the predominant land use plan focus; to protect specific recreation opportunities and resource setting characteristics on a long-term basis.

Weston County has one SRMA, the Stateline SRMA which is located east of Newcastle on the state line of Wyoming and South Dakota. The management objective for this area is to ensure continued public use and enjoyment of recreation activities while protecting and enhancing natural and cultural values; improving opportunities for high-quality outdoor recreation; and, improving visitor services related to safety, information, interpretation, and facility development maintenance. Recreational trails in the SRMA are developed on BLM-administered public lands for use by hikers, skiers, and mountain bike riders. (BLM Newcastle Field Office, 2000)

Wild and Scenic Rivers

The National Wild and Scenic Rivers System was created in 1968 to preserve naturally, culturally, and recreationally valued rivers. Rivers are designated for the National Wild and Scenic River System by Congress or, in certain situations, the Secretary of Interior. There are currently 408 miles of rivers and streams designated as wild and scenic in Wyoming. (National Wild and Scenic Rivers System, n.d.-b) There are currently no rivers in Weston County designated or proposed as wild, scenic, or recreational within the National Wild and Scenic Rivers System (National Wild and Scenic Rivers System, n.d.-a, n.d.-b).

Wilderness and Wilderness Study Areas (WSA)

The Wilderness Act of 1964 established the National Wilderness Preservation System to be managed by the USFS, NPS, and the USFWS. The passage of FLPMA in 1976 added the BLM as a wilderness management authority to the Wilderness Act. Wilderness areas must have “wilderness character”, which is described with four qualities. Wilderness Study Areas (WSAs) are places that have wilderness characteristics; (i.e.: untrammeled, natural, undeveloped, and outstanding opportunities for recreation) which make them eligible for future designation as wilderness (BLM, 2016c).

The four characteristics that must be met for designation as a WSA or Wilderness Area:

1. The area must be untrammeled by man. Untrammeled refers to wilderness as an area unhindered and free from modern human control and manipulation. Human activities or actions on these lands impair this quality.
2. The area must be natural. The area should be protected and managed to preserve its natural conditions and should be as free as possible from the effects of modern civilization. If any ecosystem processes were managed by humans, they must be allowed to return to their natural condition.
3. The area must be undeveloped. No human structures or installations, no motor vehicles or mechanical transport, or any other item that increases man’s ability to occupy the environment can be present.
4. The area must offer solitude or primitive and unconfined recreation. People should be able to experience natural sights and sounds, remote and secluded places, and the physical and emotional challenges of self-discovery and self-reliance.



WSAs are established in three different ways: (1) they are identified by the wilderness review as required by Section 603 of FLPMA; (2) they are identified during the land use planning process under Section 202 of FLPMA; (3) or they are established by Congress.

Section 603(c) of the FLMPA requires that WSAs are managed so as not to impair their suitability for preservation as wilderness and strive to retain their primeval character and influence, without permanent improvements or human habitation (BLM, 2016c). However, the FLPMA also requires that mining, livestock grazing and mineral leasing (e.g., grandfathered uses) continue in the manner and degree as they were being conducted in 1976. Therefore, to the extent that grazing was allowed in the wilderness prior to 1976, its use, specifically including allowing the same number of livestock as existed in 1976, should be continued. Grandfathered uses are protected and must be maintained in the same manner and degree as they were being conducted on October 21, 1976, even if they impair wilderness characteristics according to *Rocky Mountain Oil and Gas Association v. Watt*, 696 F.2d 734, 749 (10th Cir. 1982). This requirement includes the authority to develop livestock-related improvements (*Utah v. Andrus*, 486 F. Supp. 995 [D. Utah 1979]).

There are currently no Wilderness or WSAs within Weston County.

Scenic Routes

Black Hills Scenic Byway

The Wyoming Black Hills Scenic Byway runs 78-miles through much of Weston County (Figure 3). The area was named by Native Americans because of the color of the tree trunks when it rained and the entire area offers numerous historic sites and cultural resources in conjunction with beautiful natural vistas, unique geology, and recreational areas (Wyoming Travel and Tourism, 2021).

Beaver Creek Loop Tour

The Beaver Creek Loop Tour is a scenic and historic trek that was developed by local historians. The loop is 50 miles and has over two-dozen stops with signs that describe the historical importance of the area. Along the loop are portions of the Cheyenne to Deadwood Stagecoach route along with a historic sawmill, a grist mill, and the establishment of local ranches. The last stops along the tour feature Cambria, an early coal mining town (Newcastle Wyo, n.d.).

America the Beautiful (30 x 30)

On January 7, 2021, President Joe Biden signed Executive Order 14008 entitled Tackling the Climate Crisis at Home and Abroad (E.O. 14008). Section 216 of the E.O. required the Secretary of Interior in consultation with the Secretary of Agriculture, the Secretary of Commerce, the Chair of the Council on Environmental Quality, and the heads of other relevant agencies, to submit a report within 90 days of the date of the E.O. recommending steps that the United States should take, working with State, local, Tribal, and territorial governments, agricultural and forest landowners, fishermen, and other key stakeholders, to achieve the goal of conserving at least 30 percent of our lands and waters by 2030. The Biden Administration believes that only 12% of US land is considered to be conserved, thus additional uses would have to be eliminated, or private



and state lands would have to be acquired to achieve [30x30](#).¹⁵ It is estimated that an additional 440 million acres would have to be acquired by 2030. On May 6, 2021, the preliminary report ordered by E.O. 14008 was [released](#).¹⁶ The report identified eight primary principles the agencies were going to follow in pursuing President Biden’s 30x30 goal. Conserving and Restoring America the Beautiful p. 13-16. Those principles include:

1. Pursue a collaborative and inclusive approach to conservation.
2. Conserve America’s lands and waters for the benefit of all people.
3. Support locally led and locally designed conservation efforts.
4. Honor tribal sovereignty and support the priorities of tribal nations.
5. Pursue conservation and restoration approaches that create jobs and support healthy communities.
6. Honor private property rights and support the voluntary stewardship efforts of private landowners and fishers.
7. Use science as a guide.
8. Build on existing tools and strategies with an emphasis on flexibility and adaptive approaches.

Additionally, the report recommended the creation of an American Conservation and Stewardship Atlas. The Atlas would be an accessible, updated, and comprehensive tool through which to measure the progress of conservation, stewardship, and restoration efforts across the United States in a manner that reflects the goals and principles of 30x30. Conserving and Restoring America the Beautiful p. 17. The American Conservation and Stewardship Atlas would aggregate information from these databases and others, supplement this information with information from the States, Tribes, public, stakeholders, and scientists, and provide a baseline assessment of how much land, ocean, and other waters in the U.S. are currently conserved or restored, including, but not necessarily limited to:

- 1) The contributions of farmers, ranchers, forest owners, and private landowners through effective and voluntary conservation measures;
- 2) The contributions of Fishery Management Councils and their conservation measures under the Magnuson-Stevens Fishery Conservation and Management Act; and
- 3) The existing protections and designations on lands and waters across Federal, State, local, Tribal, and private lands and waters across the nation.

Finally, the report created six goals that the agencies should provide its early focus on to achieve 30x30. Conserving and Restoring America the Beautiful p. 18-21. Those goals include:

- 1) Create more parks and safe outdoor opportunities in nature-deprived communities.
- 2) Support tribally led conservation and restoration priorities.
- 3) Expand collaborative conservation of fish and wildlife habitats and corridors.
- 4) Increase access for outdoor recreation.
- 5) Incentivize and reward voluntary conservation efforts of fishers, ranchers, farmers, and forest owners.

6) Create jobs by investing in restoration and resilience.

To date, there has been no substantive guidance as to what lands or uses will qualify under 30x30.

On October 5, 2021, the Weston County Board of County Commissioners adopted a resolution regarding the America the Beautiful (30x30) Program that opposes the implementation of 30x30. The resolutions adopted by the Board of County Commissioners are incorporated into this document as policy statements and a copy of the adopted resolution can be found in Appendix C of this document. Copies of the Resolution were sent to the Department of the Interior and all other relevant federal and state agencies.



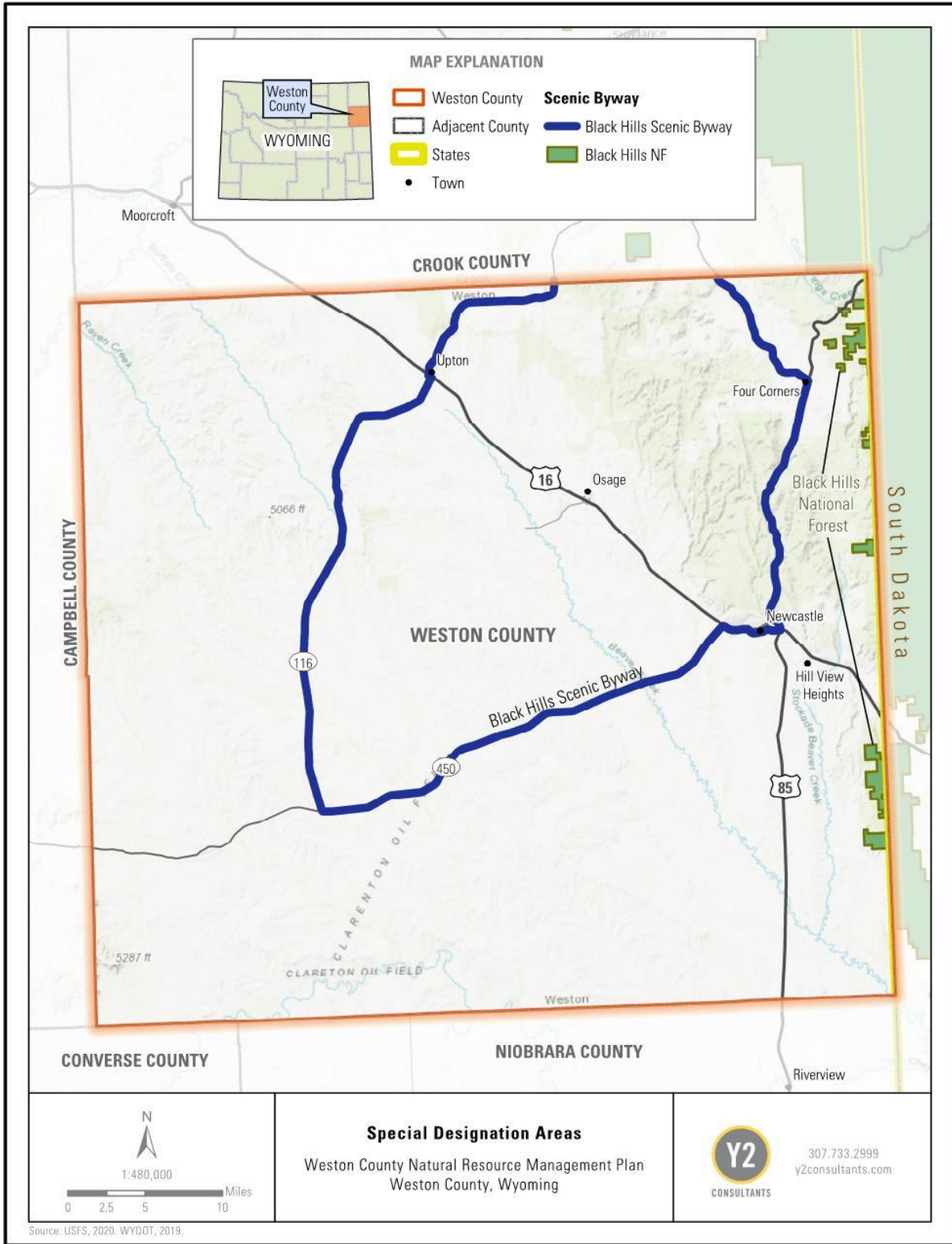


Figure 3. Special designation areas within Weston County.

3.3.4 Special Management Areas Resource Management Objective:

- A. Designation of new areas and management of current special designation or management lands are coordinated with Weston County and adjacent landowners and allow for multiple use.
- B. No new special designation or management areas are created in Weston County without approval from the County.

3.3.4 Special Management Areas Priority Statements:

1. Weston County should be a cooperating agency on any action to designate any special management or designation areas.
2. Federal agencies shall consult and coordinate with Weston County as early as possible when considering the designation of new special designation areas and should be consistent with the Weston County Natural Resource Management Plan to the maximum extent possible.
3. Any proposed special management area designation shall undergo analysis of the economic and environmental cumulative impact to Weston County's custom, culture, and economy.
4. State and federal planning actions that affect the visual resource and Visual Resource Management classifications that affect land uses should be coordinated with Weston County.
5. Weston County does not support future designations of new special management or designation areas in the County, including, Wild and Scenic Rivers, Wilderness, or Wilderness Study Areas, lands with wilderness characteristics, Areas of Critical Environmental Concern, Roadless Areas. Any proposed designation shall be coordinated with the County and undergo analysis of the impact to Weston County's economy including a pre-existing condition analysis.
6. No new historic trail designations will be created or pursued in Weston County without the County's consent.
7. Federal agencies should consult with Weston County when evaluating whether lands and the multiple uses on them qualify as "conserved lands" under 30x30.
8. Protecting private property rights should be the greatest priority when attempting to fulfill the 30x30 goals outlined in Executive Order 14008.
9. Federal agencies shall not use coercive actions or the threat of condemnation to acquire land to achieve their 30x30 goals outlined in Executive Order 14008.
10. Weston County opposes the America the Beautiful (30x30) program, including its objective of permanently preserving 30% of the Nation's lands in its natural state by 2030, or any similar program that will set aside and prevent the productive use of millions of acres of Weston County's lands.
11. Weston County opposes the designation of lands in Weston County for the purposes as expressed in the America the Beautiful (30x30) program which may restrict public access to such land and which may prevent the development of and productive use of the resources on or within such lands.

12. Weston County supports the continued private ownership of land in the County, recognizing the Nation's need for domestic sources of minerals, energy, timber, food, and fiber.
13. Weston County recognizes and supports the State of Wyoming's water rights system, including the doctrine of prior appropriation and other state laws and programs governing water rights and water use, and opposes any federal designation of waters and watercourses within the County that would impair or restrict water diversions and uses authorized under Wyoming law.
14. Weston County supports reasonable national, regional, and global greenhouse gas emissions policies and goals that are comprehensive, practical, cost-effective, and do not unnecessarily single out specific industries or activities but opposes the use of global climate change as an excuse to set aside large tracts of land as preserves or open space to fulfill the America the Beautiful (30x30) program's objectives.
15. Weston County maintains that any lands or other rights that are acquired to fulfill the America the Beautiful (30x30) program's objectives should be acquired only from willing landowners and for the payment full and fair market value for all rights and interests acquired, and not through regulatory compulsion, and only after analyzing and considering the impacts of such land acquisitions on the well-being, health, safety, welfare, economy, and culture of Weston County, its businesses, and its citizens.
16. Unless lands or waters are given a special management or designation in a respective agency's planning document, all public lands in Weston County should be managed for multiple use as outlined in the Multiple Use Sustained Yield Act and Federal Land Policy Management Act.

3.4 WILDFIRE MANAGEMENT

3.4.1 History, Custom, and Culture

Wildfires have had catastrophic effects in Weston County, including severely damaging the County watershed, timber, grazing lands, wildlife habitat, and recreational activities that rely on healthy forests, rangelands, and grasslands in addition to endangering human health and safety and lost economic opportunities (Figure 4).

3.4.2 Resource Assessment and Legal Framework

Wildfire is defined as an unplanned, unwanted fire that spreads rapidly and is difficult to extinguish. This includes accidental human-caused fires, unauthorized human-caused fires, escaped fires used as a management tool, and naturally occurring fires. Proactive planning for response to a wildland fire event is critical to the protection of Weston County; its citizen's health, safety, welfare, and private property; and forest, rangeland, and grassland health. A high degree of coordination between federal, state, and local agencies is necessary for the prevention and suppression of wildfire. Several wildfires have occurred throughout Weston County over the last few decades that have impacted the natural resources within the County. A list of the fires over 100 acres can be found in Table 2 and a map of those fires can be seen in Figure 4.

Table 2. Fire Occurrences over 100 acres in Weston County from 1966 to 2016.

Year of Fire	Fire Name	Acreage	Year of Fire	Fire Name	Acreage
1966	Dewey	180	2006	Alkali Draw	122
1983	Elk Mtn I	1,143	2006	Cummings	4,246
1985	Whoopup	760	2007	Wade Hill	2,447
1988	Keeline RA	1,433	2010	35 Mile Marker	4,901
1988	Rochelle Hills #2	2,984	2011	Weston 10	150
1991	Dewey II	536	2011	Artisan	385
1991	Mush Creek	931	2011	Borgialli Fire	704
1994	Peterson-Elliott	8,329	2011	Cowger	821
1997	Dewey2	4,345	2011	Barrel	871
2001	Elk Mtn II	10,345	2011	Whoopup	6,249
2002	Kuemmerle	110	2012	Cemetary	273
2002	Stinson	124	2012	Skull Creek	1,736
2002	Sheldon	244	2012	Butterfield	2,490
2002	Keeline	473	2012	Oil Creek	61,542
2003	Fields Draw	273	2015	Williams	113
2003	Wildcat	704	2016	Cellars Loop	130
2003	Red Point	7,228	2016	Buck Draw	1,293

Weston County has a Community Wildfire Protection Plan (CWPP) that was developed by members of Wyoming State Forestry, Weston County Fire Protection District, Weston County Fuels Mitigation Program, BLM, and USFS in 2018. The CWPP serves as a tool to coordinate the resource management of lands within Weston County in a manner that protects communities



and local values at risk from wildfire. The plan outlines goals and objectives for wildfire management across the County. The CWPP describes management for each section of the County and further evaluates action items and previous mitigation efforts. The goal for the CWPP is to: develop a CWPP working document using local input and GIS technology to quantify wildland-urban interface (WUI) area hazard ratings in Weston County and recommend actions to reduce the hazardous fuel in those WUI areas. The current CWPP was created in 2018 and can be found [here](#)¹⁷.



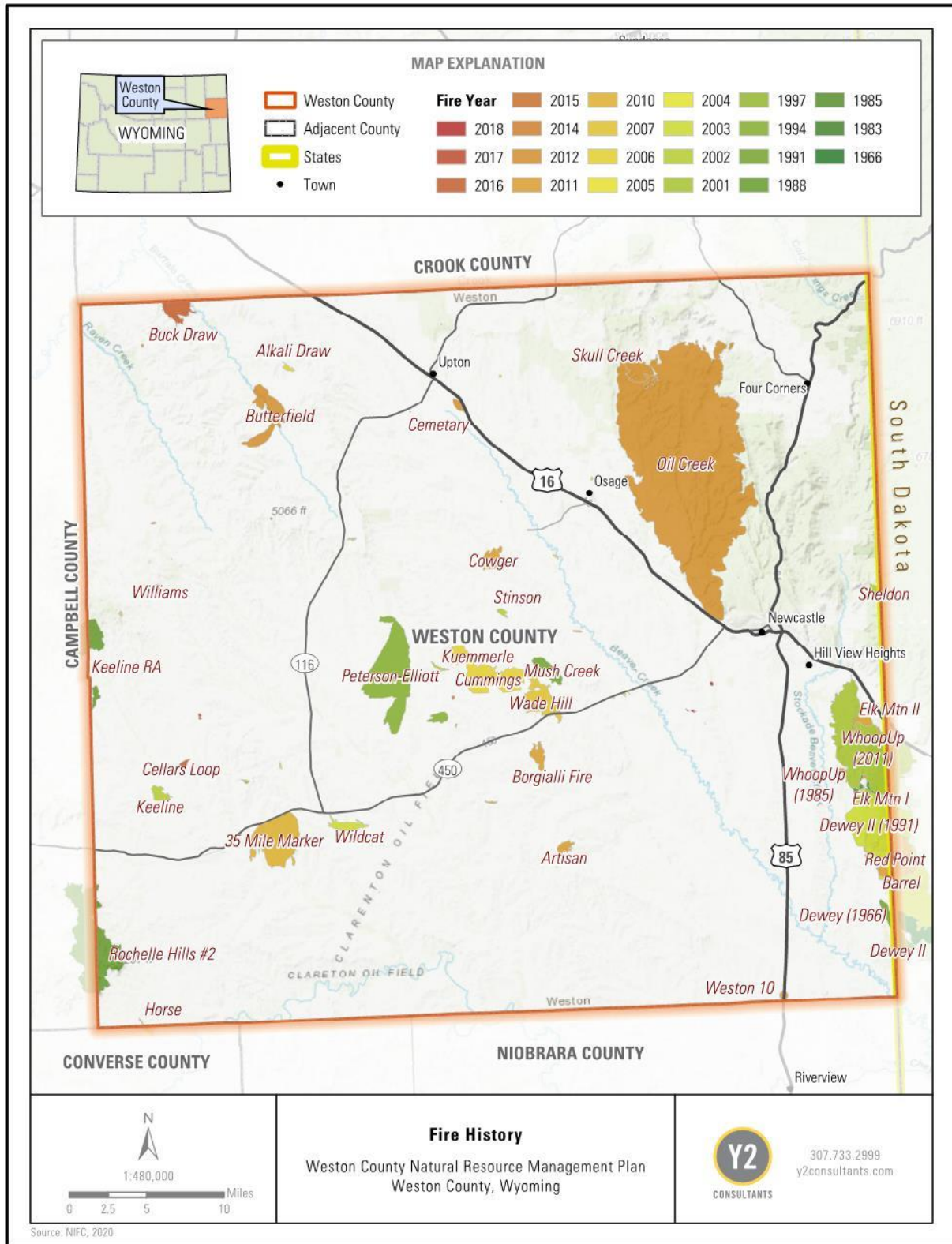


Figure 4. Fire history of Weston County.

3.4.3 Wildfire Management Resource Management Objectives:

- A. Fire suppression efforts are implemented effectively as appropriately determined through full coordination, communication, and cooperation between federal, state, and local fire-suppression units.
- B. Wildfire, fuels, and fire rehabilitation are managed promptly and effectively and proactively using credible data in coordination with the Weston County Community Wildfire Protection Plan.

3.4.4 Wildfire Management Priority Statements:

1. Federal agencies shall coordinate with local fire agencies on wildfire planning, management, and suppression in both urban and rural areas of Weston County.
2. In addition to aiding state and local rural fire prevention and control programs, the Secretaries of Agriculture and Interior shall provide prompt and adequate assistance whenever a rural fire emergency overwhelms or threatens to overwhelm the firefighting capability of the affected state and rural area.
3. Federal agencies shall incorporate local fire association plans into their fire suppression and control plans.
4. Federal agencies should support and renew existing Master Good Neighbor Agreements and, where they do not exist, develop a Master Good Neighbor Agreement between federal, state, and local fire-suppression units within 1-year of the adoption of this plan.
5. Federal agencies should coordinate and communicate temporary fire restrictions based on fire hazard designations to minimize the potential for human caused wildfires.
6. Federal agencies should promote the prompt rehabilitation of harvested areas and areas affected by wildfire, including the use of salvage logging operations.
7. Federal agencies should consult and coordinate with Weston County on proposed changes and updates to Fire Management Plans on federal lands.
8. Federal agencies should participate in consideration of limited and judicious use of wildfire, rather than favoring a “let it burn” policy, in areas where invading and expanding shrubs and trees are reducing the value of rangeland resources.
9. Post-fire objectives shall be consistent with site potential as defined in approved Desired Future Conditions or Ecological Site Descriptions.
10. Federal agencies should rehabilitate forests and rangelands damaged by wildfires as soon as possible for habitat, wildlife, and to reduce the potential for erosion and introduction of invasive or noxious weeds.
11. Weston County encourages fire suppression in areas where fire would endanger human safety, private property or valuable vegetation that supports and expands multiple uses and/or provides critical habitat for sensitive species.
12. Federal agencies should coordinate with State and local agencies to implement fire control tools such as insecticide and herbicide treatments, chemical and mechanical controls, livestock grazing, biomass fuel removal, slash pile burning, prescribed burning,

and encourage knowledgeable and prepared practices to create defensible space around buildings.

13. Should grazing on federal lands be temporarily suspended due to fire, grazing should be recommenced based on monitoring and site-specific rangeland health determinations rather than predetermined timelines.
14. Livestock grazing AUMs should return to pre-fire levels when post-fire monitoring data shows established objectives have been met or have been achieved to an extent allowed by site potential.
15. Initial post-fire monitoring data should be collected within two growing seasons of the fire and can be collected outside the agency if the appropriate monitoring protocols and credible data criteria are followed.
16. Federal agencies should allow for adaptive grazing management practices and include these practices in term permits to allow for flexible management practices that will decrease fine fuel loads on the landscape, particularly in areas with heavy grass understory.
17. When planning prescribed burns, where feasible, market timber resources while reserving desirable seed trees, before burning.
18. Fire should not replace timber harvest and other extractive uses as a primary forest management tool.

3.5 FOREST/RANGELAND/GRASSLAND MANAGEMENT

3.5.1 History, Custom, and Culture

Forest Management

The beneficial use of forest natural resources has always been a part of Weston County's economy, customs, and culture. Early citizens relied on forest resources such as timber for buildings, corrals, fences, and fuel. Historic logging took place within Weston County as part of a stable timber-harvesting program and logging occurred through the years on both federal and private lands. A healthy forest ecosystem provides employment and economic benefit for individuals and businesses in the County.

Rangeland Management

The rangeland resources in Weston County have been heavily relied upon for livestock grazing, energy development, recreation, and other uses. In the early 1880s, ranchers began bringing cattle from as far away as Texas to graze on the area's rangelands. Livestock grazing to this day remains an important industry in the county. The rangelands within Weston County have also been important resources for the development of the energy industry within the county which has provided significant economic impacts to the county for many years. These areas also maintain large acreages of important wildlife habitat and open space. The Newcastle BLM Field Office is the main land manager of public rangelands within Weston County.

Grassland Management

Weston County is home to large acreages of the Thunder Basin National Grassland. In the latter half of the 19th century, Congress incentivized the settlement of the West. The Homestead Act of 1862 authorized the disposition of 160-acre parcels of federal land to qualified individuals. To receive a patent on a parcel of land, a homesteader was allowed six months to establish a residence on the land. Upon establishing a residence, actual settlement and cultivation of the land were required for five years to receive a patent. However, much of the most valuable land in the West was already controlled by several entities including states, tribes, and the railroad, and was thus unavailable for homesteading (Olson, 1997). Also, the 160-acres promised under the Homestead Act were too little for viable farms in most of the arid West and much of the land was ill-suited for farming due to the low levels of precipitation.

Despite these difficulties, many people came to the West seeking the promise of free land. By 1904, nearly 100 million acres of land were homesteaded by 500,000 farms in the West. At the turn of the 20th Century, up until 1920, a land boom occurred in the West due to high commodity prices. The Thunder Basin experienced this same boom during the first World War years. For example, Wyoming wheat production rose from 2.2 million bushels in 1913 to 6.6

Foreclosures multiplied, tax delinquencies increased, and farm incomes dwindled. To complicate matters further, the economic hardships suffered by many farmers during this time were accompanied by devastating natural events like droughts, floods, insect infestations, and erosion. In retrospect, it became apparent that thousands of farm families had been living in poverty on sub-marginal land long before the advent of the Great Depression and the Dust Bowl. These twin events made farming, already a difficult lifestyle, that much more challenging. For many, the additional challenge was simply too much (Olson, supra n. 46).

million in 1918 (Wyoming State Historical Society, 1999). After the end of World War I, demand for commodities plummeted even though supply continued to grow.

With the steady increase in settlement also came massive droughts across the Great Plains. The continued cultivation of unproductive farms in sub-marginal lands damaged natural soil and water resources. As a result, many operations failed in the 1920s, and these failed farms were abandoned. Things worsened when, during the Great Depression, an influx of new people settled in the West. The influx only exacerbated the issues facing those farmers already settled.

These challenges also manifested into difficulties for local governments that lost tax revenue. Recognizing the magnitude of the sub-marginal land problem in 1931, the Secretary of Agriculture held the National Conference on Land Utilization. This Board recommended in 1934 that the Federal Government purchase and develop 75 million acres of sub-marginal lands throughout the country. The main objective of these acquisitions would be to “supplement the assistance to private forestry, and erosion control work” already underway and demonstrate how these sub-marginal lands could be used to serve the public (U.S. Department of Agriculture, Economic Research Service, 1972). Although a project as ambitious as acquiring 75 million acres of sub-marginal land was never accomplished, land utilization efforts began as early as 1934.

Following the guidelines of “converting the land purchased to a beneficial use to the people of the United States,” the primary purposes of the land utilization plans at the time were to retire sub-marginal land from agricultural use (i.e., farming) and develop it for uses to which the land was better suited (i.e., grazing). When assessing how to develop sub-marginal land for better uses, there was an emphasis to address three major problems:

- 1) The damage of soil and water resources, forest, and grass cover through erosion and the improper use of land;
- 2) The waste of human resources through the dependence of rural people upon land not suitable for agricultural production; and

- 3) The loss of financial resources by State and local governments through the excessive costs of public services in sub-marginal areas where tax returns were too meager or uncertain to cover those costs.

For the West, the purpose of the land utilization program was to see the semi-arid land originally used for arable farming to transition to grazing. There were several instances in which this purpose of the land utilization plans in the Western Great Plains states was made clear. The Thunder Basin program stated that the program sought to bolster “economic independence and stability in the area by adjusting the population to the productivity of the land” (Fischer, *supra* n. 50 *citing* Land Use Summary Report for Project LA-WY-I, (30 June 1937)). To further show this intent, the planning document for the Thunder Basin Land Utilization Project stated that the purpose of WY-LU-1 was “grassland agriculture’ which was to be for livestock grazing and the economic stability of the local ranches” (WY-LU-21, Douglas, Wyoming (May 25, 1943) copy located in the Douglas Ranger District Office).

Another purpose of the Land Utilization Plans was to transition grazing in the area to a more organized function, shifting the grazing operations from “uneconomical” small operators to landowners capable of effectively raising livestock in the area.

The Land Utilization Plans also sought out control of the grasslands by entrusting local management to local grazing associations. At the time of inception, Grazing Associations operated as permittees of the Soil Conservation Service. The Grazing Associations, in turn, issued grazing permits to their members, who were local ranchers. The associations were controlled by boards, which were elected by the membership. This process allowed local people to administer grazing privileges in accordance with the Soil Conservation Service rules and procedures. Additionally, Grazing Associations had their own bylaws, which provided for membership qualifications, meeting dates, election of officers, and general operating policies.

*The first step was to purchase sub-marginal lands. This was the most decisive way to acquire control over their use, and there were plenty of willing sellers. The second step was resettlement-moving “uneconomical” small operators out of the area. Third came range rehabilitation, which encompassed revegetation of plowed land, restoration of overgrazed range through resting, elimination of logical pasture units through rational fencing, and water development. Water would be key to the success of stage four: controlled grazing by remaining middle-class stock raisers. Fewer operators would have larger, more economical ranches. The government would ensure that no more cattle were put on the grass than could be supported sustainably (Cunfer, *supra* n. 57 at 201-2 *citing* "Little Missouri Land Adjustment Project: Proposal for Extension to Site No. 2," 12 November 1934, LUP Papers, box 322; M. B. Johnson, "Submarginal Land Program Memorandum of Proposed Project," 28 December 1934, LUP Papers, box 322; "Final Plan").*

The Grazing Associations helped accomplish the LUP’s ultimate goals of ensuring that the land would be utilized in a sustainable way with the land being put to use for the best purpose of transitioning the land from farming to grazing. Further, when transitioned to grazing, there

needed to be a degree of sustainability that would prevent soil erosion and overgrazing on the project lands.

The Thunder Basin was one of the earliest Land Utilization Projects having been created through executive order in 1936. The stated purpose of the Wyoming Land Utilization and Land Conservation Project WY-LU-1 was for “grassland agriculture,” which was intended to bolster “economic independence and stability in the area by adjusting the population to the productivity of the land” (Fischer, *supra* n. 50. 1 citing Land Use Summary Report for Project LA-WY-I, (30 June 1937)).

In 1937, the BJFTA provided more permanent status for the Land Utilization Plans. The modern BJFTA authorizes the Secretary of Agriculture to create a land conservation and utilization program to be used on National Forest Land in order to correct “maladjustments in land use,” and ultimately assist in, among other things, controlling soil erosion, reforestation, preserving natural resources, protecting fish and wildlife, and protecting public lands health, safety, and welfare (7 U.S.C § 1010). To carry out the program, the BJFTA allowed the Secretary to regulate the use and occupancy of BJFTA land to conserve or utilize the land, or to “advance the purposes” of the Act (7 U.S.C. § 1011(f)). The ultimate guiding principle for the Secretary in carrying out the BJFTA was to protect lands acquired under the BJFTA and to adapt them to their “most beneficial use” (7 U.S.C. § 1011(b)).

On January 2, 1954, the Department of Agriculture gave the authority to the U.S. Forest Service to administer the Grasslands under the BJFTA (36 C.F.R. § 213.1). Under this regulation, the U.S. Forest Service must:

- Administer the land with “sound and progressive principles of land conservation and multiple use;
- “Promote development of grassland agriculture and sustain yield management” of the various uses in the area (Id. at 213.1(c)); and
- Manage national grassland resources “so as to maintain and improve soil and vegetative cover, and to demonstrate sound and practical principles of land use for the areas in which they are located (Id. at § 213.1(d)).

Although there was originally hesitation by the USFS to continue to run the land utilization program, as they were intended to be run with an emphasis on grazing, the Secretary of Agriculture promulgated regulations that solidified the purpose of the National Grasslands in relation to the original land utilization plans. The regulations served:

- 1) To reaffirm the promotion of grassland agriculture and sustained-yield management of all land and water resources in the areas of which the Grasslands are a part;
- 2) To stress the demonstration of sound and practical principles of land use; and
- 3) To provide that management of the Federal land exerts a favorable influence over associated other public and private lands (Wooten, *supra* n. 54 at 33 *citing* 25 Federal Register 1960, page 5845; 28 Federal Register 1963, page 6268: 213.1)



In guiding its decisions, the National Forest Service must adopt regulations that protect the National Grasslands, as well as adapting them to their “most beneficial use” (7 U.S.C. § 1011(b)). Further, through its regulations, the USFS adopted to multiple-use and sustainable yield approach to its management of the grasslands, but there is a preference that the land ultimately be used for grassland agriculture (36 C.F.R. 213.1(c)).

3.5.2 Resource Assessment and Legal Framework

Forest Management

A small portion of the land in Weston County is within the Black Hills National Forest and managed by the USFS District Ranger Office out of Newcastle and the Thunder Basin National Grassland lies within the Medicine Bow National Forest. A healthy forest ecosystem provides employment, ecosystem services, and economic benefit for individuals and businesses in the County. Proper forest management ensures the protection of natural resources as well as human health and safety within the County by reducing risk in WUI areas and to communities at-risk of wildfire. Forest products also increase the economic potential within the County. Harvesting of forest products still occurs within Weston County and includes firewood, posts and pole, Christmas trees, and commercial harvesting.

Rangeland Management

The rangeland resources in Weston County has been relied upon for livestock grazing, energy development, timber harvesting, recreation and other uses. In the early 1880s, ranchers began bringing cattle from as far away as Texas to graze on the area’s grasslands. Livestock grazing to this day remains an important industry in the County. Many of the generational ranches in the area have relied upon the promises made by the government dating back to the early twentieth century. Any disruption in the use of the lands from what it was originally intended would harm the custom and culture of the County. These areas also maintain large acreages of important wildlife habitat and open space.

Approximately 5% of the lands in Weston County are classified as rangeland and managed by the BLM. Most of the rangelands and riparian zones in the County support an understory or periodic cover of herbaceous or shrubby vegetation amenable to rangeland management principles or practices. The principal natural plant cover is composed of native grasses, forbs, and shrubs that are valuable as forage for livestock, big game, other wildlife, and pollinators. Rangeland includes lands revegetated naturally or artificially to provide a plant cover that is managed as native vegetation. Rangelands in the County mostly consist of sagebrush steppe and riparian areas. The soil and climate make most of the land best suited for grass and shrub production, rather than farming. The BLM requires public rangelands to meet or make substantial progress to meet standards, which were developed for Wyoming as the 1997 [Wyoming Standards for Healthy Rangelands and Guidelines for Livestock Grazing Management](#)¹⁸.

The encroachment of juniper and pine trees into rangelands can reduce rangeland diversity and productivity. Similarly, the expansion of decadent and old sagebrush over thousands of acres in Weston County threatens multiple uses and the maintenance of healthy rangeland conditions.

More aggressive or intensive management of these vegetation communities will enhance and sustain multiple uses and increase rangeland productivity and resilience.

Grassland Management

The TBNG spans the center of Weston County and is managed by the USFS. The TBNG provides vegetation that is productive for livestock, wildlife, and other resource uses. The TBNG is managed for sustainable multiple uses as part of the National Forest System. These grasslands are rich in mineral, oil, and gas resources and provide for diverse recreational uses such as hiking, hunting, fishing, photographing, birding, and sightseeing.

The TBNG is found along a transition zone between the Great Plains to the east and the sagebrush steppe to the west and occurs across a gradient of temperature, precipitation, and elevation. The area evolved with disturbance from drought, grazing, fire, and burrowing mammals. The TBNG includes both sagebrush and grassland plant communities which interact with a range of ecological disturbances to support diverse wildlife species.

Federal law requires the USFS to administer the national grasslands for the purposes for which they were acquired. When the federal government acquires land for a particular public purpose, only Congress has the power to change that purpose or dispose of the acquired land (*Reichelderfer v. Quinn*, 287 U.S. 315, 318–20 (1932)). Thus, federal agencies must manage and administer acquired lands according to the purpose for which the federal government acquired them, unless Congress has authorized otherwise (*Id.*; see also *United States v. Three Parcels of Land*, 224 F.Supp. 873, 876 (D. Alaska 1963); *United States v. 10.47 Acres of Land*, 218 F.Supp. 730, 733 (D.N.H. 1962)).

3.5.3 Forest/Rangeland/Grassland Management Resource Management Objective:

- A. Forest lands, rangelands, and grasslands within Weston County are managed under multiple use that promotes the timber industry, energy industry, grazing, fuels management, and recreation and benefits the economy of the County's communities.

3.5.4 Forest/Rangeland/Grassland Management Priority Statements:

1. Weston County encourages federal agency policies that support and allow for the timber industry's continued economic benefit to the citizens of Weston County. Access to forest, rangeland, and grassland products on public lands shall be ongoing and access to these sites shall be through an open road and a cross-country travel system.
2. Federal agencies should support salvage harvest when necessary due to insect/disease epidemic, blowdown, or post-fire situations using appropriate categorical exclusions.
3. Federal agencies should notify and coordinate forestland, rangeland, and grassland management projects with Weston County, state and local agencies, and private landowners.
4. Federal agencies should maintain and restore watershed health by demonstrating active forestland, rangeland, and grassland management.

5. Federal land managers should continue to plant and develop a wide variety of trees, shrubs, and seedlings to the vegetation community for windbreaks and shelterbelts for aesthetic, wildlife, and agricultural value.
6. Federal agencies should support excluding the maximum area of land possible from single-use or restrictive-use designations, so that excluded land is available for active and sound management.
7. Federal agencies should ensure that rangeland health assessments identify all the causal factors when there is a failure to meet the 1997 Wyoming Standards for Healthy Rangelands and that livestock grazing uses are not reduced to compensate for or mitigate the impacts of other causal factors.
8. Federal agencies should explore and use vegetation management and harvest methods, where applicable, that enhance wildlife habitat through vigorous new growth and a natural mosaic that reduces fuel loads.
9. Federal agencies should coordinate with Weston County in the development of plans to reduce fuel loads in forest, rangeland, and grassland areas that are already insect-infested and manage the remaining forested areas to minimize further infestation.
10. The Thunder Basin National Grassland should be used primarily for the original purposes it was created for, which were grazing and bolstering economic independence in Weston County.

3.6 LAND EXCHANGES

3.6.1 History, Custom, and Culture

There are some intermingled ownership lands within Weston County, areas where land ownership is dispersed between two or more owners (often public land and private land). Much of the land in the TBNG is intermingled since many of the lands were purchased from fee ownership under the Land Utilization Program in the 1930s. Additional lands are intermingled as unclaimed land that reverted to the BLM.

3.6.2 Resource Assessment and Legal Framework

Land exchanges can be used to alter the intermingled lands of federal and private land, allowing lands to be consolidated by ownership type and reducing the amount of federal land that is isolated from other public ground. This allows for a more uniform management plan of USFS and BLM land and can create public access opportunities that were previously impossible due to the landlocked nature of such parcels and the lack of easements on neighboring private lands. Land exchanges can also be used to allow community development or other purposes that provide great value to the public interest. Exchanges usually take two to four years, but the process can be extended considerably if complications arise with NEPA, land valuation, or ESA. Private land comprises the County's tax base that supports most County services and private land is essential to local industry and residents. An important check on the exercise of governmental authority is the protection of private property rights as provided in the United States Constitution and the Wyoming State Constitution.

Exchanging private land for public is one way that federal agencies can improve their management of public lands and allow public access to said lands. FLPMA granted the BLM power to conduct land exchanges with private property owners and established five requirements for the process:

- Acquisitions must be consistent with the mission and land use plans of the agency.
- Public interests must be served by the land exchange.
- An agency may accept title to non-federal land if the land is located in the same state as the federal land for which it is being exchanged and the agency deems it proper to transfer the land out of federal care.
- The lands to be exchanged must be equal in value or equalized through the addition of a cash payment, but a cash payment may not exceed 25% of the total value of the federal land.
- Land may not be exchanged with anyone who is not a U.S. citizen or a corporation who is not subject to U.S. laws (BLM Handbook, 1-1, 1-2)

The process for land exchanges on USFS lands begins with a proposal (by an agency or private landowner) of an exchange by an agency to a private landowner. The proposal then goes through multiple analyses and review phases to assure its compliance with the laws and regulations controlling such an exchange. After the review process is complete, an agreement to initiate is



signed by both parties which outlines the scope of the exchange and who will be responsible for what costs in the procedure. The parties are expected to share equally in the costs of a land exchange, but specific requirements may vary between agencies. The USFS requires private landowners to pay for title insurance, advertising, and land surveys at a minimum. The USFS usually pays for appraisals. (USFS, 2004)

Next, an appraisal must be done on each parcel to determine their respective values and assure that the properties are capable of being exchanged. At this point the agency and private landowner sign a formal exchange agreement binding them to the exchange. The plan is then subject to final review before being completed. During the exchange process NEPA review must also be completed. The exchange must follow NEPA procedures to determine the environmental impacts of the exchange, including scoping, environmental assessment, notice and comment, and appeals. (USFS, 2004)

The USFS can also perform land exchanges under Title III of the BJFTA for parcels situated in National Grasslands. These lands are commonly called “Title III Lands.” Title III requires the USFS to determine that an exchange will not conflict with the purposes of the BJFTA and that the values of the properties are “substantially equal.” If the USFS can show through a determination of consistency that the exchange does not conflict with the purpose of the BJFTA, it “may be completed without a ‘public purpose’ reversionary clause.” (USFS, 2004)

Eminent Domain

The Wyoming Eminent Domain Act, Wyo. Stat. § 1-26-501, authorizes the condemnation of land only for public use and only as set forth in state law. Nevertheless, it is possible that eminent domain power may be used to acquire land needed by private corporations for projects deemed to serve the public good, such as electrical transmission lines. Condemnation authority can also arise from federal law when Congress has given certain federal agencies the authority to condemn, for example, natural gas pipelines have condemnation authority through the Federal Energy Regulatory Commission (FERC) under the Natural Gas Act of 1938 (*See* 15 U.S.C. § 717). Condemnation should only be used as a last option after every attempt has been made to deal in good faith and a desirable outcome cannot be reached.

Payments in Lieu of Taxes

Land exchanges or acquisitions that eliminate or decrease private lands can be harmful to the County because the federal government does not pay property taxes, but still may create a demand for services, such as fire protection and police cooperation. One way to offset some of these losses are Payments in Lieu of Taxes (PILT) administered by the United States Department of Interior (31 U.S.C. §§ 6901-6907). The annual PILT payments to local governments are computed in a complex formula based on five variables 1) the number of acres of eligible land in the county; 2) the population of the county; 3) the previous year’s payments for all eligible lands under other payment programs from federal agencies; 4) any state laws requiring payments to be passed through to other local government entities (such as school districts); 5) any increase in the Consumer Price Index for the 12 months ending the preceding June 30th. Generally, federal lands eligible under PILT include acreage within the National Forest and National Park Systems,

those managed by the Bureau of Land Management, and those affected by U.S. Army Corps of Engineers and Bureau of Reclamation water resources development projects. 31 U.S.C. § 6901. Individual county payments may increase or decrease from the prior year due to changes in computation variables and the amount allocated by Congress in its discretionary spending. 31 U.S.C. § 6902.

Weston County received \$707,955 in PILT payments in 2020 (U.S. Department of the Interior, 2020). The Congressional Research Service offers an in depth look at PILT and some of the issues surrounding the program, including, the uncertainty counties face regarding PILT funding because the funding is discretionary for Congress (Hoover, 2017).

3.6.3 Land Exchanges Resource Management Objective:

- A. Land exchanges within Weston County that are mutually beneficial to private landowners, the federal agencies, and the public are completed in a timely and cost-efficient manner.
- B. Any land tenure adjustments by a federal or state government agency within Weston County are conditioned on no net loss of private land or private property rights and fully compensate the landowner for the value of the property interest, including investment-backed expectations, and compensate Weston County for the lost property tax revenue.
- C. Private property rights are protected in Weston County.

3.6.4 Land Exchanges Priority Statements:

1. Weston County requests consultation, coordination, communication, and cooperation when land tenure adjustments to federal and state land are proposed within the County.
2. Federal agencies should proactively identify potential land exchanges and conduct analyses on lands for disposal that will consolidate land ownership type and reduce isolated federal land parcels.
3. Federal agencies should prioritize land exchanges in areas where there may be resource or management conflicts between federal managers and neighboring private or state landowners.
4. Federal agencies should attempt to achieve a no net loss of private lands within the County whenever considering a land exchange or purchase. Private land, including isolated tracts, should only be acquired by state and federal government entities when it is consensual and there is clearly just and adequate compensation to the landowner and separate compensation to Weston County for the lost tax base.
5. Federal agencies should support voluntary land exchanges between the federal government and private landowners to adjust property lines and improve access and land management.
6. Federal government entities should investigate and attempt to increase local economic development within Weston County and those citizens of the County suffer no adverse aggregate economic impacts from land ownership adjustments.

7. Weston County requests that when federal and state land agencies propose changes in land use, impact studies on the proposal be conducted at the expense of the agency proposing the change, and that mitigation measures are adopted in coordination with the County.
8. Weston County supports federal Payments in Lieu of Taxes to Weston County.

CHAPTER 4: GEOLOGY, MINING, AND AIR

4.1 GEOLOGY

Weston County has a rich geologic history. There are many locations of geologic interest throughout the County. These landscapes display the history of the area and contain cultural and recreational value. Refer to Figure 5 for a map of the surficial geology within Weston County.

Weston County is characterized by four dominant land formations: Lance Formation, Fort Union Formation, Pierre Shale, and the Inyan Kara Group formation. The Pierre Shale Plains and Badlands are composed of gently rolling hills, divided by creek and river valleys. These formations are dominated by clay soils. The Black Hills and the associated foothills in the northeast quadrant of the County are dominated by rocky hills and plateaus with steep-sided ridges. The remaining half of the County is dominated by flat rolling plains and sandy soils, known as the Northern Rolling High Plains (Lebsack, 2014).

Paleozoic Era rock in Weston County reflects a marine transgressive/regressive deposition cycle; these formations are dominated by marine formations with occasional sandstones and shales from beach and shore conditions. Erosion during this time created gaps in the formations. The early Mesozoic Era was characterized by shallow seas that deposited sandstones, siltstones, and shales (Libra et al., 1981). During the Cretaceous Period, Weston County was largely submerged. Fossils from prehistoric marine life dated 110 million years old have been found in Weston County (Lebsack, 2014).

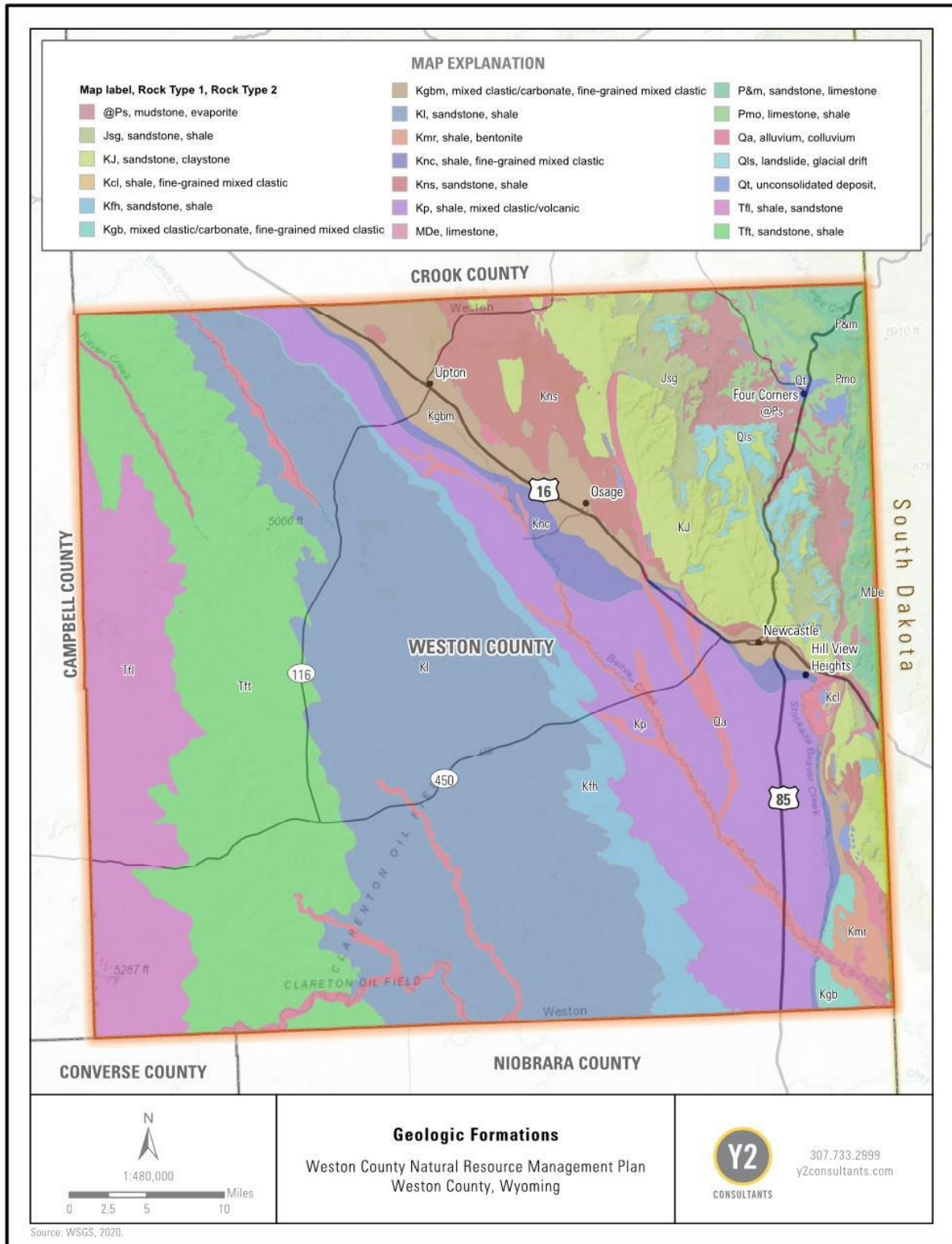


Figure 5. Weston County geologic formations.

4.2 SOILS

4.2.1 History, Custom, and Culture

Healthy soils sustain plant communities, keep sediment out of streams, and dust out of the air. Land managers of federal lands are mandated to manage soils and vegetation to ensure land-health standards are maintained and to safeguard sustainable plant and animal populations (NRCS, 2018). Soil type dictates the vegetation within an area, which determines the area’s uses, productivity, resistance to disturbance, and scenic quality.

Anthropogenic land disturbance, as well as wildfire, can influence soil quality. Soil issues arising from both anthropogenic and natural causes include erosion, drainage, invasive species, soil compaction, salination, and loss of vegetation (NRCS, 2018).

The Weston County Natural Resource District works to promote the conservation of soil and water resources within the district (see Section 3.1 Land Use for more information).

4.2.2 Resource Assessment and Legal Framework

Soil Surveys

Soil surveys provide detailed information on soil limitations and properties necessary for project planning and implementation. Soil surveys document soil properties and distribution to monitor and understand the impacts of various uses. There are five levels or “Orders” of soil surveys depending on the level of detail involved. Order three is typical for most federal land projects which do require onsite investigations by expert soil scientists for site-specific, project-related activities or projects (USDA: Soil Science Division Staff, 2017).

Soil survey reports, which include the soil survey maps and the names and descriptions of the soils in a report area, are published by the USDA NRCS and are available online through Web Soil Survey (NRCS, n.d.-b). The soil survey mapping of Weston County is current and published to [Web Soil Survey](#)¹⁹ (NRCS, n.d.-a). The general soil map units for Weston County are depicted in Figure 6 below.

Ecological Sites

Ecological Sites provide a consistent framework for classifying and describing rangeland and forestland soils and vegetation. Ecological Site Descriptions (ESDs) are reports that provide detailed information about a particular type of land. ESDs are described using the soil mapping for a landscape and each ‘site’ has multiple characteristics that are tied to the soil traits present. ESDs are used for assessing vegetation states and are often used when designing reclamation and rehabilitation of an area. ESDs help determine how a site will react to disturbances and potential vegetation that could be used in reclamation of the site.

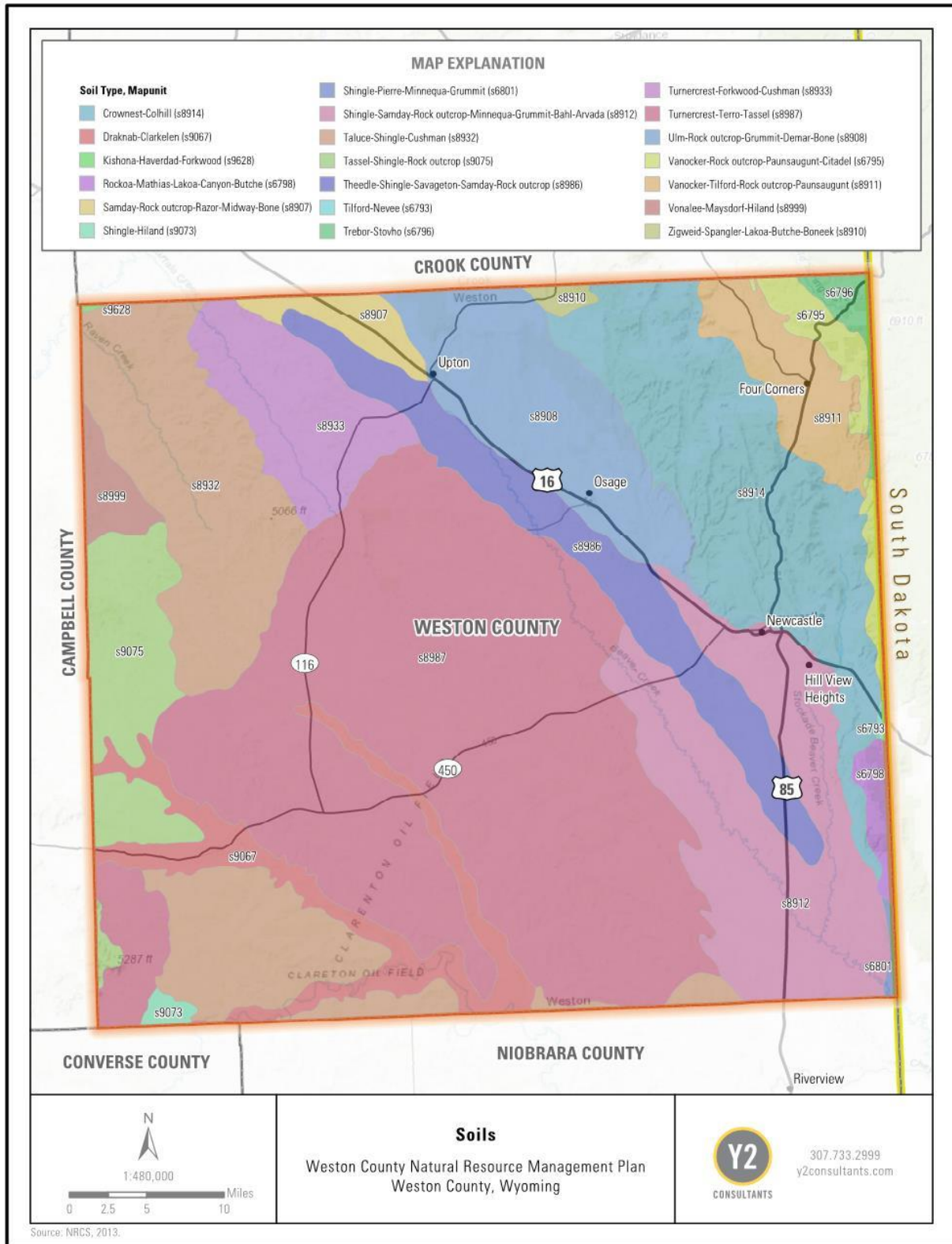


Figure 6. Soils mapped within Weston County.

4.2.3 Soils Resource Management Objectives:

- A. Soil quality and health is maintained and conserved through best management practices throughout Weston County.
- B. Federal agencies consult and coordinate with surface users regarding soil health and reclamation.

4.2.4 Soils Priority Statements:

1. Federal agencies should support projects and policies which improve soil quality and ecology throughout Weston County.
2. Federal agencies should support erosion control as a means of flood control.
3. For new soil disturbing projects or permits, federal agencies should support the implementation of best management practices to manage runoff, preservation and maintenance of topsoil, watershed management, stabilization of soil on site, and reclamation.
4. Weston County does not support land use designations or management objectives that eliminate or reduce the opportunity for implementation of practices that can improve soil health.
5. Weston County supports and encourages the use of natural processes, including livestock grazing, in site reclamation for soil health and biodiversity.
6. Federal permitting that may cause soil disturbance or degradation should complete a soil reclamation and remediation plan prior to the disturbance occurring.
7. Federal agencies should consult with existing surface users, Weston County, and the Weston County Natural Resource District when developing reseeding and reclamation requirements for permittees conducting soil disturbing or degradation activities.
8. Weston County encourages local, state, and federal agencies to cooperate in defining desired plant communities on federal lands within the County to control soil erosion.
9. Weed management plans should be developed in consultation with the Weston County Weed and Pest District for soil surface disturbance on public lands.
10. Federal agencies should use Ecological Site Descriptions developed by the USDA Natural Resource Conservation Service as the foundation for the inventory, evaluation, monitoring, and management of rangelands and forestlands.

4.3 MINING AND MINERAL RESOURCES

4.3.1 History, Custom, and Culture

Mineral production has been part of Weston County's culture for over 100 years. Mining is one of the historical uses of federally managed lands, predating the establishment of the USFS and BLM. Maintenance of such use is statutorily compatible with multiple use principles. Coal production is a large corner of industry in Weston County and provides jobs to hundreds of people throughout the region. This industry served a crucial role in the development of the County. Production of minerals, and associated economic and cultural activity, have historically waxed and waned with demand and pricing, but mining has and remains to be a significant portion of Weston County's domestic production.



4.3.2 Resource Assessment and Legal Framework

There are 2,134 records of mining claims listed through the BLM in Weston County, only 12.8% of which are currently active. There are 16 records of mines listed by the USGS. Of the USGS listed claims, three were in production as of 2020 in Weston County (The Diggings, 2020). The top commodity minerals present in the County include uranium, copper, gold, and manganese. Other mineral resources include bentonite, limestone, and barium. Refer to Figure 7 for a map of the mineral estate mapped for Weston County. Coal has also been an extremely important mining resource to the county for many decades. (Lebsack, 2014; mindat.org, n.d.; The Diggings, 2020)

Weston County supports the production of all minerals in an environmentally responsible manner by providing infrastructure and services such as roads, bridges, medical services, and law enforcement. The existing governmental regulatory process has limited development due to the necessary collaboration between local and state authorities. Entities such as the Wyoming Oil and Gas Conservation Commission (WOGCC), BLM, USFS, and Wyoming Department of Environmental Quality (WDEQ) are critical to the development of hydrocarbon reserves but can potentially hinder the development of these resources. Improved relations with these agencies are a crucial element for increasing access to new reserves. To secure the economic longevity and prosperity of the County, these challenges and interface issues need to be streamlined.

The Congressional Act of July 26, 1866, and the General Mining Act of 1872 granted all American citizens the right to go into the public domain to prospect for and develop minerals. Every mining law or act enacted since then has contained a “savings clause” that guarantees that the originally granted rights will not be rescinded. These laws are applicable in Weston County. Weston County’s policies for mineral development are structured to increase the exploration, development, and production of mineral and energy resources within the political jurisdiction of the County. The primary objectives of the County are to establish partnerships with mineral industries and federal agencies, to increase and share knowledge of the mineral estate, and to develop and foster trust among partners. Through these relationships, the County plans to encourage the development of mineral and energy production countywide.

Split Estate

A unique form of federal land ownership in the west comes from split mineral estates. Weston County has a large amount of split mineral estate. A split mineral estate occurs when the ownership of the minerals (or subsurface rights) in a certain area is different from the ownership of the surface estate. Generally, and as set forth in Wyoming law, mineral rights often take precedence over other rights and the owner of the mineral estate has an overriding right to use the land to explore for and develop minerals (43 U.S.C. §§ 291 and 299; *see also Watt v. Western Nuclear Inc.*, 462 US 36, 53-55 (1983)). Thus, the federal government owns the minerals of any lands in which the patent is after 1916.

A split estate can be formed when an original sovereign makes a land grant but reserves the mineral estate. This occurred in the U.S. under several land grant or homesteading acts, when the federal government sold or gave away vast quantities of land to encourage western migration. The Stock Raising Homestead Act of 1916 devised over 70 million acres in the west,



reserving the minerals for the federal government. A split estate may also be created when a landowner sells their mineral rights or sells the surface estate while retaining the minerals. There are many forms of split estate where the surface/mineral split may be private/federal, private/state, private/private (different owners), state/federal, state/private, federal/state, or federal/federal (where different federal agencies control).

Wyoming has its own state statute regarding split estate. Wyoming Statute §§ 30-5-401 to –410 that holds key provisions to conduct oil and gas operations within the State. Those key provisions are:

- Codifies reasonable use and accommodation
- Predevelopment notice of entry
- Good faith negotiations for surface use agreement
- Damage bond required if no surface use agreement reached
- Two-year statute of limitations for damages to surface (from discovery)
- Compensable damages include loss of production, income, land value, and improvements for land directly affected
- Does not foreclose common law tort actions or contract rights
- Regulatory violation is *per se* negligence under the Act

For federal split mineral estates, the BLM manages all minerals owned by the federal government. Whenever an operator acquires a BLM lease to produce minerals from a split estate, they must negotiate a surface use agreement in good faith with the surface estate owner. Surface Operating Standards and Guidelines for Oil and Gas Exploration and Development (BLM, 2007). The surface use agreement is confidential but must provide enough information in a Surface Use Plan to allow for the BLM to conduct NEPA review of the project. If the operator is unable to negotiate a surface use agreement with the landowner, they may elect to file a bond with the BLM to cover compensation for damages to the surface estate. Paleontological fossils are a part of the surface estate, thus are owned by the surface owner (*See Earl Douglass*, 44 Pub. Lands Dec. 325 (D.O.I. 1915)).

Withdrawal

Federal lands can be withdrawn from mineral eligibility for development under the mining laws (30 U.S.C. Ch. 2). Mineral withdrawal prohibits the location of new mining claims. Withdrawal also may require that any preexisting mining claims in the area demonstrate that valuable minerals have been found before the withdrawal before any activities can commence on those preexisting claims. Withdrawal of minerals cannot prohibit the use of a valid existing right. A valid existing right exists when the mining claim contains the discovery of a valuable mineral deposit that satisfies the “Prudent Person” test, as defined in *Castle v. Womble. US v. Cole* (390 U.S. 599, 602 (1968)). To pass the “Prudent Person” test a person must demonstrate that “the discovered deposits must be of such a character that “a person of ordinary prudence would be justified in



the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine.” *Id.* However, these minerals cannot be considered “of common variety” to be a considered a valuable mineral under the mining laws (*See id.*; 30 U.S.C. § 611).

Congress can withdraw lands from new mineral claims or leases by passing legislation withdrawing said lands (*see* North Fork Watershed Protection Act of 2013). Additionally, FLPMA gives the Secretary of Interior the authority to withdraw federal lands (43 U.S.C. § 1714). Secretarial withdrawals of over 5,000 acres may only last 20 years at most, but withdrawals may be renewed (43 U.S.C. § 1714(c)). The Secretary of Interior must inform Congress of any secretarial withdrawal of over 5,000 acres. *Id.* The withdrawal will expire after 90 days if both bodies of Congress draft concurrent resolutions that they do not approve the withdrawal within 90 days of being notified by the Secretary of Interior. *Id.* In order to allow for public involvement in the withdrawal process, public hearings and opportunities for public comment are required of all new secretarial withdrawals (43 U.S.C. § 1714(h)).

Mineral Resources

Bentonite

Bentonite deposits in Wyoming comprise about 70 percent of the world’s known deposits (Sutherland, 2014). Bentonite is a fine clay material mined from the earth, formed by the decomposition of volcanic ash deposited millions of years ago in an ancient inland seaway. It is widely used as a drilling mud additive for oil, natural gas, and water wells; other uses include cat litter, plaster, cosmetics, a binding agent in animal feed, and a foundry-sand bond in iron and steel foundries. For economic reasons, surface mining generally extends to depths no greater than 50 feet. Bentonite mined from open pits is blended, ground, dried, and processed into various products at several mills in the state. All bentonite mines in Wyoming are required to obtain a mining permit from WDEQ-LQD. Small mining permits limit operations to not more than thirty-five thousand (35,000) yards of overburden, excluding topsoil, and ten acres of affected land in any one year.

Weston County’s first bentonite plant opened in 1920 as Clay Spur near Osage. Bentonite was an important industry for the County during this time, being the first to pick up after the Great Depression. By October of 1935, the refineries in Weston County were working 24-hour shifts to keep up with the high demand (Lebsack, 2014). Deposits of bentonite can be found in the Frontier Formation, Carlile Shale, Greenhorn Formation, Belle Fourche Shale, Mowry Shale, Aspen Shale, Muddy Sandstone, Newcastle Sandstone, Thermopolis Shale, Skull Creek Shale, and Bear River Formation. The highest quality Wyoming bentonite is found primarily in the Upper Cretaceous Mowry Shale (Clay Spur Member).

Coal

Coal was first discovered in the County in 1887 near the Cambria coal settlement. Two years later Newcastle was founded and the Burlington railroad followed soon after (Lebsack, 2014).



Currently, there are a few sporadic coal estates in the County, predominately scattered along the western quarter of the County (Figure 7).

Uranium

The BLM is responsible for administering the laws and regulations regarding the availability of all locatable minerals on federal lands, including uranium, as specified under the General Mining Law of 1872, as amended, 43 CFR Parts 3700 and 3800, and the FLPMA. Under these laws and regulations, the BLM is obligated to allow claim holders to develop their claims subject to reasonable restrictions including the restriction that unnecessary or undue degradation may not occur (43 CFR § 3809.411(d)(3)).

BLM authority for land management is derived from the FLPMA. General BLM regulations are described in 43 CFR Subtitle B - Regulations Relating to Public Lands, Chapter II - BLM, USDOl. The BLM regulations for the management of mining are included in 43 CFR Subpart 3809, Surface Management, and derive their mandate from Sections 302 and 303 of the FLPMA. Subpart 3809 established procedures and standards for mining claimants to prevent public land degradation and requires reclamation of disturbed areas. It also requires coordination with applicable federal and state agencies. For operations on public lands other than casual use, 43 CFR 3809 requires BLM approval of a Plan of Operations, a full environmental review, and reclamation bonding.

Uranium mines in Wyoming are permitted through the WDEQ Land Quality Division and licensed through the WDEQ Uranium Recovery Program.

Limestone (Gravel)

Limestone for gravel is a common mineral in Weston County. The gravel from the limestone quarries is used in a variety of ways. The Rawhauser Quarry Mine is the main quarry in Weston County.

4.3.3 Mining and Mineral Resources Resource Management Objectives:

- A. The extraction of all minerals (locatable, leasable, and salable) within Weston County are continued in a sustainable and ecologically healthy way.
- B. All mining operations in Weston County reclaim the land as close to its original condition as appropriate.

4.3.4 Mining and Mineral Resources Priority Statements:

1. Weston County supports the open filing of mining claims and exploration for and development of locatable minerals, except for land withdrawn from mineral location.
2. Federal agency proposals to withdraw lands from mineral exploration or extraction shall be coordinated with Weston County prior to a decision to consider the impact of such withdrawal on the County's economic viability.
3. Federal agency decisions pertaining to mining and energy resources within Weston County affect the health, safety, and welfare of its citizens and the County requests to be

notified and allowed to join as a cooperating agency for any proposed decision affecting mining and mineral resources as early in the process as is allowed by federal law.

4. Federal agency land use and management plans shall contain a thorough discussion and evaluation of energy and mineral development, including the implications such development may have on surface land uses and the Weston County economy.
5. Weston County encourages simultaneous or sequential mineral development with other resource uses in accordance with multiple use management principles in Weston County, weighing and balancing established mineral rights with other multiple uses in the development and coordination process.
6. Weston County encourages proper mitigation of closed mines and reclamation practices throughout the County using existing ecological site descriptions to help determine mitigation and reclamation methods.
7. Weston County shall be informed of proposed timelines for federal agency projects and decisions involving minerals.
8. Federal agencies should follow the July 2020 Council on Environmental Quality National Environmental Policy Act regulations and the timeline requirements for all NEPA decisions conducted by the agencies.
9. All federal permits should require road management and repair agreements with Weston County.
10. All federal agency plans or management recommendations shall include an economic impact description that addresses the effects on energy and mining development in Weston County.
11. Federal agencies should provide for adequate bonding requirements and procedures for releasing bonds once requirements have been met.

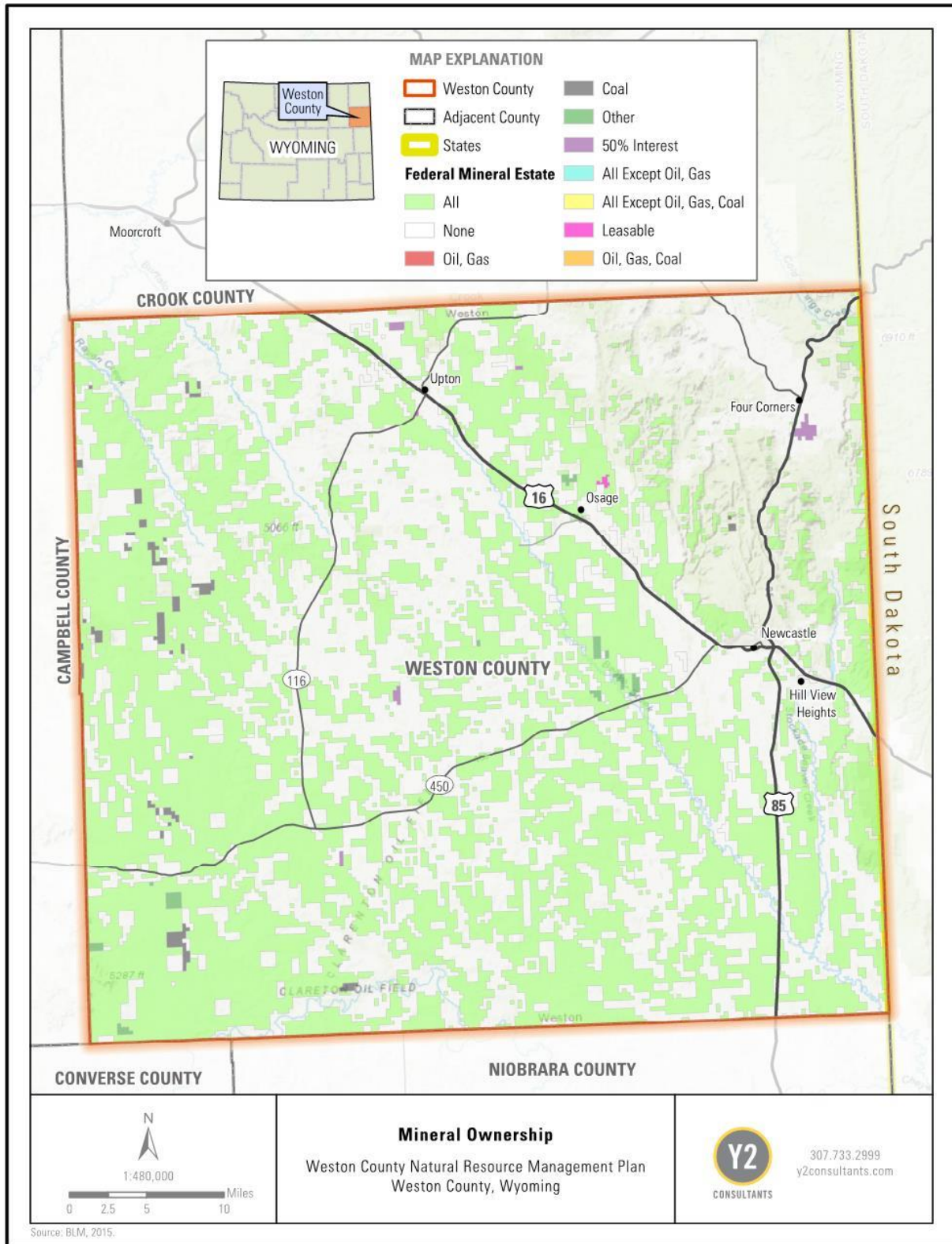


Figure 7. Weston County mineral estates.

4.4 ENERGY RESOURCES

4.4.1 Oil and Gas

History, Custom, and Culture

Oil and gas production have contributed to Weston County's taxable income for over 100 years. Between 1890 and 1901 the first oil wells were drilled in Weston County. The largest oil companies at the time were Mike Henry Oil Company, Illuminator Oil Company, and M.J. Coyle. In the early 1920s, multiple high-producing oil wells were discovered (the first near Osage WY). This generated a boom in the area, bringing in refineries and an influx of people into the County. After World War I oil demand declined and the booming oil towns in Weston County shrank to smaller agriculturally based communities. (Lebsack, 2014)

In the past decade, there have been developments in secondary and tertiary production methods that have made previously depleted oil and gas fields economically feasible to re-produce and re-complete. From these advances, there has been an increase in statewide oil production in the past decade. Conversely, overall natural gas production has declined. The County has seen gradually decreasing trends in overall oil production over the past 35 years. Since 1985, gas production has been relatively consistent with a slight downward trend. Production peaked at 3.52 million MCF in 2013. Since its peak, gas production has declined, producing only 1.1 million MCF in 2019 (Figure 8) (DrillingEdge, 2020). These trends in decline and growth are tied to existing economic conditions at the state and national levels (Figure 9 and Figure 10). Refer to Figure 11 for a map of the energy resources and development across Weston County.

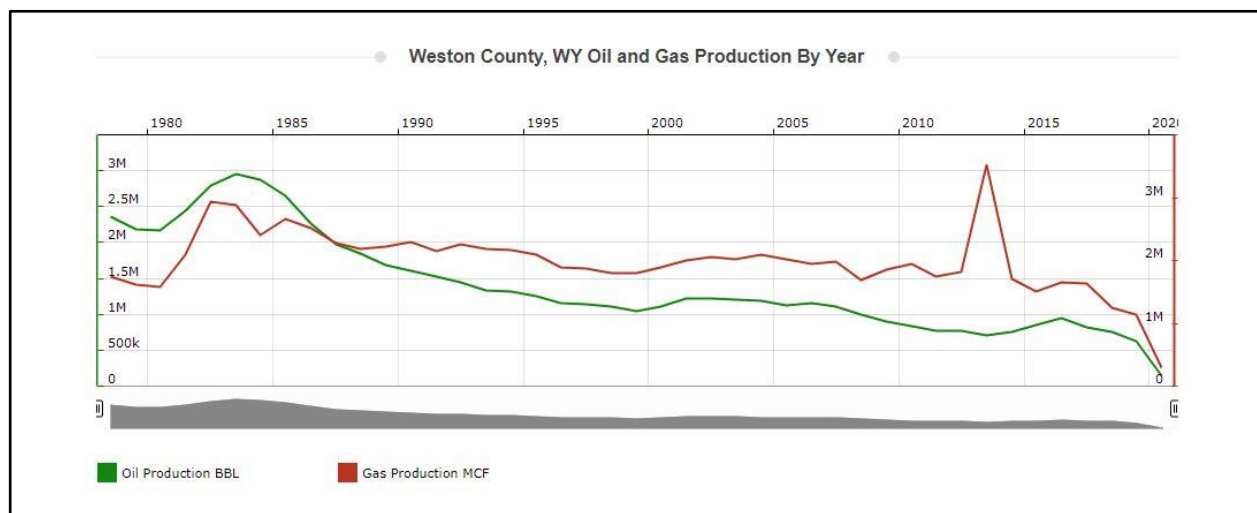


Figure 8. Oil and gas production in Weston County from 1980 to 2020.

Wyoming Oil Production for 1978-2020

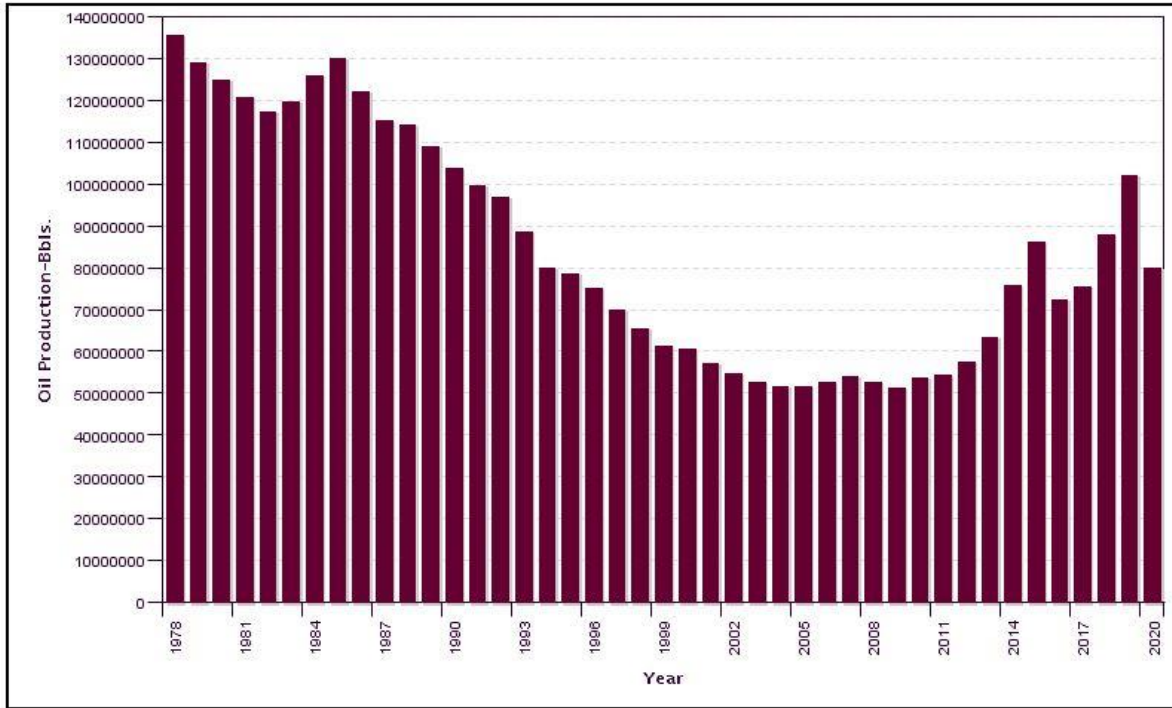


Figure 9. State of Wyoming oil production trends (1978-2020). (WOGCC, n.d.-a)

Wyoming Gas Production for 1978-

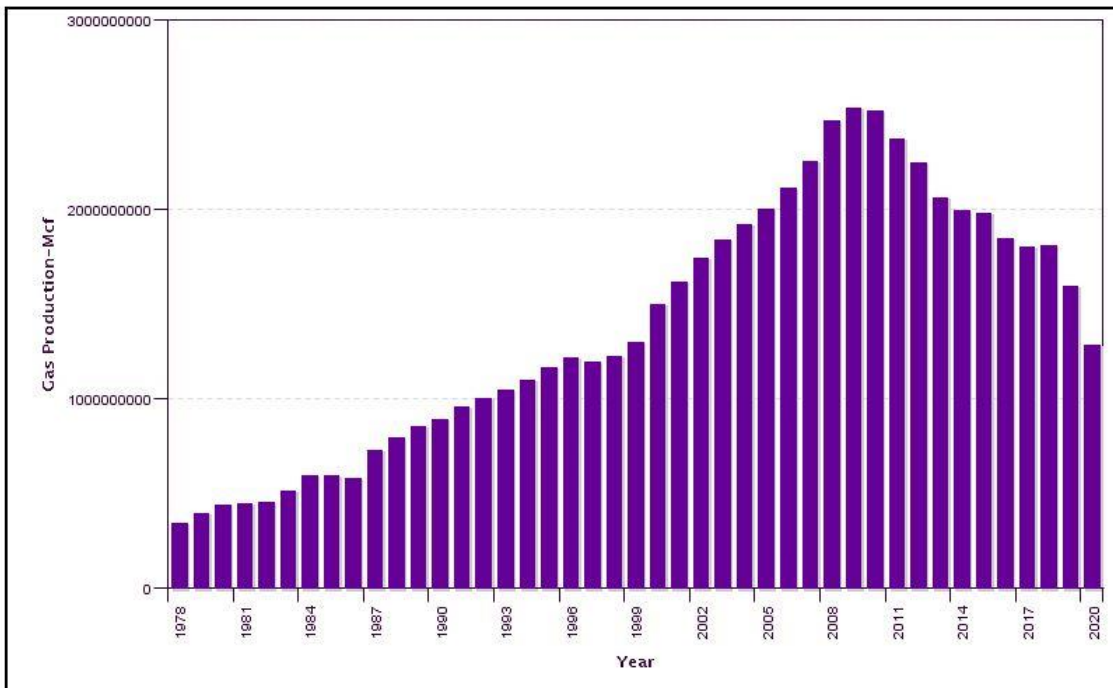


Figure 10. State of Wyoming gas production trends (1978-2020). (WOGCC, n.d.-b)

Resource Assessment and Legal Framework

The extraction of oil and natural gas from deposits is accomplished in three central phases of recovery: primary, secondary, and enhanced or tertiary recovery. Primary recovery relies on initial underground pressure to drive the product to the surface. As pressure falls, artificial lift technologies are used to bring the product to the surface. Occasionally the need for artificial lift is eliminated in the case of the artesian, or over-pressured, reservoir. Typically, only 10% of a reservoir's original oil in place is produced through primary recovery. Secondary recovery methods, such as water or gas injection, can extend a field's productive life and result in the extraction of an additional 20-40% of the original oil in place. Enhanced oil recovery techniques offer the potential to produce 30-60% more oil. These techniques include thermal recovery, hydraulic fracturing, gas injection, chemical flooding, or horizontal development.

The production of gas is similar to that of oil. The primary phase of production is driven by initial reservoir pressure and decreases as this pressure and reserves in place are reduced. The production of gas can be augmented like that of oil. Enhanced or tertiary recovery of gas can be further augmented through the utilization of fracturing and other stimulation methods. Enhanced recovery methods are limited by costs and unpredictable effectiveness. These methods have improved drastically over the past decade allowing for more cost-effective and efficient recovery.

The Mineral Leasing Act of 1920, as amended, and the Mineral Leasing Act for Acquired Lands of 1947, as amended, give the BLM responsibility for oil and gas leasing on BLM, USFS, and other federal lands, and on private lands where mineral rights have been retained by the federal government (split estates). The BLM is a multiple use agency and must balance the development of mineral resources in the best interest of the country. The BLM must manage for uses like livestock grazing, recreation, and development and conservation of wildlife habitat. The USFS regulates all surface-disturbing activities on USFS land (30 U.S. Code § 226 (g)). The USFS is the lead agency applying stipulations on leasing of USFS land and conducts environmental analysis for leasing and permitting activities on these lands. The Mineral Leasing Act makes the disposition of oil and gas in the form and manner provided by the Act a mandatory Act (30 U.S.C. § 181). Further, lease sales for each state where eligible lands are available must be held at least quarterly (30 U.S.C. § 226).

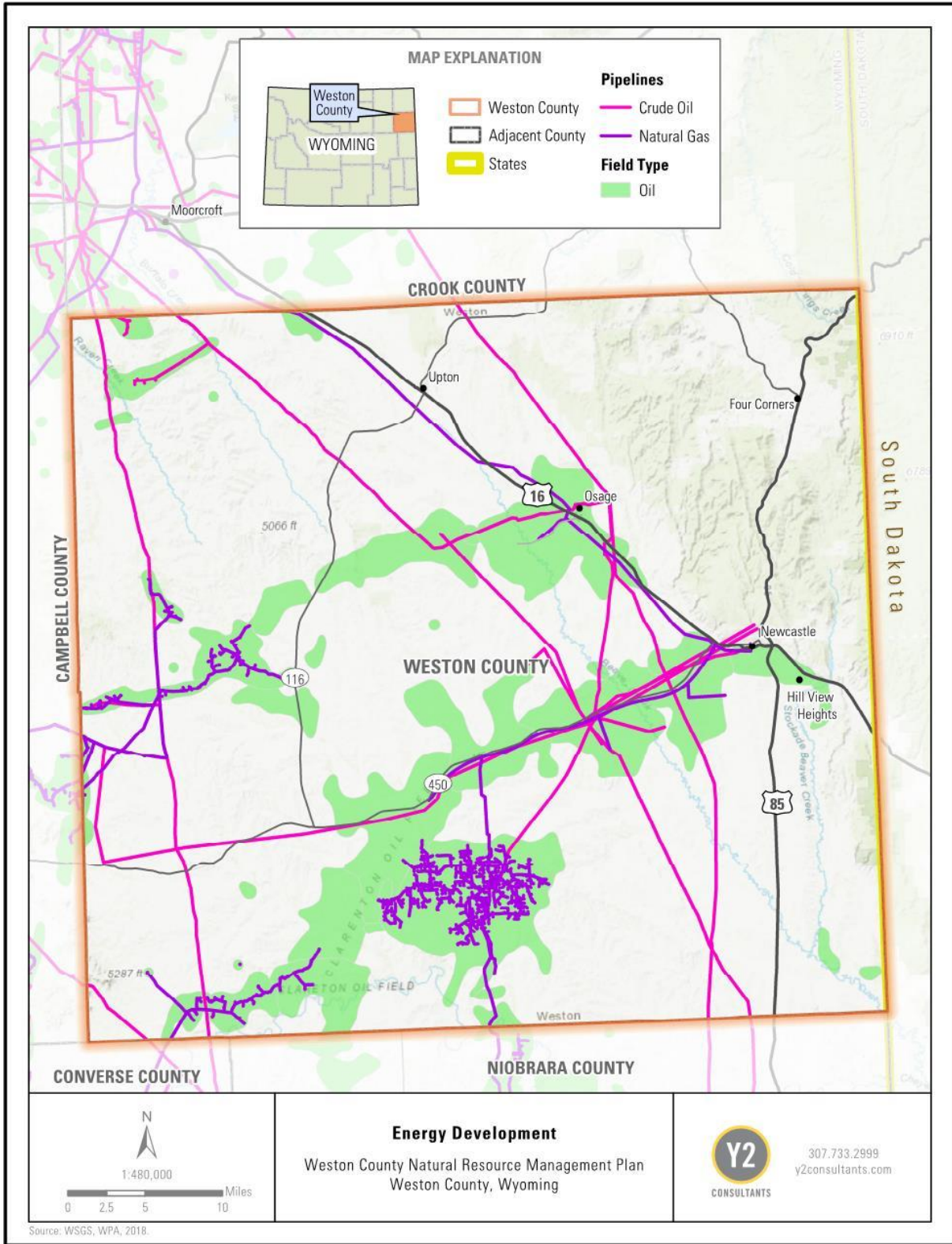


Figure 11. Mapped energy resource development within Weston County.

4.4.1.3 Oil and Gas Resource Management Objectives:

- A. Oil and gas extraction is managed in a responsible way that promotes Weston County's economic viability along with the health of both ecosystems and the citizens of the County.

4.4.1.4 Oil and Gas Priority Statements:

1. Weston County should be informed of all potential uses of county roads and resources from oil and gas activities and associated impacts to those resources on an annual basis.
2. Weston County encourages and supports the nomination of more state and federal oil and gas leases for sale.
3. Federal agencies are encouraged to prioritize approval of secondary and enhanced (tertiary) recovery methods where possible to extend the production life of a field, while maintaining air quality and available water for agricultural and domestic use.
4. Weston County encourages the use of new technology and advanced production techniques to improve access to reserves in place, including long length horizontal wells and fracking.
5. Weston County requests coordination among federal agencies to facilitate permits in a timely manner as prescribed by federal law.
6. Federal agencies should support the use of enhanced production techniques and the development of infrastructure to provide material supply and support to ensure further development throughout Weston County.
7. Alternatives to flaring such as the use of pipelines, storage, etc. should be encouraged.
8. Road agreements should be made with Weston County for all oil and gas projects that will likely use Weston County roads.
9. So long as such activities will not harm private property rights, federal agencies should allow operators to capture, use, and/or store carbon dioxide during extraction activities on public lands.
10. Federal agencies should facilitate reclamation and mitigation of lost or decreased forage resources that occur because of surface disturbance from oil and gas, utilities, and recreation.
11. Federal agency land managers and landowners should be encouraged to seek technical assistance from the Weston County Natural Resource District and Weed and Pest District to mitigate surface disturbance to facilitate soil and water conservation and re-establishment of native or other desired vegetation.
12. Federal agencies must provide adequate bonding requirements to ensure removal and successful reclamation of abandoned energy and mineral resource projects.
13. Weston County encourages proper mitigation and reclamation practices throughout the County using existing Ecological Site Descriptions to assist in determining mitigation and reclamation methods in coordination with the Weston County Natural Resource District when possible. Weston County encourages negotiation of surface use agreements on split estates and supports siting of oil and gas facilities off irrigated lands, unless otherwise agreed by surface user.

14. Weston County encourages minimization of conflict between surface owners and mineral owners/lessees and supports the process for entry upon land for oil and gas development as required by Wyo Stat. § 30-5-402.
15. The Bureau of Land Management should continue holding lease sales and awarding leases for Weston County lands on at least a quarterly basis as is required by the Mineral Leasing Act.
16. Weston County supports Wyoming's primacy over air and water quality standards with the Wyoming Department of Environmental Quality as the primary authority concerning setting and enforcing standards within the County.

4.4.2 Alternative Energy

4.4.2.1 History, Custom, and Culture

Weston County does not have an extensive history or culture associated with renewable energy. However, the renewable energy industry is growing rapidly in Wyoming. The County understands that the development of renewable energy is a component of energy infrastructure development. Wyoming does not have a renewable portfolio standard goal to generate a certain amount of the state's electricity from renewable energy (National Conference of State Legislatures, 2019).

4.4.2.2 Resource Assessment and Legal Framework

Weston County has the potential for a variety of alternative energy resources. Alternative energy sources that could be present in the county include wind, solar, hydrogen, and carbon capture. These alternative energy sources are further described below in short detail. Much of the alternative energy development within the County has been done on private lands on smaller scales, however, there is a great opportunity to expand onto federal lands in the future.

New development of alternative energy in the County needs to be considered based on expanding existing available energy infrastructure.

The BLM authorizes renewable energy projects on public lands using a right-of-way grant under Title V of FLPMA. The BLM requires project developers to submit bonds in an amount that the agency has determined will be adequate to cover the potential costs for hazardous liabilities, decommissioning, and reclamation of the project site, should the developer be unable or unwilling to conduct those activities. Currently, the BLM requires a minimum bond of \$2,000 per wind energy test site and \$10,000 per wind turbine. There are currently no minimum bond amounts for solar energy projects. (BLM, 2015)

Wind Energy

Wind energy has potential within Weston County, as there are areas that have higher wind speeds (Figure 12).

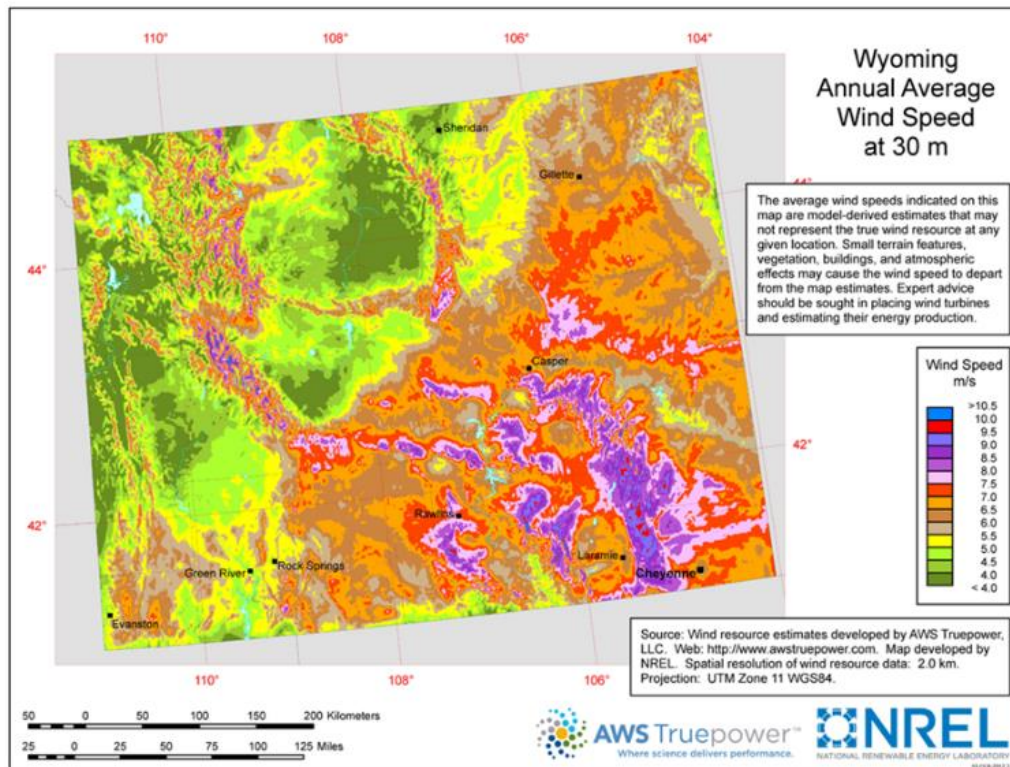


Figure 12. Wind resource map for the State of Wyoming.

Solar Energy

Solar energy has been implemented on a small scale on private lands within the County. There may be an opportunity in the future for solar energy projects to be developed on federal lands.

Hydrogen Power

Hydrogen is another alternative energy source that could potentially be produced in Wyoming. Hydrogen is a naturally occurring element and can be produced from a variety of sources including fossil fuels, water, and biomass, and used as an energy or fuel source with zero greenhouse gas emissions. There are two methods for producing hydrogen, "green hydrogen" is hydrogen that is produced from water via electrolysis using renewable energy sources, whereas "blue hydrogen" refers to hydrogen sourced from a fossil fuel base combined with technology that captures carbon released in the production process. Extracted hydrogen can have a variety of uses including fuel cell technology; zero-emission fuel for vehicles, airplanes, water transport, and space rockets. It can be blended with natural gas to reduce greenhouse gas emissions; feedstock for ammonia and urea production; long-duration energy storage; and zero-emission process fuel for industrial applications like steel and cement manufacturing. (Wyoming Energy Authority, n.d.)

Blue Hydrogen developers are looking at the surrounding counties to Weston County as a potential development site. Construction for these projects may happen as soon as 2026. The County tentatively supports the potential of these projects if they are done properly and with consideration of neighboring resources. Two major issues must be taken into consideration when reviewing these projects. First, there needs to be consideration of how these projects will affect the water resources in the area, including those senior water rights and preexisting uses that rely on the current water supply in the region. Second, the impact that these hydrogen plants will have on county roads with potentially more traffic being brought into these areas needs to be considered, as well as the maintenance and mitigation efforts needed to protect those roads.

Carbon Capture, Utilization, and Storage

Carbon Capture, Utilization, and Storage (CCUS) refers to the process in which carbon is captured from industrial processes and either utilized by turning the carbon into a new product or stored by injecting the carbon into a storage site, usually underground in a geological formation. Researchers around the world have been able to demonstrate success with both methods (Wyoming Energy Authority). Wyoming is committed to advancing the carbon economy.

Rare Earth and Critical Earth Elements

Northeast Wyoming is home to one of the highest grade rare earth deposits in North America. Rare Earth Elements (REE) are naturally occurring materials with unique properties that make them essential to new technologies. They include 17 elements that share similar chemical properties, giving them the ability to discharge and accept electrons, making them an integral component of many modern day electronic, optical, magnetic, and catalytic uses. Because of the deposits within this area and the economic impact that this would have should these mineral be mined, Weston County is supportive of the development of REE within the county should it arise.

Wyoming also has potential for the development of critical earth elements (CEE). Those with the highest potential in Wyoming include helium, platinum, REE, titanium, uranium, and vanadium.

4.4.2.3 Alternative Energy Resource Management Objectives:

- A. Development and management of renewable and alternative energy are done in a responsible manner that takes into consideration the economic viability of Weston County along with the health, safety, and welfare of the County's citizens and the health and sustainability of the County's natural resources.
- B. Alternative energy development is supported where it is both commercially feasible and does not disproportionately harm the environment, existing uses, and the surrounding custom and culture.

4.4.2.4 Alternative Energy Priority Statements:

1. Federal agencies should evaluate alternative energy projects proposed for Weston County based on the same criteria applied to other projects, including impacts on visual resources, wildlife habitat, soils and vegetation, and impacts on existing land uses.

2. Federal agencies should coordinate with Weston County regarding regulatory processes for alternative energy that may impact the cultural and economic stability of Weston County.
3. Federal agencies should consider the development and siting of alternative energy in coordination with Weston County and stakeholders.
4. Alternative energy should be supported to further develop energy infrastructure and energy independence without encumbering the underlying mineral estate.
5. A reclamation plan must be designed before alternative energy projects are approved on public lands.
6. Federal agencies should consider the effects of alternative energy developments on other land uses and the potential nuisances to neighboring properties before approving any proposed projects.
7. Federal agency land use and management plans shall contain a thorough discussion and evaluation of alternative energy development, including the implications such development may have on surface land uses and the Weston County economy.
8. Weston County supports private property rights and encourages the minimization of conflicts with existing uses and the avoidance of eminent domain.
9. Road agreements should be made with Weston County for all alternative energy projects that will likely use Weston County roads.
10. Weston County supports the development of rare earth elements and critical elements.

4.4.3 Pipelines

4.4.3.1 History, Custom, and Culture

Due to the development of oil and gas within Weston County there has been significant development of oil and gas transmission pipelines throughout the County. The development of pipelines in the County began in the early 1920s. The County has long been a proponent of pipeline development. (WSGS, 2020)

4.4.3.2 Resource Assessment and Legal Framework

Pipeline infrastructure plays a crucial role in the development and transmission of hydrocarbons at the national, state, and county levels. These avenues for transmission must be allowed to thrive and develop within Weston County. Pipelines offer a safe and effective means for delivering large amounts of hydrocarbons across extended distances with minimal risk for spills (Global Energy Institute, 2013).

There is very little federal regulation of most pipelines. Permitting for interstate natural gas pipelines and interstate liquified natural gas pipelines fall under Section 7 of the Natural Gas Act and are reviewed by the FERC, which also gives pipeline companies their national condemnation authority. However, the Natural Gas Act does not regulate oil or natural gas liquid.

The federal government has explicitly avoided drafting regulations concerning pipeline land-use issues. “Congress has failed to create a federal regulatory scheme for the construction of oil pipelines and has delegated this authority to the states” (*Sisseton-Wahpeton Oyate v. U.S. Dep’t*



of State, 659 F. Supp. 2d 1071, 1081 (D.S.D. 2009)). “Generally, state and local laws are the primary regulatory factors for construction of new hazardous liquid pipelines.” Even for gas pipelines, the FERC requires gas pipeline companies to comply with state and local regulations as a condition of their federal certificates (concluding that field of natural gas regulation was occupied by federal law, but that FERC required gas companies to comply with local regulations through conditions in certificate) (See *NE Hub Partners, L.P. v. CNG Transmission Corp.*, 239 F.3d 333, 339, 346 n. 13 (3d Cir.2001)). Thus, unless pipelines cross federal lands and trigger NEPA review, interstate pipelines remain mostly unregulated by the federal government.

One aspect of pipelines that is federally regulated outside of federal lands is pipeline safety. In 1994, Congress passed the Pipeline Safety Act (49 U.S.C. § 60101–60137), recodifying without substantive changes the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquids Pipeline Safety Act of 1979. Among other things, the Pipeline Safety Act expressly preempts state law concerning “safety standards for interstate pipeline facilities or interstate pipeline transportation” and delegates the authority to draft pipeline safety regulations to the Pipeline and Hazardous Materials Safety Administration (49 U.S.C. § 60104(c)).

However, regulations that concern a county’s purview (the general welfare of its constituents) are not necessarily preempted if they indirectly affect pipeline safety (See, e.g., *Tex. Midstream Gas Svcs., LLC v. City of Grand Prairie*, 608 F.3d 200, 212 (5th Cir. 2010)). So that the regulations are not preempted by the Pipeline Safety Act, the regulations must affect aesthetics or other non-safety police powers (*Id.* at 212; see also, e.g., *Am. Energy Corp. v. Tex. E. Trans., LP*, 701 F. Supp. 2d 921, 931 (S.D. Ohio 2010)). Regulations directly affecting reclamation, water crossings, cleanup, or other similar matters important to landowners that affect their environment would likely not be preempted by the Pipeline Safety Act.

For an interactive map of Weston County’s pipelines refer to the Interactive Oil and Gas Map of Wyoming located [here](#)²⁰.

4.4.3.3 Pipelines Resource Management Objectives:

- A. Pipeline development is managed responsibly and takes into consideration the health, safety, and welfare of Weston County’s citizens and natural resources.
- B. Pipeline reclamation is conducted in an efficient way that protects existing uses, utilizes best management practices, and considers the use of nonnative seeding where appropriate and beneficial for soil stability and conservation.
- C. Pipeline development primarily utilizes existing utility corridors and areas previously disturbed regardless of land ownership, while sensitive habitats, conflicting uses, and the use of eminent domain are avoided.

4.4.3.4 Pipeline Priority Statements:

1. Federal agencies should coordinate with Weston County at the earliest possible time whenever there is a proposal for a pipeline to cross the County.
2. Eminent domain on private property should be discouraged to acquire rights-of-way for pipelines.



3. Pipelines should be used as an alternative to flaring in Weston County.
4. Unless encouraged otherwise by private landowners, pipeline development should be in the most direct path regardless of land ownership, with a preference to placement on federal lands.
5. Reclamation of surface disturbance after pipeline construction should use weed-free native or weed-free introduced seed mixes appropriate to the ecological site.
6. Federal agencies should coordinate with surface users and the Weston County Natural Resource District, where appropriate when determining location and reclamation requirements for pipeline right-of-way permits.
7. Pipelines should avoid water crossings and placement in river systems. Should a pipeline cross water bodies, boring and other methods that would reduce disturbance to the water body or riverbed should be required.
8. Federal agency land use and management plans shall contain a thorough discussion and evaluation of pipeline development, including the implications such development may have on surface lands and the Weston County economy.

4.5 AIR QUALITY

4.5.1 History, Custom, and Culture

Clean air in the County is important to citizens and visitors. Wildfires burning on federal lands can create air quality issues in the summer and fall. Dust from roads and rangelands can negatively impact air quality, mostly during drought conditions. Clean air is key to people living in Weston County and also to those who visit and wish to live here.

4.5.2 Resource Assessment and Legal Framework

Air quality is important to the health, safety, and welfare of Weston County's residents. Under the Clean Air Act of 1970 (42 U.S.C. §7401 et seq.), the U.S. Environmental Protection Agency (EPA) is responsible for setting and enforcing National Ambient Air Quality Standards (NAAQS). Standards were established for total suspended particulate matter, carbon monoxide, ozone, nitrogen dioxide, and sulfur dioxide. The EPA, working with states and tribes, identifies areas as meeting (attainment) or not meeting (nonattainment) the NAAQS standards. The Clean Air Act requires states to develop a plan to attain air quality standards in their state. These plans are called State Implementation Plans (O. EPA, 2014).

In Wyoming, local enforcement of many air pollutant regulations is delegated to the WDEQ (R. 08 EPA, 2014). WDEQ's Air Quality Division has established standards for ambient air quality necessary to protect public health and welfare; ambient air refers to that portion of the atmosphere, external to buildings, to which the general public has access (WDEQ, 2018b). WDEQ has also established limits on the quantity, rate, and concentration of emissions of various air pollutants from various sources including, but not limited to:

- Vehicle engines
- Construction/Demolition activities (asbestos)



- Handling and transport of materials
- Agricultural practices
- Fuel-burning equipment
- Oil and gas operations
- Manufacturing operations

The degradation of air quality in Weston County comes from both natural and man-made sources:

- Wind-carried dust (especially during periods of drought)
- Wildfire emissions
- Emissions from the open burning of vegetation
- Emissions from farming and agricultural operations
- Emissions from industrial operations
- Dust from unpaved roadway use

The WDEQ Air Quality Division maintains air quality monitoring locations throughout the state. The closest monitoring stations to Weston County are the Thunder Basin Monitoring Station located north of Gillette in Campbell County and the Converse County Monitoring Station located north of Douglas. The monitoring objective of these stations is to obtain ambient air quality and meteorological data in an oil and gas development area intermingled with rural residential populations (Wyoming Air Quality Monitoring Network, 2020). There are several private air monitoring stations throughout the County including at the Wyoming Refining Company. The Thunder Basin National Grassland sets the standard to meet state and federal air quality standards, and comply with local, state, and federal air quality regulations and requirements, either through original project design or through mitigation (US Forest Service: Rocky Mountain Region, 2002). The Newcastle BLM Field Office RMP lays out objectives to meet state and federal air quality standards (BLM Newcastle Field Office, 2000).

4.5.3 Air Quality Resource Management Objective:

- A. Management of federal lands considers clean air practices and limits air pollution within Weston County without expansion of rules and policies that would act as an impediment to economic development.

4.5.4 Air Quality Priority Statements:

1. Alternatives to flaring to decrease its impact on air quality within Weston County should be explored.
2. Federal, state, and local agencies should work together to educate all stakeholders involved to develop best management practices concepts and plans to protect air quality in Weston County.
3. Federal agencies should support the development and implementation of educational programs to provide best management practices on burning to improve air quality in Weston County.

4. Federal agencies should implement best management practices and take aggressive forest, range, and grassland management actions to decrease the number of summer wildfires to help improve air quality.
5. Federal agencies should acknowledge that wood-burning is a "necessity of life" for the health, safety, and welfare of Weston County's citizens and should be maintained as an acceptable activity.
6. The creation of permitting for wood burning is not supported by Weston County.
7. Federal agencies should ensure there is a balance in which air quality is not compromised at the expense of economic development activities.
8. Federal agencies should require dust mitigation in all development and reclamation plans to increase air quality standards.
9. Federal agencies should consider the impact a permitted activity may have on private or public unpaved roads and require dust mitigation plans whenever the planned activity will cause dust disturbances.
10. Weston County requests to be notified of any present and future air quality designations within Weston County.
11. Businesses, industry, and land management agencies should plant windbreaks, plant living snow fences, or other ideas to reduce or eliminate dust.
12. Weston County requests to be notified of and participate, as appropriate, in any local, state, regional, and/or federal land planning process that impacts managing and monitoring air resources in and affecting the County.
13. Federal agencies should support air quality compliance programs that address the causal factors affecting air quality.

4.6 CLIMATE CHANGE

4.6.1 History, Custom, and Culture

Weston County relies heavily upon the agriculture and energy industries to support the local economy. Climate change including increased temperatures, reduced precipitation, and changes in airflow have the potential to drastically affect the economy of the County. Weston County is committed to preserving the health of its citizens and its economy and, as such, is requiring cooperation and open communication with federal agencies when assessing the effects of proposed federal actions and climate change analysis policies within Weston County.

4.6.2 Resource Assessment and Legal Framework

The climate of Weston County is classified as semi-arid. Temperatures show a wide range between summer and winter and between daily maximums and minimums. The average annual temperature is 45.1 degrees. Abrupt changes in the weather are common. The lowest temperatures occur when cold air masses from Canada flow into the area. Winter snowfall is frequent, and blizzards occur several times each winter.

NEPA-compliant documents may include the following analyses of the proposed action regarding climate change: (1) the extent to which the proposed action and all reasonable alternative(s)



contribute to climate change through greenhouse gas (GHG) emissions; (2) the effect of a changing climate over the life of the project on the proposed project including flooding considerations and changes in precipitation; and (3) implications of climate change on the proposed project including cumulative impacts to resource availability (Exec. Order No. 13783, 3 C.F.R., 2017).

Federal agencies are required to consider direct, indirect, and cumulative effects when analyzing any proposed federal action and its environmental consequences. When assessing direct and indirect climate change effects, agencies should take account of the proposed action, including “connected” actions, subject to reasonable limits based on feasibility and practicality. In addition, emissions from activities that have a reasonable nexus to the federal action (e.g. cumulative actions), such as those activities that may be required either before or after the proposed action is implemented, must be analyzed. (National Environmental Policy Act 1969, 1969)

4.6.3 Climate Change Resource Management Objective:

- A. Climate change analysis is conducted on a regional level that does not give deference to potential long-term effects of climate change compared to immediate harms that the decision may have to the community.

4.6.4 Climate Change Priority Statements:

1. Additional climate change scientific data should only be included in National Environmental Policy Act planning processes if it meets the credible data criteria, even if not produced by a federal agency.
2. When climate change analysis is required to occur on a regional level, the region shall be identified through consultation and coordination with Weston County.
3. Federal agencies shall require a full analysis of the impact each “decision” will have on the local economy. If it is determined that the decision will have significant negative impact on the local economy, the alternative/decision is not supported by Weston County.
4. The regulation of greenhouse gases through climate change analysis is not supported by Weston County.
5. The costs and benefits of any regulator changes or management decisions adopted to address climate change should be quantified.
6. When agencies use climate change model projections to justify their decisions and analysis, those model projections and assumptions should be available for the public to review, and the agency should consider all outcomes and projections that are equally probable instead of focusing primarily on the worst-case scenario.

CHAPTER 5: WATER RESOURCES

5.1 OVERVIEW

Healthy watersheds contain forests, rangelands, and grasslands that are in good health, have minimal weed infestations, functioning riparian areas, ecosystems with a variety of vegetation, and valleys that support farming and urban developments. Healthy watersheds provide recreation opportunities for residents and visitors, serve cultural needs, and provide habitat for native plants, wildlife, and fisheries. The health of Weston County's watersheds directly affects the current and future availability of quality water resources and water-dependent natural resources, as well as the ability of watersheds to adapt to climate variability, such as periods of drought, high rainfall, or rain-on-snow events.

Weston County's watersheds are diverse and dynamic (Figure 13). They consist of a variety of vegetation and topography, including uplands, floodplains, wetlands, channels, springs, lakes, and reservoirs. These watersheds continue to evolve under the influence of climate, floods, landslides, erosion, and human land use. A successful management strategy for Weston County's watersheds must consider how the various watershed components and uses interrelate and influence each other from ridgeline to stream, and across adjacent watersheds.

Weston County spans two river basins, the Cheyenne River Basin in the southern portion of the County and the Belle Fourche River Basin across the northern border and northwest corner of the County.

The watershed plan relevant to Weston County is the [Northeast River Basin Plan Final Report](#)²¹.



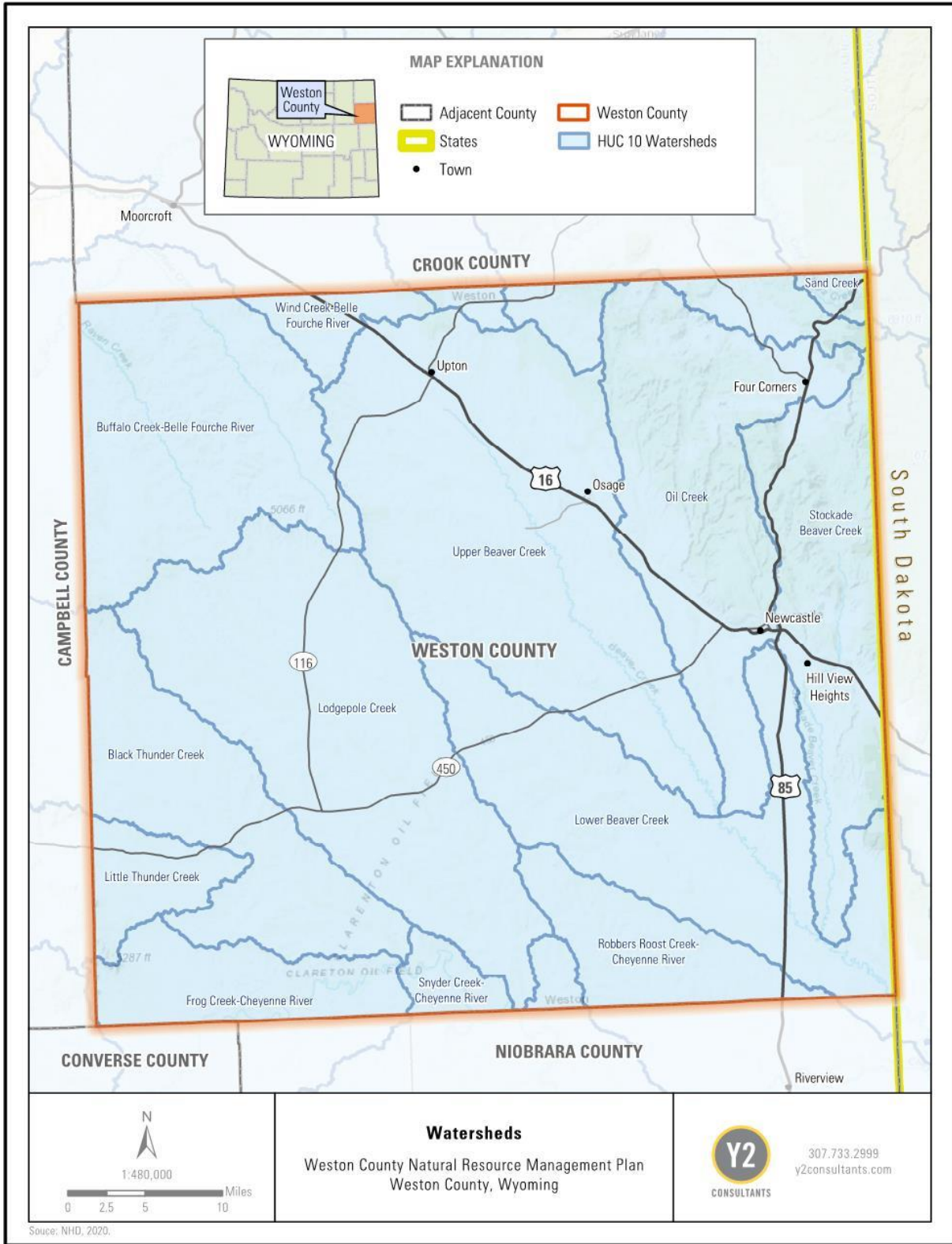


Figure 13. Watershed boundaries within Weston County.

5.2 WATER RIGHTS

5.2.1 History, Custom, and Culture

Wyoming water laws and statutes are governed by Title 41 (Tyrrell & States West Water Resources Corporation, n.d.). By Wyoming law, all surface and groundwater belong to the State. The Wyoming State Engineers Office is responsible for management of these waters and protecting existing water rights and resources.

5.2.2 Resource Assessment and Legal Framework

Wyoming is a Prior Appropriation Doctrine state, meaning that water rights are established by actual use of the water, and maintained by continued use and need (Wyo. Stat §41-3-101). Wyoming prioritizes water uses as “preferred uses” and all other uses (Wyo. Stat. § 41-3-102). Preferred uses include “rights for domestic and transportation purposes, steam power plants, and industrial purposes.” Preferred uses have the right of condemnation against all other water uses and those lesser preferred uses. Wyoming ranks uses in the following order:

- 1) Water for drinking purposes for both man and beast;
- 2) Water for municipal purposes;
- 3) Water for the use of steam engines and for general railway use, water for culinary, laundry, bathing, refrigerating (including the manufacture of ice), for steam and hot water heating plants, and steam power plants; and
- 4) Industrial purposes.

In Wyoming, a water right is a right to use the water of the state, when such use has been acquired by the beneficial application of water under the laws of the state relating thereto, and in conformity with the rules and regulations dependent thereon. Beneficial use shall be the basis, measure, and limit of the right to use water at all times. Thus, in Wyoming, a person must (1) obtain a permit; (2) demonstrate a beneficial use and (3) use the water in conformity with the permit in order to have a valid water right (Wyo. Stat. § 41-3-101). Wyoming case law also generally holds that water rights appurtenant to land and the means of conveyance of the water (i.e. ditches, pipes, and conduits) pass with the transfer of the land (*See Toltec Watershed Improvement Dist. V. Associated Enterprises, Inc.*, 829 P.2d 819 (Wyo. 1992); *Frank v. Hicks*, 35 P. 475 (Wyo. 1894)). Wyoming also allows for temporary changes in water use of a currently valid water right for up to two years with approval from the Wyoming State Engineers Office, so water right users may transfer their water rights for other uses on a temporary basis (Wyo. Stat. § 41-3-110).

Although all surface and groundwater in Wyoming belong to the state, water rights are considered a property right that can be conveyed or reserved in the same manner as real property. Thus, water rights are widely accepted as property of the holder and can be protected under the 5th and 14th Amendments of the United States Constitution when taken through regulation (*See Klamath Irrigation Dist. v. United States*, 113 Fed. Cl. 688, 691 (2013)).



5.2.3 Water Rights Resource Management Objectives:

- A. State water right laws and policies are supported for all waters on public and private lands within Weston County.
- B. Wyoming water law and policy controls all water rights within Weston County and is supreme to any federal policy or regulation.
- C. Beneficial uses of water as defined by Wyoming statutes are protected and prioritized in all water management.
- D. Federal agencies should never acquire water rights outside of Wyoming water law.
- E. There are no new interstate water compacts developed, new trans-basin diversions, or interstate water transfers that occur within Weston County without the County's involvement.

5.2.4 Water Rights Priority Statements:

1. Federal agencies should not purchase water rights from state or private water rights owners.
2. If a federal agency needs water for a particular beneficial use, the agency should lease water rights from the state or private water rights owners instead of acquiring a permanent water right.
3. All efforts by federal agencies to limit or control appropriations and use of water, such as through the denial of rights-of-way necessary to put the water to beneficial use are opposed.
4. Federal agencies should promote water policies and projects that ensure that the unappropriated water is put to beneficial use within the local watersheds, keeping Weston County water in Weston County.
5. Placing water rights in the name of any state or federal agency when the water right is applied for and proved upon by a private individual or corporation, or as the condition of any permit, is not supported.
6. Water rights shall not be acquired through exactions as a condition precedent of any permit.
7. Federal agencies should support the prohibition of water right exactions for right-of-way and ditch permits.
8. It is the position of Weston County that instream flow requirements are exactions.
9. Federal agencies should recognize water rights as a private property right that may be owned separately from federal land when allowed by Wyoming law.
10. Separate federal regulations on Wyoming waters are opposed; Weston County supports Wyoming control of Wyoming waters.
11. The use, sale, or lease by the State of any Wyoming basin water unless the water and storage needs of the affected basin(s) have been met is opposed.
12. Any sale or lease of water out of basin or out of state must be mitigated by storage before the transaction is approved.
13. Federal agencies should support policies and actions that will protect existing water rights and water uses within Weston County for long-term conservation and enhancement of our natural resources while contributing to the economic stability of the County and its residents.

14. Federal agencies should recognize historic and customary beneficial uses under Wyoming State Law to take precedence over all in-stream flow use designations.
15. Federal agencies should work with local, state, and other federal agencies to encourage and support state control of water rights and to maintain opportunities for future water right allocations.
16. Federal agencies should work with Weston County to educate and inform cooperators regarding Wyoming water laws.

5.3 IRRIGATION AND RELATED INFRASTRUCTURE

5.3.1 History, Custom, and Culture

The primary use of irrigated land in the Northeast River Basin is for forage production. Many ranchers in the area have depended on irrigated forage production for winter feed since the early development of irrigation in the basin. By the late 1800s, bottomland irrigation for forage production was relatively common. In 1972, over 80% of water use in northeast Wyoming was for irrigation. (HKM Engineering Inc. et al., 2002)

In 2002 there were approximately 33,000 acres of irrigated land across the three major hydrology units that span Weston County (the Upper Belle Fourche River, Upper Beaver Creek, and the Northern Tributaries of the Cheyenne River) (HKM Engineering Inc., 2002). The majority of irrigation water is sourced from surface waters; less than 20% of irrigated lands in the Northeast River Basin use groundwater. Within the basin forage crops dominated the active irrigated acres with grass and alfalfa making up 68% and 26% of irrigated crops respectively. (HKM Engineering Inc., 2002)

Additional information on crop production is available in Section 8.1 Agricultural Production.

5.3.2 Resource Assessment and Legal Framework

According to the U.S. Geological Survey (USGS) Water Resources Report, irrigation influences the flow rates and timing of both perennial and ephemeral streams in the County. Return flow from irrigation can maintain perennial flow in naturally ephemeral streams. During non-irrigation seasons, both perennial and ephemeral streams in irrigated areas experience low flows. The use of reservoirs for retaining irrigation water can lower peak flow rates in systems downstream. This water retention can also extend how long spring and early summer runoff is held in the system before being released downstream. This can extend the season prior to low flow and increase low flow rates during the non-irrigation season for downstream systems. The result is peak and low flows that are more moderated; this decreased flow fluctuation can influence the ecology of downstream fisheries and habitat. (Plafcan et al., 1993)

Additional information regarding irrigation acres, conveyance, and capacity can be found in the Wyoming Water Development Commission Irrigation Survey System Reports located [here](#)²². (Wyoming Water Development Office, 2019).

1866 Act

In 1866 Congress passed legislation that recognized a pre-existing right to construct, operate, and maintain water systems on federal lands. A ditch granted through the 1866 Act comes with a property right and the constitutional protections given to property rights. Therefore, the USFS, BLM, or any other agency generally cannot regulate the use of an 1866 Act ditch, so long as the right of way is operated and maintained in accordance with the scope of the original rights granted. See *Western Watershed Project v. Matejko*, 468 F.3d 1099, 1104-06 (9th Cir. 2006). The scope of the easement for an 1866 Act ditch is defined by the physical extent of the on-the-ground easement, plus adjacent lands. The extent of adjacent lands included in the easement is a question of state law. In Wyoming, it is whatever is reasonable and necessary to maintain the ditch. In order for a ditch to qualify under the 1866 Act, it must have been completed and used before the lands were set aside as a National Forest. No formal agency documentation is necessary, but there must be proof that a current water right exists in the ditch. See 43 U.S.C. § 661 (repealed in part Oct. 21, 1976) (1866 Act) (also known as R.S. 2339 and 2340). Similar to R.S. 2477, the 1866 Act was repealed with the enactment of FLPMA, but the prior existing rights were explicitly retained by Congress (*Western Watershed Project*, 468 F.3d at 1106).

1891 Act

In 1891 Congress again granted easement rights to ditch owners through federal lands that allows the ditch owner to construct, operate, and maintain water systems on federal lands. Act of March 3, 1891 (“1891 Act”), 26 Stat. 1095 (codified at 43 U.S.C. §§ 946–949) (repealed Oct. 21, 1976). Just like an 1866 Act ditch, the granting came with a property right and cannot be regulated, so long as the right of way is operated and maintained in accordance with the scope of the original rights granted. The scope of the ditch is defined by the physical extent of the on-the-ground system, plus fifty feet from the marginal limit thereof. Also, upon a satisfactory showing by the water company, the easement can include those adjacent lands deemed necessary for the proper operation and maintenance of the system. 1891 Act ditch rights are acquired through formal application and approval by the Secretary of Interior before October 21, 1976 (*Pine River Irrigation Dist. V. US*, 656 F. Supp. 2d 1298, 1321 (D. Colo 2009)). Also, like 1866 Act ditches, the 1891 Act was repealed with the enactment of FLPMA, but the prior existing rights were explicitly retained by Congress.

Colorado Ditch Bill Act

The Colorado Ditch Bill Act of 1986 amended Title V of FLPMA to authorize the secretary of Agriculture to issue permanent easements without charge for water conveyance systems used for agricultural irrigation or livestock watering. The act requires applicants to submit information concerning the location and characteristics of the water conveyance system necessary to ensure proper management of National Forest System lands. Extensions or enlargements constructed after October 21, 1976, do not qualify for an easement and must be covered by other authorities (USFS, n.d.-a). In order to obtain a Ditch Bill easement, the ditch user had to relinquish any other easements the ditch user might have had under other federal statutes. Thus, a Ditch Bill applicant would have to waive any 1891 and 1866 rights they may have. Additionally, applications had to be submitted by December 31, 1996.



Granting easements under the Colorado Ditch Bill Act is not a USFS discretionary decision. If an applicant meets the Colorado Ditch Bill Act criteria, he or she is entitled to an easement and the decision to grant the easement does not constitute a federal action subject to NEPA analysis or review. Conditions of the easement, including operations and maintenance activities, may require NEPA analysis and review (USFS, n.d.-a).

5.3.3 Irrigation and Related Infrastructure Resource Management Objectives:

- A. Irrigation and water systems are managed to ensure current and future access to irrigation water and to promote the health, longevity, and sustainability of Weston County's water.
- B. Productive watersheds are maintained and/or enhanced for the preservation of irrigated agriculture.
- C. Water rights are protected from exactions and irrigation ditch easements are protected for the current and future viability of irrigation agriculture in Weston County.
- D. Private property rights and interests in irrigation and water development structures on public lands are protected.
- E. Upstream storage structures and water retention are used to enhance available water for appropriation and beneficial use, through a combination of on-stream storage, off stream storage, structural storage, and/or non-structural storage.

5.3.4 Irrigation and Related Infrastructure Priority Statements:

1. Federal agencies should support the update, improvement and continued use of irrigation infrastructure throughout Weston County to improve overall watershed health.
2. Federal agencies should support the development, maintenance, and continued use of irrigation and related infrastructure.
3. Federal agencies should work with appropriate partners and agencies to promote the efficient delivery and use of irrigation water within Weston County.
4. Federal agencies should develop off channel storage facilities that would allow excess spring runoff to be captured and used later in the growing season with support from surrounding landowners and water users.
5. Federal agencies should allow consumptive water right owners to improve water quality and water-use efficiency to provide additional water for economic development and agriculture.
6. Federal agencies should consider the effects of irrigation infrastructure while allowing for other multiple uses on federal land.
7. Federal agencies should support the continued use and protection of historical irrigation ditch rights-of-way through federal lands whether those rights are permanent or require periodic renewal.
8. Any renewal of rights-of-way for irrigation ditches crossing federal lands should be done expeditiously without impacting the historical use.
9. The imposition of instream flows as a condition precedent for renewal of historical irrigation ditch rights-of-way is not supported by Weston County.
10. Federal agencies should use best management practices for erosion control on rangelands and irrigated cropland by local cooperators.

11. Federal agencies should support increased productivity of irrigated lands to increase and/or maintain animal unit months in Weston County.

5.4 DAMS AND RESERVOIRS

5.4.1 History, Custom, and Culture

Dams and reservoirs are located across Weston County and are used for various functions, including storage for irrigation, recreation, industrial, municipal, flood control, and fish propagation. The Wyoming Water Development Office’s (WWDO) Dam and Reservoir Planning division works to promote dam and reservoir maintenance and improvement. Funding from the Dam and Reservoir Division account is available for the development of new reservoirs that are 2,000 acre-feet or larger, or the enlargement of currently existing reservoirs (minimum of 1,000 AF increased capacity). Funding is also available for Level I and Level II feasibility studies identifying possible water storage projects. (WWDC, n.d.)

5.4.2 Resource Assessment and Legal Framework

Key Storage reservoirs are defined as reservoirs with equal to or greater storage capacity than 50-acre feet. There are six key storage reservoirs listed in the Northeast Wyoming River Basins Water Plan, two of which are within Weston County. Those reservoirs are the Klodt Reservoir and the Spencer (Lak) Reservoir; listed below in Table 3. Currently, there are no dams that provide hydroelectricity within Weston County.

Table 3. Weston County major reservoirs capacity and surface area. (HKM Engineering Inc., 2002)

Major Reservoirs in Weston County	Reservoir Capacity (Acre Feet)	Reservoir Surface Area (Acres)
Klodt Reservoir	980	124
Spencer (Lak) Reservoir	2,163	126

Other reservoirs in the County include:

- Turner Reservoir
- YT Reservoir
- Upton Reservoir
- Clark Reservoir
- Black Hills Power and Light Reservoir
- Buzzer Reservoir
- Kellog Reservoir
- Shostak Reservoir
- MW Reservoir
- Rivenburgh Reservoir
- Betty Reservoir
- Paxton Reservoir
- VE Lissolo Reservoir
- Michaels Reservoir
- Bernard Howell Reservoir
- Martin Thompson Reservoir
- Mary Ellen Reservoir
- Rosean Reservoir

5.4.3 Dams and Reservoirs Resource Management Objectives:

- A. Quality of all dams and reservoirs is preserved and water resources are developed responsibly to provide well maintained, accessible, and functional dams and reservoirs.



- B. Water storage facilities are increased where applicable.
- C. The primary use of all reservoirs within Weston County is maintained for the purpose for which they were originally intended.
- D. Weston County is consulted and coordinated with regarding federal land management decisions that impact dams and reservoirs.

5.4.4 Dams and Reservoirs Priority Statements:

1. Weston County should be consulted regarding federal land management decisions that may potentially impact on water quality, yields, and timing of those yields; impacts on facilities such as dams, reservoirs, delivery systems, or monitoring facilities; and any other water-related concerns.
2. Federal agencies should support the construction of water storage.
3. Federal agencies should provide proper management, maintenance, and improvements of all dams, especially high-hazard dams.
4. Federal agencies should maintain the primary use of all reservoirs within Weston County for the purpose for which they were originally intended, with the understanding that such use must consider and maintain the highest and best use for citizens within the County and protect current water rights.
5. Recreational and consumptive use of water should be supported to enhance the local economy in a manner that maintains the quality and quantity of the resource.
6. Projects from the Small Water Development Projects Program, conducted by Wyoming Water Development Commission, should be implemented to increase water storage capacity to meet the needs of agriculture, industry, recreation, and municipalities.
7. Federal agencies should allow for the option to use mechanized equipment for maintenance of dams and water delivery structures regardless of use and access restrictions.

5.5 WATER QUALITY

5.5.1 History, Custom, and Culture

Water quality is important to the health and quality of life of Weston County residents. The EPA and WDEQ (Wyoming Department of Environmental Quality) establish, administer, and monitor standards, policies, rules, and regulations for ground and surface water quality. Weston County is located in the northeast WDEQ District.

5.5.2 Resource Assessment and Legal Framework

Surface Water Quality

The Clean Water Act (CWA) is the federal regulatory mechanism that regulates surface water quality. The CWA gives the EPA and Army Corps of Engineers regulatory jurisdiction over all “navigable waters” also known as “Waters of the United States” (WOTUS). The CWA makes it illegal to discharge a pollutant from a point source into a navigable water unless a permit is obtained. The definitions surrounding “navigable water” or “Water of the United States” have been controversial in the past several years and there is still some uncertainty as to what bodies



of water constitute as WOTUS and what qualifies as a “point source.” From the earliest rulemaking efforts following adoption of the CWA in 1972 to the agencies’ most recent attempts to define WOTUS in 2015, the lack of a tangible statutory definition has generated hundreds of court cases spanning dozens of courts to ascertain the span of the EPA’s jurisdiction (See Federal Register Vol. 85, No. 77 22255 (April 21, 2020)).

On September 11, 2020, the EPA published final CWA regulations that were intended to clarify some of the definitions and clearly set forth the jurisdictional limits of the CWA. The final regulations:

1. Include four simple categories of jurisdictional waters;
 - a. Territorial seas and navigable waters
 - b. Tributaries of jurisdictional waters
 - c. Lakes, ponds, and impoundments that contribute surface water flow to a jurisdictional water in a typical year
 - d. Wetlands adjacent to non-wetland jurisdictional waters
2. Provide clear exclusions for many water features that traditionally have not been regulated, including ditches, non-adjacent wetlands, groundwater, treated water, and ephemeral features (see 33 C.F.R. § 328.3).
3. Define terms in the regulatory text that have never been defined before, including adjacent wetlands, ephemeral, upland, and tributaries.

The CWA regulations are currently being challenged in federal court in the Federal District of Northern California, Federal District of Colorado, Federal District of Arizona, and the Federal District of Virginia. On August 30, 2021, the Federal District Court of Arizona issued a vacatur of the 2020 rule claiming that the rule was too flawed to keep in place. On September 3, 2021, the EPA announced on their website that they will no longer follow the 2020 regulations due to the Arizona Court’s decision. The EPA in turn announced that it will be interpreting “waters of the United States” consistent with the pre-2015 regulatory regime until further notice. The Pre-2015 regulatory definitions and guidance documents can be found [here](#)²³.

Wyoming surface water quality standards (Water Quality Rules and Regulations, Chapter 1) are developed with the federal CWA and the Wyoming Environmental Quality Act (WEQA). These standards include water quality criteria, antidegradation provisions, and designated surface water uses (WDEQ, 2018a). The Wyoming Water Quality Assessment Program prepares and submits the Integrated 305(b) and 303(d) *Report to the EPA* biennially to maintain compliance with the CWA (WDEQ, n.d.-e). Policies for antidegradation were last updated in September 2013; Surface Water Quality Standards were last updated in April 2018. Surface Water Quality Standards are reviewed triennially as per the requirements of the CWA (WDEQ, n.d.-d). Surface water designated uses are separated into classes and recreational designated uses. For more information on these classifications refer to the Wyoming Surface Water Classification List and the Recreation Designated Uses Web Map located [here](#)²⁴ (WDEQ, n.d.-b, 2013).

The WDEQ’s Wyoming Pollutant Discharge Elimination System (WYPDES) program provides permits that contain limitations and conditions that will assure that the state’s surface water



quality standards are protected. Through this program, operators of a point source discharge are required to receive coverage under a WYDPDES discharge permit. (WYDEQ, n.d.)

Groundwater Quality

The Water Quality Division (WQD) Groundwater Program works to protect and preserve Wyoming's groundwater by permitting facilities to prevent contamination and investigating and cleaning up known releases.

Groundwater Pollution Control Program

The WQD Groundwater Pollution Control (GPC) Program tracks potential impacts on Wyoming's groundwater through evaluation of activities permitted at federal, state, and local levels. The GPC Program assists federal agencies with the NEPA process on large projects such as the Moneta Divide and the Pinedale Anticline. This program also assists private landowners with suspected contamination of their wells. The GPC Program also evaluates the adequacy of water supply sources and wastewater collection and treatment facilities during subdivision applications to ensure groundwater will not be impacted (WDEQ, n.d.-a).

The Supreme Court recently opined that groundwater can be a point source to transfer pollutants to WOTUS when the groundwater is a "functional equivalent of a direct discharge..." (*County of Maui, Hawaii v. Hawaii Wildlife Fund*, 140 d. 1462, 1468 (2020)). To determine whether groundwater is a functional equivalent of a direct discharge, the Supreme Court clarified that "distance and time" to surface water are major factors in determining if a CWA permit is required for any groundwater discharges (*Id.* at 76-77). Thus, there can be some circumstances in which some groundwater discharges may require CWA permitting.

Impaired Waters

There are no listed impaired waters within Weston County at the time of this NRMP. The Wyoming 2016/2018 Integrated 305(b) and 303(d) Report includes the Northeast River Basin and was completed in 2018. This report includes the 305(b) stream classification/designation list and the 303(d) use and contaminate lists for the Northeast River Basin (WDEQ & WQD, 2018).

Subdivision Review

Subdivision reviews are governed by Water Quality Rules and Regulations, Chapter 23 and Wyoming Statutes 18-5-301 to 315. The WQD Water & Wastewater Program (W&WP) works to ensure safe and adequate supplies of drinking water and the proper disposal of wastewater. Subdivision review requires that all WQD, W&WP, and GPC standards are complied with during the review, for approval, and during the construction of subdivisions.

Subdivisions are reviewed by the Weston County Natural Resource District per W.S. 11-16. A subdivision review provides recommendations to planning and zoning staff, Commission, and County Commissioners of natural resource concerns specific to the development. The review is also an educational tool for land developers and future homeowners and can provide information from other agencies including Weed and Pest, Game and Fish, Office of Historic Preservation, and others. According to statute 18-5-306(b) a subdivision review should include soil suitability, erosion control, sedimentation, flooding concerns, and other issues that are a concern to the



District (i.e., noxious weeds, small acreage grazing/livestock management, wildlife concerns). The WDEQ reviews subdivisions of 5 parcels or more within Weston County. (WDEQ, n.d.-c)

5.5.3 Water Quality Resource Management Objectives:

- A. Water quality within Weston County is maintained or improved for current and/or future uses using legally obtained credible data.
- B. Watersheds are managed and maintained for productivity and water quality.
- C. The application of the “Credible Data Legislation,” which provides the basis for surface water quality monitoring in Weston County is enforced (Wyo. Stat. §35-11-302(b)).

5.5.4 Water Quality Priority Statements:

1. Weston County reserves the right to refer subdivision water quality reviews to the Wyoming Department of Environmental Quality in special circumstances.
2. Federal agencies should prioritize locally-led efforts to monitor and improve water quality, and where feasible, complete in conjunction with existing state and federal agencies.
3. Federal agencies should require baseline water quality sampling and cataloging of all collected data for wells (including injection wells) drilled on federal lands.
4. Federal agencies should consult Weston County regarding federal land management decisions for their potential impact on water quality, yields, and timing of those yields; impacts on facilities such as dams, reservoirs, delivery systems, or monitoring facilities; and any other water-related proposal.
5. All water quality data considered by federal agencies should be credible data as is specified in each of their agency handbooks and should be legally collected.
6. Any action, lack of action, or permitted use that results in a significant or long-term decrease in water quality or quantity is not supported.
7. Federal agencies should support the implementation of land management actions and practices that contribute to or maintain healthy drainages, watersheds, and aquifers.
8. Federal agencies should encourage good management and maintenance of watersheds to retain and slowly release water for the desired plant, animal, and human uses, and to reduce the risk of flash floods.
9. The United States Forest Service, Bureau of Land Management, Environmental Protection Agency, Wyoming Department of Environmental Quality, and other relevant public agencies should coordinate to ensure that the management of watersheds and aquifers, including municipal watersheds, meet the multiple needs of residents and promotes healthy forests and rangelands.
10. Federal agencies should support reclamation activities on mined lands that improve water quality and the function of stream channels, floodplains, and wetlands for better productivity.
11. Federal agencies should support the construction and management of roads, bridges, culverts, cut slopes, fill slopes, and artificial surfaces to minimize water concentration, erosion, and delivery of polluted water and sediment to streams.
12. Federal agencies should implement land use improvements and practices which promote healthy drainages and watersheds.

13. Federal agencies should implement already established State best management practices in coordination with Weston County and other local governments to mitigate water pollution caused by heavy erosion and sedimentation from public lands under their management.
14. Federal agencies should implement policies and management decisions to encourage and allow consumptive water right owners to improve water quality and water-use efficiency to provide additional water for economic development and agriculture.
15. Federal agencies should implement policies to improve groundwater health for consumptive use.
16. Federal agencies should ensure any recovery plan, habitat management plan, critical habitat designation, or any other plan proposing an “in streamflow” requirement adequately considers local existing and anticipated future water uses, local custom and culture, local economic and individual needs, and is consistent with Wyoming water laws.
17. Federal agencies should ensure that land use inventory, planning, or management activities affecting point or nonpoint sources and water quality in Weston County, either directly or indirectly, are coordinated through the County and Weston County Natural Resource District and are consistent with this plan.
18. Federal agencies should ensure that all management and watershed plan and land use practice modifications proposed by either local, state, or federal agencies premised on water quality issues are coordinated with Weston County and are consistent with the protection of private property rights.
19. Federal agencies should recognize the economic and social benefits of customary land use activities in Weston County and balance against the social and economic value of the sources of pollution.
20. Federal agencies should require baseline testing and water quality monitoring as part of energy and right-of-way development projects to ensure groundwater and surface water quality is not degraded.
21. Weston County supports water quality testing and monitoring programs that collect credible data according to Wyo. Stat. § 35-11-302 using a local steering committee according to the Watershed Strategic Plan.

5.6 FLOOD PLAINS

5.6.1 History, Custom, and Culture

Flood and floodplain management are important to the safety, economy, and ecological health of Weston County. Flooding is a significant natural hazard within the state of Wyoming and can cause significant damage. From 1905 to the present there have been approximately \$126.7 million in damages across the state from flood damage (University of Wyoming, n.d.). Between 1960 and 2015 Weston County experienced 138 flood events which incurred \$921,406 in property damage. Weston County is categorized as ‘No Plan’ for flooding in the Wyoming State Mitigation Plan (Wyoming Office of Homeland Security, n.d.).



5.6.2 Resource Assessment and Legal Framework

Federal Emergency Management Agency's

At the time this document was written, both Newcastle and Upton within Weston County were participating in the National Flood Insurance Program (NFIP) (FEMA, 2020). Communities that participate in NFIP and implement the floodplain management regulations, are eligible for the FEMA Community Assistance Program – State Support Services (CAP-SSE) (FEMA, n.d.-a)). The CAP-SSE provides support and funding for strategic planning, ordinance assistance, technical assistance, mapping coordination, state program and agency coordination assistance, and general outreach and training (FEMA, n.d.-a). Where CAP-SSE provides general preparedness funding, planning, and management, the Risk Mapping and Assessment Planning (Risk MAP) projects develop high-quality maps and data to assess the factors contributing to increased risk of flooding in an area, and then develop plans to reduce risk (FEMA, n.d.-d). There are currently no active Risk MAP projects within Weston County (FEMA, n.d.-c). For more information on flood hazard mapping within Weston County refer to FEMA's National Flood Hazard Layer (NFHL) viewer, accessible [here](#)²⁵ (FEMA, n.d.-b).

Executive Order 11988-Floodplain management, signed in 1977, was implemented to avoid, to the extent possible, the long- and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative. Further information on this Executive Order can be found [here](#)²⁶.

5.6.3 Flood Plains Resource Management Objectives:

- A. Stormwater is managed to ensure the health, safety, and welfare of all residents within Weston County.
- B. Emergency response regarding flooding is coordinated with the Weston County Emergency Response Coordinator.
- C. Weston County is coordinated within designating federal flood plains.

5.6.4 Flood Plains Priority Statements:

1. Federal agencies should support projects and encourage policies which manage stormwater, run-off, and flooding on public lands within Weston County.
2. Weston County shall be consulted where flooding and stormwater run-off could impact the County.
3. Oil and gas facilities should be developed outside of the flood plains.
4. Federal agencies should consult and coordinate with Weston County when designating federal flood plains.

5.7 RIVERS AND STREAMS

5.7.1 History, Custom, and Culture

Rivers and streams are important surface water resources for Weston County. The County's surface water quality and health are integral to multiple industries, including livestock and crop



production, recreation, and tourism. Surface waters are especially integral to forage irrigation and fisheries in Weston County. (HKM Engineering Inc., 2002)

5.7.2 Resource Assessment and Legal Framework

Wyoming has approximately 108,767 miles of rivers. Two river networks span the majority of Weston County: northern tributaries of the Cheyenne River and a few southern tributaries of the Belle Fourche River. (National Wild and Scenic Rivers System, n.d.)

Cheyenne River

The Cheyenne River headwaters are located southwest of Weston County. The major tributaries within Weston County include Black Thunder Creek, Lodgepole Creek, and the Beaver Creek network. These tributaries start throughout the central to northern regions of Weston County and flow southeasterly. Just south of Weston County they merge into the Cheyenne River before entering South Dakota. From there, the river continues northeast to the Missouri River. (HKM Engineering Inc., 2002)

Belle Fourche River

The Belle Fourche River is located north of Weston County. There are a few small tributaries located in the northwest corner and along the northern border of the County that flow north to the Belle Fourche. Those tributaries are Buffalo, Raven, and Four Horse Creeks. (HKM Engineering Inc., 2002)

Interstate Water Compacts

An interstate water compact is an agreement between two or more states that is approved by those states' legislators and by the U.S. Congress. An interstate compact that receives the approval of Congress counts as federal law (*Kansas v. Nebraska*, 574 U.S. 445, 455 (2015)).

The Belle Fourche River Compact apportions the flow at the state line of Wyoming and South Dakota of 10% to Wyoming and 90% to South Dakota. A compact on the Cheyenne River was negotiated between Wyoming and South Dakota water officials but was never ratified by the Wyoming Legislature. (Wyoming State Water Plan, n.d.)

5.7.3 Rivers and Streams Resource Management Objectives:

- A. Rivers and streams within Weston County are managed to maintain water quality, to maintain proper ecologic function needs, for municipal use to control flooding, and for recreational and industrial use including irrigation.
- B. Rivers and streams are protected to allow continued historical uses that contributed to the custom and culture of Weston County.
- C. No agreements or new interstate water compacts increasing Weston County's water obligations are agreed to without the County's approval.

5.7.4 Rivers and Streams Priority Statements:

1. Federal agencies should support management of rivers and streams to meet "in-stream" flow and water compact requirements.



2. Any new or changed management priorities or policies regarding in-stream flows should be coordinated with Weston County.
3. Federal agencies should ensure any recovery plan, habitat management plan, critical habitat designation, or any other plan proposing an “in streamflow” requirement adequately considers local existing and anticipated future water uses, local custom and culture, local economic and individual needs and is consistent with Wyoming water laws.
4. Federal agencies should support the continued use of rivers and streams by all users.
5. Federal agencies should support the recreational and consumptive use of water to support the local economy.
6. Weston County shall be consulted when impacts to rivers and streams are a potential outcome of federal action or decision.
7. Federal agencies should support projects and policies which improve or maintain the current ecological function of rivers and streams within Weston County.
8. Any new interstate water diversions, transfers, or obligations outside of those originally agreed to are not supported by Weston County.
9. Federal agencies should support the recreational and consumptive use of water to support the local economy.
10. Weston County requests coordination or involvement as a cooperating agency in any proposed amendments or discussions regarding river compacts.

5.8 WETLANDS AND RIPARIAN AREAS

5.8.1 History, Custom, and Culture

Riparian and wetland areas only make up approximately 4% of the state, however, they support over 80% of Wyoming’s wildlife (Bureau of Land Management, 2016c). These areas are very important to the health and quality of watersheds and their ecological function. Riparian areas are characterized by vegetation that is adapted to the wetter environments along bodies of water. These areas provide a buffer between open water and upland sites, protecting stream banks from erosion, maintaining stream channel morphology and water table access, filtering runoff sediment and nutrients, and improving stream habitat through lowering stream temperatures and increasing oxygen levels. Wetland areas filter sediment and nutrients that improve water quality and play an important role in maintaining habitat. Riparian and wetland areas play large roles in a stream's ability to release energy from floods onto surrounding floodplain areas, greatly reducing flood damage downstream. (WDEQ, n.d.-f)

5.8.2 Resource Assessment and Legal Framework

Riparian and wetland areas are an integral part of the health and resilience of water resources within Weston County. Multiple anthropogenic processes can harm riparian and wetland areas. A few examples of activities that can degrade these ecosystems and their ability to function properly are urban and road development along streams and on floodplains, diversion of water, improper timber harvest, and improper grazing practices (WDEQ, n.d.-f; WGFD, n.d.-c). There are also multiple processes that if done correctly can have a positive impact on wetlands. Livestock grazing managed properly and in the right time of year can provide benefits to wetland areas by

thinning vegetation to allow new growth and could be used as a weed treatment option (Clary et al., 1989; NRCS et al., 2006).

Executive Order 11990 – Protection of Wetlands of 1977 was implemented to avoid, to the extent possible, the long- and short-term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative. Further information on the Executive Order can be found [here](#)²⁷.

The Association of State Wetland Managers maintains resources regarding voluntary wetland restoration work, wetland programs, and law and policy. Federally, wetlands are protected under the Clean Water Act (CWA). The definition of wetlands protected under CWA has been specified further through the supreme court rulings in 1985 *Riverside Bayview*, 2003 *SWANCC*, and 2008 *Rapanos* (ASWM, n.d.-a, n.d.-b). The U.S. Army Corps of Engineers (USACE) is also responsible for protecting aquatic resources and navigable capacity while allowing economic development through fair and balanced decisions. The USACE requires a permit process to minimize the environmental impact of construction and development activities in U.S. waters to ensure the protection of these resources. (ACOE, n.d.)

Monitoring and Management

Federal managing agencies monitor riparian-wetland areas using methods such as Proper Functioning Condition (PFC), Winward Greenline, Rosgen Stream Classification, Stream Visual Assessment Protocol (SVAP), Rapid Stream-Riparian Assessment (RSRA), PACfish/INfish Biological Opinion Monitoring Program (PIBO), Geomorphic Road Analysis and Inventory Package (GRAIP), and modified Multiple Indicator Monitoring (MIM). All these methods assess the condition and health of riparian and wetland areas and give federal agencies an indication of the change of species composition, streambank alterations, woody species present and available, along with other riparian health considerations.

Managing agencies are required to manage riparian-wetland areas in Proper Functioning Condition (PFC). PFC is the minimum state of resilience needed to withstand moderate flooding and make progress toward a desired condition that supports fish habitat, water quality, and wildlife needs. Riparian and wetland areas may be categorized as properly functioning (PFC), Non-Functioning (NF), Functioning at Risk (FAR) with upward, downward or nonapparent trends within a PFC assessment. Aquatic AIM monitoring is also used for riparian-wetland assessments and management. (Bureau of Land Management, 2016d)

5.8.3 Wetland and Riparian Area Resource Management Objective:

- A. Wetlands and riparian areas are managed to be healthy and function properly.
- B. Weston County is coordinated with and apprised of wetland mitigation plans and locations throughout the county.
- C. Private landowners' rights are maintained regarding wetland jurisdictions.
- D. Wetlands issues are based on a cooperative approach that conserves and protects soil and water resources and protects rangeland and agricultural uses.

5.8.4 Wetland and Riparian Area Priority Statements:

1. Federal agencies should support the management, maintenance, protection, and restoration of wetland and riparian areas to proper functioning condition.
2. Federal agencies should coordinate any wetland project with Weston County.
3. Federal agencies should support the use of responsible and appropriate grazing and vegetation management tools to maintain and/or improve wetlands and riparian areas.
4. Federal agencies should manage riparian areas damaged by non-native species to decrease the impact of these species on the watershed.
5. Federal agencies should use appropriate methods and practices to maintain and restore riparian areas to proper functioning condition.
6. Federal agencies should use credible data and scientific standards for wetland designation.
7. Weston County does not support any Clean Water Act jurisdictional wetland designations for any wetlands not located immediately adjacent to a navigable water in the County.
8. Weston County should be notified of any planned Clean Water Act jurisdictional wetland designations within the County.
9. A consistent definition and accurate delineation of riparian areas, wetlands, and lands adjacent to wetlands or directly/indirectly influenced by permanent water should be developed cooperatively.
10. Federal agencies should ensure that the regulation of wetlands does not impair property rights.

CHAPTER 6: WILDLIFE AND FISHERIES RESOURCES

6.1 WILDLIFE MANAGEMENT AGENCIES

U.S. Fish and Wildlife Service

The U.S. Fish & Wildlife Service (USFWS) is the agency within the Department of the Interior dedicated to the management of fish, wildlife, and their habitats, and is charged with enforcing federal wildlife laws, including the Endangered Species Act (ESA). In addition to managing threatened and endangered species, they manage migratory birds, restore significant fisheries, conserve and restore wildlife habitat including wetlands, and distribute money to state fish and wildlife agencies. They also manage the National Wildlife Refuge (NWR) System created by President Theodore Roosevelt in 1903. There are no wildlife refuges within Weston County. (Wilson, 2014)

There are eight administrative regions for USFWS and approximately 700 field offices across the country. Wyoming is in the Mountain Prairie Region which consists of eight states - Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. The regional office for the Mountain Prairie Region is in Denver, CO. The closest field office is in Cheyenne, WY.

Wyoming Game and Fish Department

All wildlife in Wyoming are managed by the Wyoming Game and Fish Department (WGFD). Those species on the ESA are managed by the WGFD in partnership with the USFWS. Nearly a decade after Wyoming became a state in 1890, the legislature created the office of the State Game Warden in 1899. The Wyoming Game and Fish Commission was created in 1921 but did not receive the ability to actively manage Wyoming's game populations through opening and closing hunting until 1929. The Wyoming Game and Fish Department was created in 1973. Prior to this time, all Game and Fish personnel were employed by the Wyoming Game and Fish Commission. (WGFD, n.d.-a)

The Wyoming Game and Fish Commission acts as the policy-making board of the WGFD. The commission is responsible for the direction and supervision of the Director of the WGFD. Through the relationships with the Director, department, and citizens, the board provides a flexible system of control, propagation, management, protection, and regulation of all wildlife in Wyoming. WGFDs commission is a board of seven citizens of which not more than five can be from the same political party. (WGFD, n.d.-b) The WGFDs mission is 'Conserving Wildlife, Serving People'.

The WGFD utilizes a State Wildlife Action Plan (SWAP), revised in 2017, to provide a strategy for managing groups of wildlife in need of conservation, including mammals, birds, reptiles, amphibians, fish, and mussels. This plan is neither a legal document, regulatory document, recovery Plan under the ESA nor a NEPA decision document (WGFD, 2017b). It is designed to complement existing and future planning and management programs. Wyoming's SWAP was partially funded by the State Wildlife Grants Program, which was created through federal legislation to provide federal funding to states to create a list of wildlife species that have the



greatest conservation need. The state plan is built upon eight essential elements, identified by Congress, and implemented by the state game agency, with an overall focus on “species of greatest conservation need.” The essential elements are:

- Information on the distribution and abundance of species of wildlife including low and declining populations.
- Descriptions of locations and relative condition of key habitats and community types.
- Problems affecting species and priority research, or survey efforts needed.
- Conservation actions needed to conserve the identified species.
- Plans for monitoring species and the effectiveness of conservation actions.
- Plans for reviewing the strategy.
- Coordinating with federal, state, and local agencies and Tribal governments on the development and implementation of the strategy; and
- Involve broad public participation.

The species list includes 229 total species including eighty birds, nine amphibians, twenty-four reptiles, fifty-one mammals, twenty-eight fish, eight crustaceans, and twenty-nine mollusks, each with a specific priority designation based on the essential elements listed above. (WGFD, 2017b)

Wyoming’s List of Species of Greatest Conservation Need is divided into three tiers: Tier 1 – highest priority, Tier 2 – moderate priority, and Tier 3 – lowest priority. The Wyoming Game and Fish Commission has six approved variables to evaluate the conservation priority of each species. These variables include the Wyoming Game and Fish Department Native Species Status (NSS); Wyoming’s contribution to the species’ overall conservation; regulatory/monetary impacts of the species’ listing under the Endangered Species Act; the urgency of conservation action; ability to implement effective conservation actions; and the species’ ecological or management role as keystone, indicator, or umbrella species. The consideration of these variables in the species’ priority tier designations are made by WGFD biologists who have considerable knowledge about the species. Individual designations may be reviewed annually if warranted by changing circumstances or new data. State Wildlife Grant Program funds are appropriated annually by Congress. In the appropriation process, individual states are evaluated based on their population and total geographical area. From these evaluations, states receive their apportioned funding amounts. Federal grants cover up to 75% of planning grants and 65% of plan implementation grants. (USFWS, n.d.-b; WGFD, 2017b)

The WGFD updates the species on the Conservation Priority List in conjunction with the State Wildlife Action Plan. The Wyoming Species of Conservation Priority List can also be found on the WGFD [website](#)²⁸ (WGFD, 2017a).

Wildlife Habitat Management Areas

The WGFD maintains approximately 450,000 acres of land under deed, lease, or by agreement for wildlife habitat management areas (WHMA). There are no WHMAs within Weston County (WGFD, 2020d)



Bureau of Land Management

The BLM's Wildlife Program manages wildlife habitat to help ensure self-sustaining, abundant, and diverse populations of native and desired non-native wildlife on public lands and federal mineral estate. To carry this out, the BLM must formally identify priority species; BLM-sensitive species; and other species. BLM then considers and implements applicable conservation measures for these species and their habitats based upon their Resource Management Plans for each field office. Weston County is entirely within the Newcastle Field Office of the BLM.

U.S. Forest Service

The 2012 Planning rule direction (36 CFR 219) sets out the planning requirements for developing, amending, and revising land management plans for the National Forest System, as required by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by NFMA. The regulations in 36 CFR 219.9 explain that the Forest Plan components must provide for the diversity of plant and animal communities and keep common native species common; contribute to the recovery of federally listed threatened and endangered species; conserve proposed and candidate species; and maintain a viable population of each species of conservation concern (SCC) within the plan area.

Thunder Basin National Grassland

In December of 2020, the Medicine Bow-Routt National Forests and Thunder Basin National Grassland completed an amendment to the Thunder Basin National Grassland Land and Resource Management Plan that focused on prairie dog management. The intent behind the amendment is to provide a wider array of management options to respond to changing conditions on the grassland, minimize prairie dog encroachment onto non-Federal lands, reduce resource conflicts related to prairie dog occupancy and livestock grazing, ensure the continued conservation of at-risk species, and support ecological conditions that do not preclude reintroduction of the black-footed ferret. (USFS, n.d.-b)

6.2 GENERAL WILDLIFE

6.2.1 History, Custom, and Culture

Weston County has diverse habitats that host several wildlife species which are important to the recreational industry and economy of the region. Weston County's economically important game species include elk (*Cervus elaphus canadensis*), mountain lion (*Puma concolor*), mule deer (*Odocoileus hemionus*), pronghorn antelope (*Antilocapra americana*), white-tailed deer (*Odocoileus virginianus*), Bighorn Sheep (*Ovis canadensis*), Merriam's wild turkey (*Meleagris gallopavo merriami*), and greater sage grouse (*Centrocercus urophasianus*).

6.2.2 Resource Assessment and Legal Framework

Big Game

Weston County has a diversity of habitat that hosts several large wildlife species that are important to the recreational industry of the region. Virtually all of the county is habitat of some importance.



Elk

Rocky Mountain Elk (*Cervus elaphus canadensis*) WGFD delineated yearlong elk habitat (~393,596 acres) is found primarily in the Black Hills and Rochelle Hills of Weston County. See Figure 14 for mapped elk habitat designations. However, scattered subpopulations of elk occur transiently throughout the County, but these elk are not actively managed as distinct viable populations. Elk are primarily grazers, or bulk foragers, though they will occasionally browse on willows and aspen.

Mule Deer

Mule deer (*Odocoileus hemionus*) habitat is found throughout Weston County. A large portion of the County is designated as yearlong habitat, 980,136 acres. There are also large acreages of winter / yearlong (455,860 acres) habitat designated for mule deer, with smaller acres of spring/ summer/ fall habitat in the northeast corner and migration corridors on the eastern border of the County. Limited crucial winter and crucial winter/ yearlong habitat for this species has also been mapped in the County, but the lack of data means these habitats are likely underrepresented. See Figure 15 for mapped mule deer habitat designations. Mule deer are considered primarily browsers but will use forbs as well. Mule deer will consume grass early in the season while the nutritive value is high, but senescent grasses do not meet their dietary requirements.

Pronghorn

Pronghorn (*Antilocapra americana*) are common throughout most of Weston County. Most of the habitat is identified as yearlong (948,552 acres) with approximately 338,225 acres identified as winter / yearlong. See Figure 16 for mapped habitat designations. Pronghorn prefer the open sagebrush grasslands that the southern and western portions of the county provide. They are intermediate foragers, eating grasses, forbs, and shrubs, but rely almost exclusively on sagebrush in the winter.

White-Tailed deer

White-tailed deer (*Odocoileus virginianus*) prefer riparian habitats often associated with irrigated lands. Approximately 184,280 acres of the County provide winter yearlong habitat, and 58,756 acres provide spring/summer/fall habitat. Limited crucial winter and crucial winter/ yearlong habitat for this species has been mapped in the County, but the lack of data means these habitats are likely underrepresented. Whitetails, like mule deer, are browsers, supplementing their diet with forbs and occasionally grass. In agricultural areas they will feed more on field and hay crops. White-Tailed Deer and mule deer are sympatric wherever whitetails occur in the County. See Figure 17 for mapped habitat designations.

Bighorn Sheep

Rocky Mountain bighorn sheep (*Ovis canadensis*) are found on and near Elk Mountain along the eastern edge of the County. They are part of the South Dakota / Wyoming interstate bighorn sheep (BHS) herd. This herd was started north of Edgemont, SD in 2001 by South Dakota Game, Fish and Parks (SDGF&P) with sheep from their Spring Creek herd. The herd then moved and established themselves on Elk Mountain. Bighorn sheep are grazers that prefer rugged, open

mountain habitats, and they have generally thrived since being re-introduced to this part of the Black Hills. Several major wildfires in the area in the early 2000's significantly increased the quality and quantity of their preferred habitat. Both Wyoming and South Dakota issue hunting permits each year valid in their respective states for this iconic species. The biggest threat to this species persistence on the landscape is disease transmission from domestic sheep and goats.

Mountain Lion

Mountain lions (*Puma concolor*) are large predators that occupy most of Wyoming and occur in Weston County. They mainly prey on deer and other large ungulate species and serve as a popular game animal for hunting. Mountain lions are managed under the 2006 Mountain Lion Management Plan.

Game Birds

Wild Turkey

Merriam's wild turkey (*Meleagris gallopavo merriami*) is not native to Weston County but was introduced by the WGFD in the late 1950s. This subspecies of wild turkey is endemic to ponderosa pine forests of the Rocky Mountain West, and has thrived in similar habitats in the County since being introduced. The largest game bird in the state, wild turkeys are generalists foraging on a variety of grasses, forbs, hard & soft mass, as well as invertebrates depending on season and availability. These game birds are often associated with farm and ranch compounds in the winter, relying heavily on direct or indirect feeding from agricultural operations.

Greater Sage-Grouse

Greater sage-grouse (*Centrocercus urophasianus*) are found in Wyoming Big Sage-dominated habitat. Weston County is near the very east edge of this species distribution. While cycling about every ten-years, sage-grouse numbers have declined significantly in the County over the past 50 years. Loss of large, contiguous sagebrush stands and West Nile Virus threaten the species persistence in the County.

Efforts to conserve the species and its habitat date back to the 1950s. Over the past two decades, state wildlife agencies, federal agencies, and many others in the range of the species have been collaborating to conserve sage-grouse and its habitat. BLM and USFS have broad responsibilities to manage federal lands and resources for the public benefit. General habitat spans areas of isolated habitat with low use (USFS, 2016). Wyoming began sage-grouse management efforts in 2000, forming the Wyoming Sage-Grouse Working Group (WSGWG). In 2003 WGFD released the Wyoming Greater Sage-Grouse Conservation plan, and the 'core area' strategy for population and habitat management was released via executive order in 2008 (later updated in 2011, 2015, and 2019). Local working groups were established throughout the early 2000s to facilitate and implement conservation plans for the sage-grouse. There are eight local sage-grouse working groups in the state. The Northeast working group spans Weston County. Further information on the projects and meetings for the local working groups can be found [here](#)²⁹. (GFD, 2020; University of Wyoming Extension, 2016; WGFD, 2019)



In September 2015, the USFWS determined that the Greater sage-grouse did not warrant listing under the Endangered Species Act of 1973 (ESA). In its “not warranted” determination, the USFWS based its decision in part on regulatory certainty from the conservation commitments and management actions in the BLM and USFS Greater sage-grouse land use plan amendments (LUPAs) and revisions, as well as on other private, state, and federal conservation efforts. Since 2015 the BLM, in discussion with partners, recognized that several refinements and policy updates would help strengthen conservation efforts while providing increased economic opportunity to local communities.

In 2019, the Wyoming Governor’s Office issued Sage-Grouse Executive Order 2019-3. The Executive Order is the State of Wyoming’s primary regulatory mechanism to protect the Greater sage-grouse and its habitat. The order outlines procedures that seek to minimize disturbance and incentivize development outside of designated core population areas. The 2019 Executive order can be found [here](#)³⁰.

The BLM issued its Record of Decision for the Wyoming Greater Sage-Grouse Approved Resource Management Plan Amendment (ARMPA) in March 2019 to update Greater sage-grouse management. This document partially supersedes the 2015 Final Bighorn Resource Management Plan revisions. The 2019 Plan Amendment is currently being litigated in the United States District Court for the District of Idaho and is blocked from implementation under an injunction issued by that court. Revisions to the 2015 and 2019 sage-grouse plans are currently under scoping and anticipated to have revisions done in 2022.

The Forest Service developed standards and guidelines for sage grouse conservation in 2015. After two years of monitoring, amendments were developed; the new EIS spans Colorado, Idaho, Nevada, Utah, and Wyoming. The FEIS was released in the fall of 2019. Monitoring reports on sage-grouse populations and habitat within USFS Region 4 are released annually. (USFS, 2020)

Sage-grouse habitat or range spans most of Weston County, and there are 568,082 acres of sage-grouse core area designated within Weston County. The remainder of the County that is outside sage grouse core habitat, and a few areas within core habitat, currently harbor isolated “island” populations of sage grouse that are trending towards extirpation. It is projected that Weston County is likely to lose most of the sage-grouse populations outside of the core areas in the near future unless long-term population trends change (personal communication with J. Sandrini, WGFD). Refer to Figure 18 for a map of sage-grouse habitat and core area within the County.

State of Wyoming Migration Corridor Protections

In February 2020, Wyoming released the Wyoming Mule Deer and Antelope Migration Corridor Protection Executive Order 2020-1, outlining the State’s strategy for managing migration corridors and habitats. The order designated three separate mule deer corridors (Sublette Mule Deer, Baggs Mule Deer, and Platte Valley Mule Deer) and a process by which to designate additional corridors in the future. The Executive Order addresses surface disturbance, state-permitting, and recreation activities within designated mule deer and antelope migration corridors, as well as the cooperation between WYDOT and WGFD (and other related state



agencies) to minimize roadway collisions and facilitate big game movement across roadways. (State of Wyoming, 2020)

Executive Order 2020-1 promotes Counties to revise or update land use plans to be consistent with the state-designated migration corridor protections. There are currently no migration corridors designated within Weston County. (WGFD, 2020b)

Black-tailed Prairie Dog

There can be conflict between private citizen, state and federal management of the black-tailed prairie dogs (*Cynomys ludovicianus*) in Weston County. The State of Wyoming considers black-tailed prairie dogs a pest, however, both the BLM and USFS consider conservation of prairie dogs in certain areas a priority. They are also identified by WGFD as a mammalian species of greatest conservation need.

Prairie dogs can consume up to two pounds of forage per month, thus without proper population management they can reduce the forage available to other wildlife and livestock. Prairie dogs are carriers of sylvatic plague, an infectious disease caused by the bacterium that causes bubonic and pneumonic plague in humans. Under favorable conditions, prairie dog towns can become dense and naturally expand into areas that directly compete with agriculture, and their burrowing can be disruptive to irrigation and dangerous to livestock. Prairie dogs were initially identified as a nuisance rodent in Wyoming by the 1886 Territorial Legislature. In 1973, the Wyoming legislature identified the prairie dog as a designated pest under the current weed and pest law. The designation allows the county Weed and Pest Control Districts to work with local landowners in developing management programs that include cost-share agreements for prairie dog control. (Wyoming Weed and Pest Council, 2019)

Conversely, the USFS classifies the black-tailed prairie dog as a sensitive species in the Forest Service, Rocky Mountain Region, and as a management indicator species on the Thunder Basin National Grassland. Thus, the USFS has had a history of conserving prairie dog habitat.

Prairie dogs present a number of ecological, economic, and multiple use management issues. That needs to be considered whenever making management decisions affecting the species.

Prairie dogs particularly affect agriculture. Perhaps the greatest harm prairie dogs cause is the destruction of local grassland vegetation that can significantly reduce available forage for livestock and wildlife. Recent monitoring performed on the Thunder Basin National Grassland has shown that prairie dogs are preferencing grass/forb-dominated communities including western wheatgrass and blue gramma-dominated sites and getting away from shrub-dominated communities. This puts them in direct competition with livestock grazing in the same areas. In an arid region such as the Thunder Basin, it proves very difficult to raise livestock. Annual precipitation in the area as a whole is 10-14 inches. See Thunder Basin National Grassland Land and Resource Management Plan (2001) at 2-2. The difficulties are magnified when the forage that these operations have relied upon for over one hundred years suddenly becomes scarce.

An AUM is the amount of forage that one cow and calf ingest per month during the summer. In the Thunder Basin, a cow and calf consume 780 pounds of forage per month. Denise Langley, presentation before Wyoming Legislature Joint Agriculture, State and Public Lands and Water Resources Interim Committee (Sept. 14, 2015). It has been calculated that a total of 5.2 acres of prairie dog colonies is equivalent to one AUM. Using the information from the partial land survey referenced above, the total AUMs lost in that portion of the Thunder Basin due to the prairie dog occupation is 14,589 AUMs. The loss of AUMs due to prairie dog infestations has already damaged landowners in the region. Several landowners in the region have drastically reduced their livestock herd because of the loss of forage.

When determining the value an AUM means to a rancher, one cannot look purely at the AUMs lost, but also must look at how those lost AUMs will affect the ranching operation as a whole and take away from other areas. When considering the change in total ranch production resulting from the change in federal grazing, which ultimately affects the optimal use of the rest of the forage resources.

The cost of prairie dog expansion in the Thunder Basin National Grassland is not limited to the loss of AUMs in the region. There is also a continual and unsustainable cost to control prairie dog populations on private and state lands due to the prairie dog encroachment from neighboring federal lands.

Prairie dog burrows also damage local infrastructure and can cause hazards to both humans and livestock relying on those improvements. Prairie dogs sometimes burrow around fence posts causing damage to fence lines. Burrows have also expanded to dirt roads, causing potholes for vehicle traffic. Other infrastructure damage is caused to earthen dams and reservoirs for water storage, irrigation projects, and wells, by the prairie dogs burrowing into and around these structures.

A black-tail prairie dog colony can create up to 50 burrow entrances per acre. Most burrow entrances lead to a tunnel that is 3 to 6 feet deep and about 15 feet long. Prairie dogs construct crater- and dome-shaped mounds up to 2 feet high and 10 feet in diameter. Due to the large number of burrows per acre and the size of the holes, there have been numerous reports of livestock stepping into a hole and breaking limbs.

Finally, prairie dogs can impact other sensitive species in the area including the greater sage grouse and mountain plover through habitat destruction and alteration caused by prairie dog expansion. The boom-and-bust cycles that occur when prairie dogs are unmanaged can impact mountain plover populations, as mountain plover habitat is affected by both extremely high prairie dog populations and extremely low populations (TBGPEA, 2020).

The expansion of prairie dog colonies in the Thunder Basin National Grassland has negatively impacted sage-grouse in the area. One of the main reasons that the greater sage grouse was considered for listing by the U.S. Fish and Wildlife Service was because of habitat destruction and fragmentation of greater sage grouse habitat areas. 79 Fed. Reg. 72464 (proposed December 5, 2014). Greater sage grouse rely primarily on a sage-steppe ecosystem with high amounts of



sagebrush in the area and a higher grass height to provide greater sage-grouse with nesting cover to increase the likelihood of successful nests. Fish and Wildlife Service, Greater Sage Grouse Record of Decision for Northwest Colorado and Wyoming 30 (September, 2015). Further, the percentage of bare ground typically increases with long-term prairie dog occupancy because prairie dogs specifically trim forage to a very low stubble in order to scan the area for predators, in direct contradiction to what greater sage grouse need, which is cover to hide their nests from predators. Prairie dogs actively remove sagebrush until entire stands have been destroyed. Removal of sagebrush tends to create a more xeric site, making it extremely difficult for sagebrush to reestablish. Thus, sage grouse habitat and prairie dog habitat are in direct conflict with each other. This is demonstrated by the fact that the Forest Service submitted a request to the Sage Grouse Working Group to remove 6,904 acres from the proposed greater sage-grouse core habitat area because there was no longer suitable habitat in the area. See Tim Byer, Thunder Basin NG Core Area Adjustment Recommendations (2015); see also Core Area Boundary Revisions – Northeast LWG Mtg (March 16, 2015).

In December of 2020, the Medicine Bow-Routt National Forests and Thunder Basin National Grassland completed an amendment to the Thunder Basin National Grassland Land and Resource Management Plan that focused on prairie dog management. The intent behind the amendment is to provide a wider array of management options to respond to changing conditions on the grassland, minimize prairie dog encroachment onto non-Federal lands, reduce resource conflicts related to prairie dog occupancy and livestock grazing, ensure the continued conservation of at-risk species, and support ecological conditions that do not preclude reintroduction of the black-footed ferret. (USFS, n.d.-c)

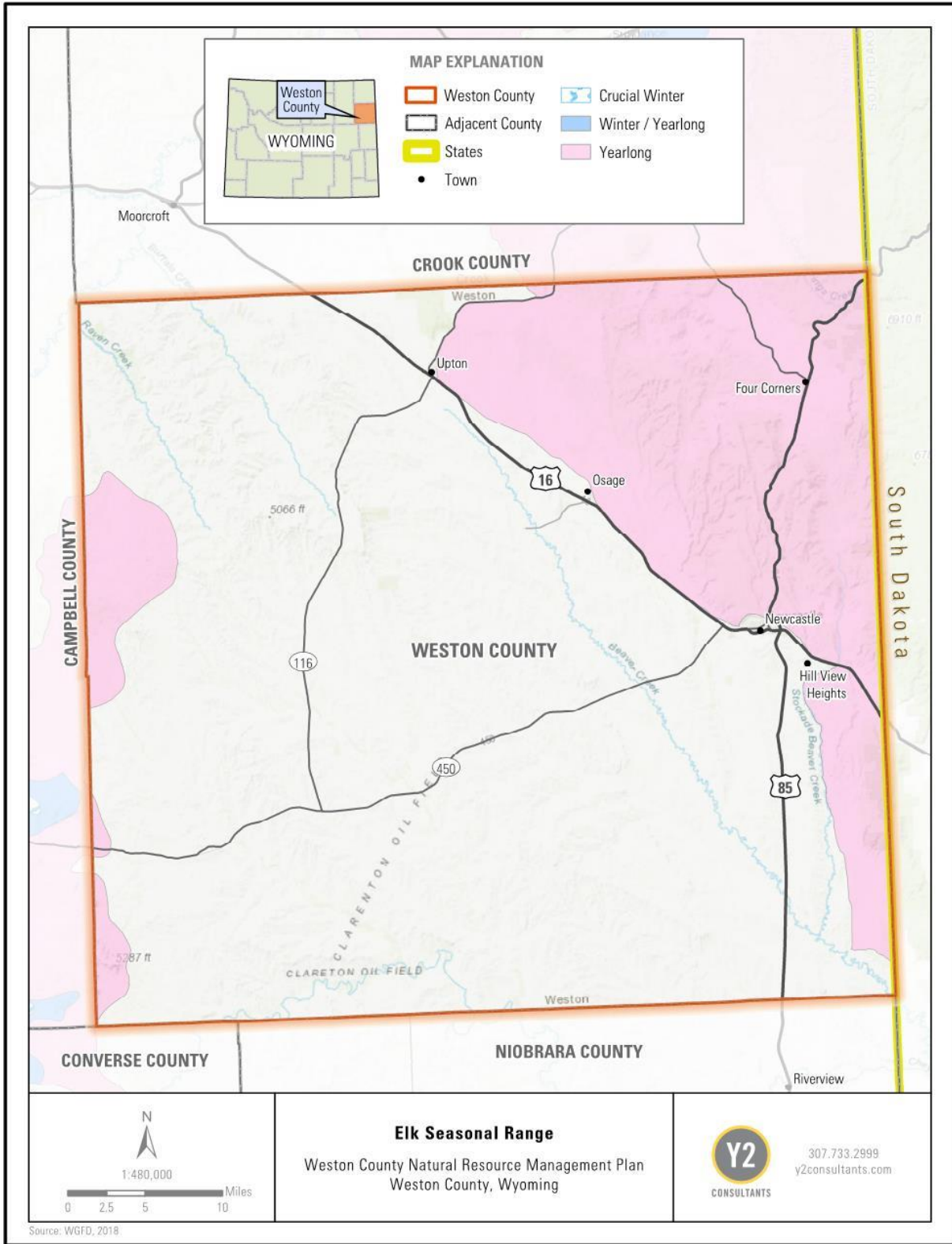


Figure 14. Elk habitat mapped within Weston County.

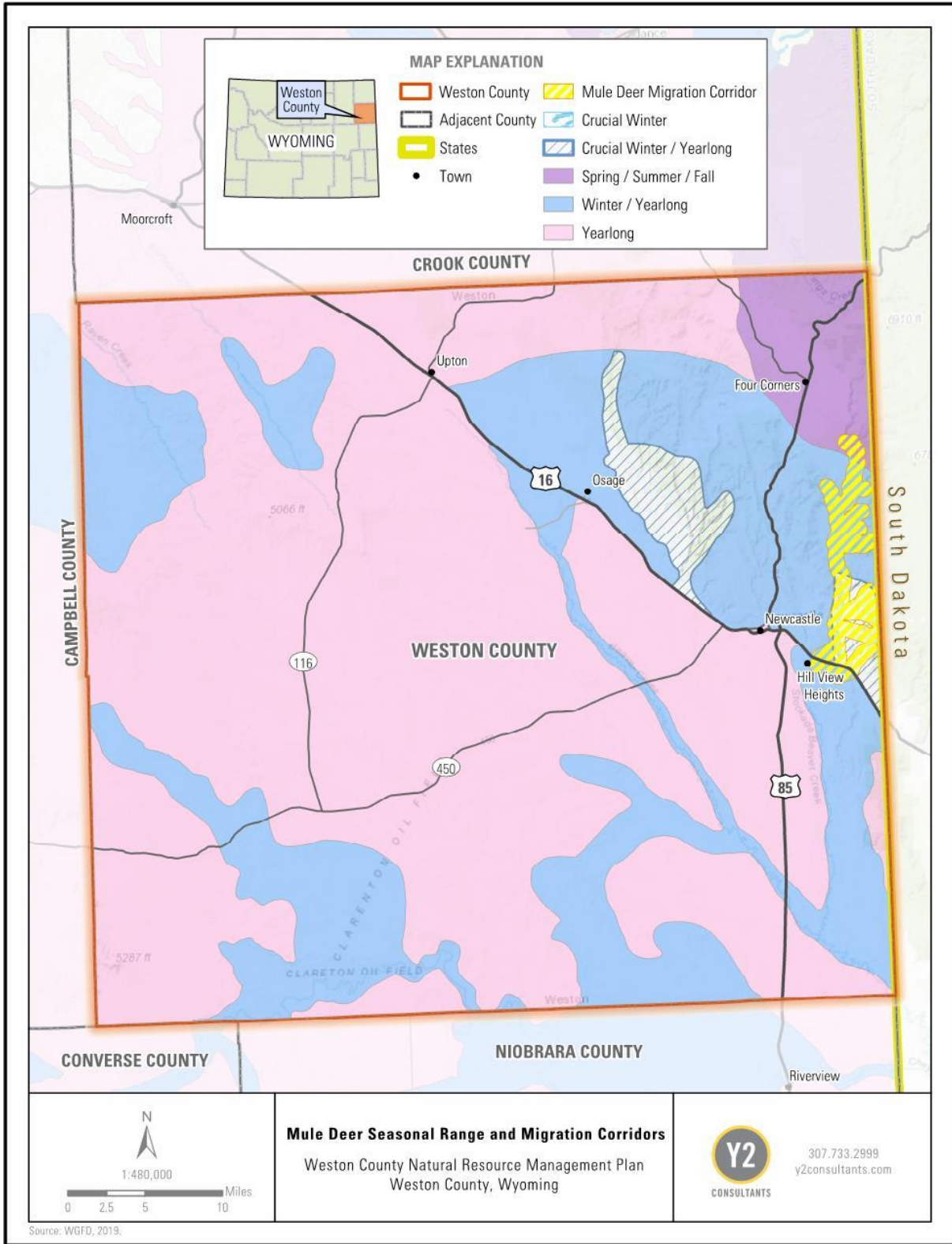


Figure 15. Mule deer habitat mapped within Weston County.

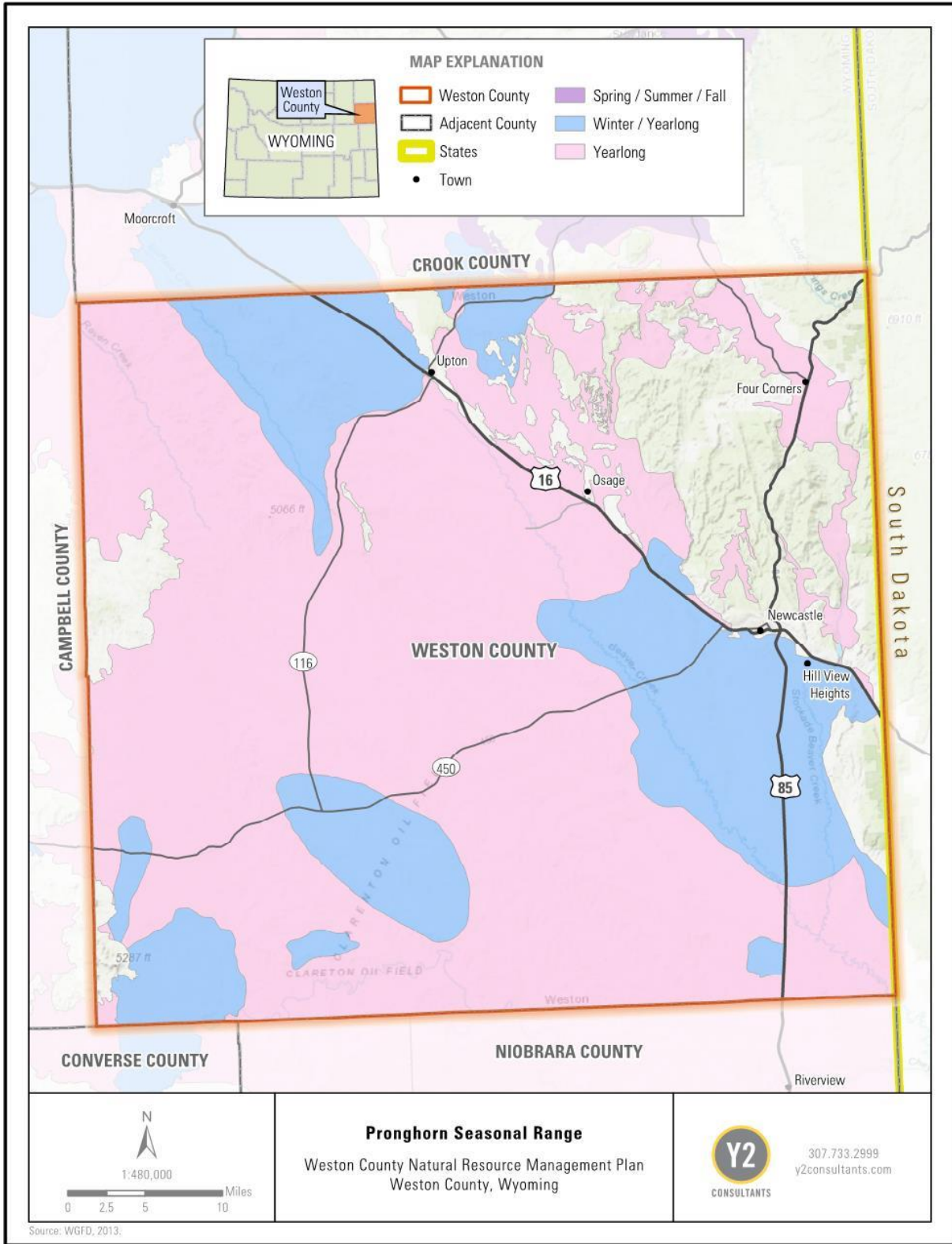


Figure 16. Pronghorn habitat mapped within Weston County.

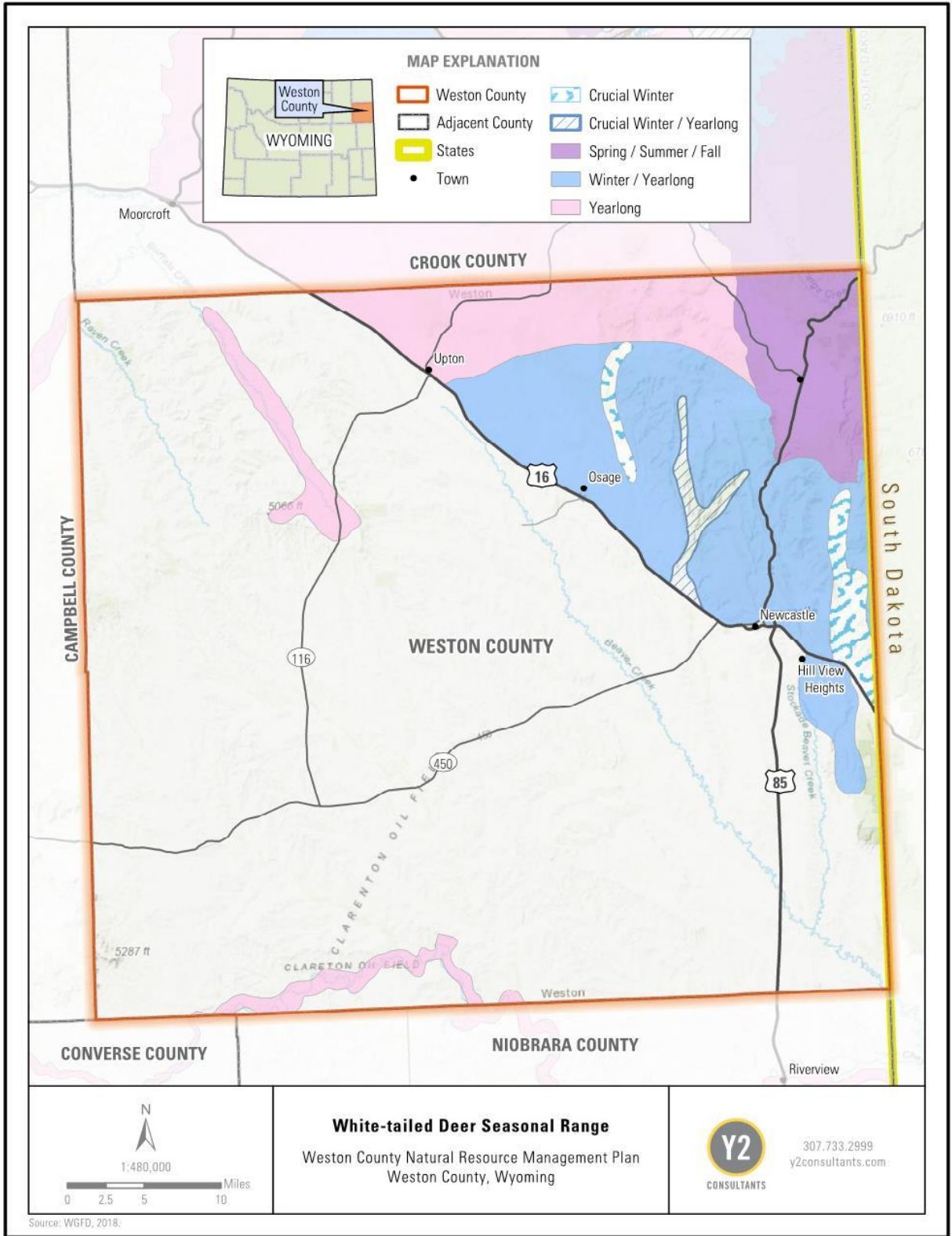


Figure 17. White-tailed deer habitat mapped within Weston County.

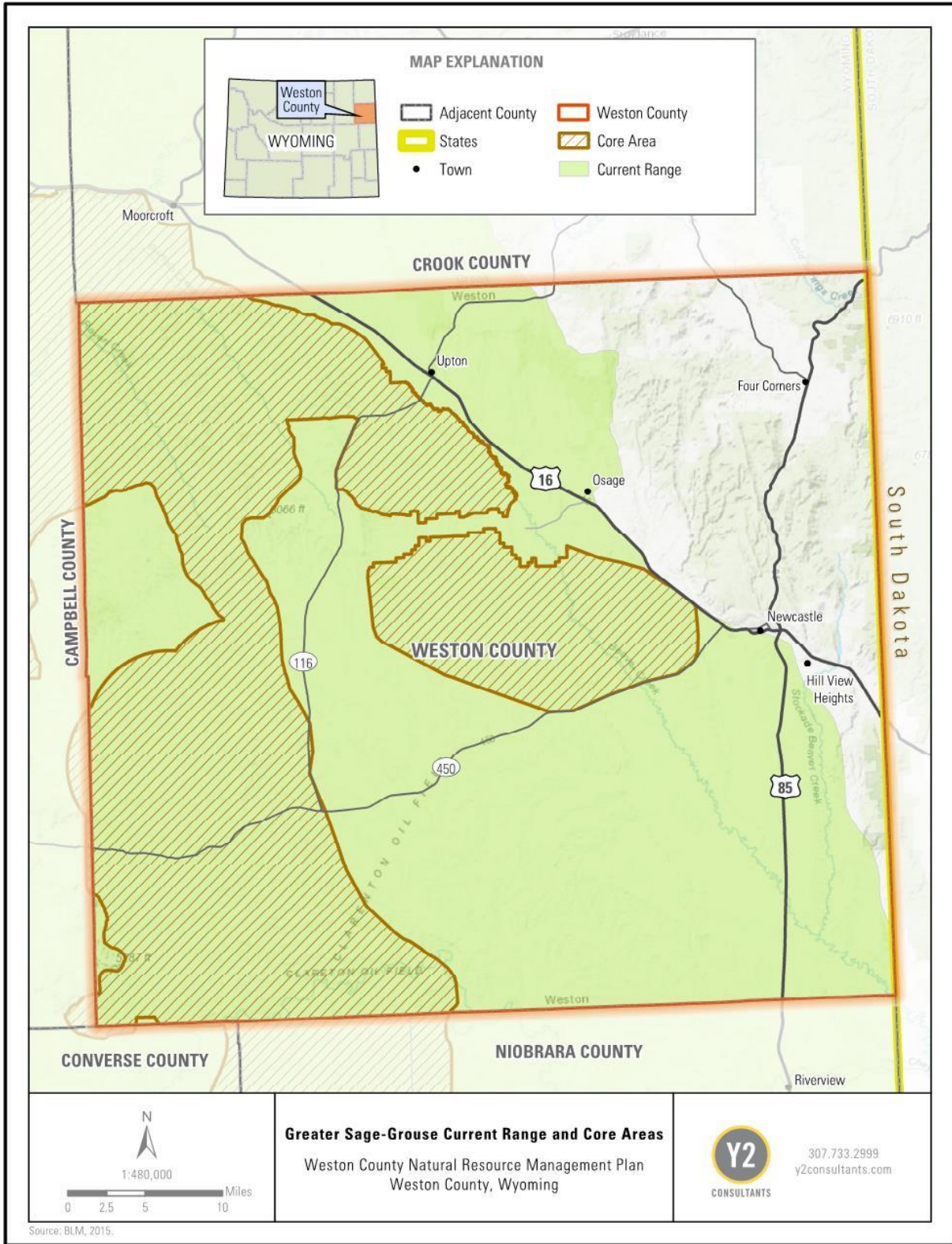


Figure 18. Greater sage-grouse core areas mapped within Weston County.

6.2.3 Wildlife Resource Management Objectives:

- A. Wildlife is managed toward objectives using credible data and effective management plans.
- B. Wildlife management objectives are developed in coordination with Weston County and local stakeholders.
- C. Wildlife species and habitat are not managed above their legal designation (i.e. non endangered species are not managed as endangered species).
- D. Hunting, fishing, and outdoor recreation involving wildlife is a protected multiple use.
- E. Habitats should be maintained and improved to sustain viable and harvestable wildlife populations along with a diversity of non-game species, and for range and agricultural interests, further ensuring that wildlife management and habitat objectives reduce and/or avoid conflicts with other multiple uses.

6.2.4 Wildlife Priority Statements:

1. Weston County supports Wyoming State management of wildlife.
2. Federal agencies should support wildlife management objectives and numbers based on what the range conditions and habitat can support and should remain dynamic as conditions change.
3. Federal agencies should support reasonable and science-based protection and restoration of critical winter range habitat, while respecting private property and considering the economic effects.
4. Federal agencies should research and provide funding opportunities and compensation to landowners for resource enhancement that benefits wildlife.
5. Weston County requests the inclusion of at least one representative from the County Commissioners as a cooperating agency for any decision-making or management decision which may affect wildlife resources in the County.
6. Federal agencies should support mitigation measures when conflicts between wildlife and livestock occur. If reductions in grazing are required, allocations to wildlife and livestock should be reduced proportionately.
7. Weston County should be notified and allowed to participate as a cooperating agency when considering any closures on traditional winter range that might affect multiple use.
8. Federal agencies should coordinate with Weston County and the Wyoming Game and Fish Department to ensure that all affected landowners, lessees, and permittees are consulted when developing specific Wildlife Management Plans for the County.
9. Federal agencies should assist in funding cooperative studies with willing private landowners regarding wildlife damage to rangeland resources and related concerns.
10. Weston County encourages cooperation between local, regional, state, and federal governments and private landowners in the management of big game and non-game wildlife species.
11. Weston County opposes the conversion of livestock animal unit months (AUMs) to wildlife AUMs.
12. Federal agencies should coordinate with Weston County to prioritize managing prairie dogs in order to preserve sagebrush habitat before restricting other uses as a means to preserve sagebrush habitat.

13. The management of non-ESA listed species (e.g., species of concern, species of special concern, or any other non-ESA designation) as though they are protected by the rules of the ESA is not supported by Weston County.
14. Weston County supports the State of Wyoming’s Sage-Grouse Conservation Strategy.
15. Federal agencies should provide timely responses when requested by Weston County for resource concerns, management plans, and other sensitive, candidate, or listed species.
16. Weston County shall be consulted and coordinated with in the continued management of Greater sage-grouse, and any other species for which a single-species management plan is developed.
17. Peer-reviewed science, and/or those data meeting the ‘credible data’ agency specifications, shall be used in the management of disease spread between native and domestic species, with consultation and coordination of local government.
18. Wildlife should be consistently managed according to the State of Wyoming policies and standards, including designated pests on federal lands.
19. Federal agencies should recognize and support the State of Wyoming designation of black-tailed prairie dogs as being classified as an agricultural pest [Wyoming Statute 11-5-102(a)(xii) and should employ the appropriate management prescriptions to be consistent with this designation.
20. Weston County supports research and management of mule deer, white-tailed deer, and elk for reduction of chronic wasting disease, vehicle collisions, and migration corridors.
21. When managing wildlife on federal lands, federal agencies should attempt to protect neighboring private and state lands from depredation and damage due to wildlife encroachment from federal lands.
22. Migration corridors as subject to Executive Order 2020-1 are not supported in Weston County without the express support and/or approval of the County.

6.3 THREATENED AND ENDANGERED SPECIES

6.3.1 History, Custom, and Culture

Endangered Species Act

USFWS administers the Endangered Species Preservation Act, passed by Congress in 1966, which provided limited protection for species listed as endangered. The Departments of the Interior, Agriculture, and Defense were to seek to protect listed species and to the extent possible, preserve the habitats of listed species. In 1969, Congress amended the Act to provide additional protection for species at risk of “worldwide extinction” by prohibiting their import and sale in the United States. This amendment called for an international meeting to discuss the conservation of endangered species and changed the title of the act to the Endangered Species Conservation Act. In 1973, 80 nations met to sign the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Commission of the European Communities, 1986). As a follow-up, Congress passed the ESA of 1973. The ESA:

- Defined “endangered” and “threatened” species;
- Made plants and all invertebrates eligible for protection;



- Applied “take” prohibitions to all endangered animal species, and allowed the prohibitions to apply to threatened animal species by special regulation; such “take” prohibitions also include “adverse modification” of critical habitat;
- Required federal agencies to use their authorities to conserve listed species and consult on “may affect” actions;
- Prohibited federal agencies from authorizing, funding, or carrying out any action that would jeopardize a listed species or destroy or adversely modify its “critical habitat”;
- Made matching funds available to States with cooperative agreements;
- Provided funding authority for land acquisition for foreign species; and
- Implemented protection in the United States. (USFWS, 1973)

The ESA was amended in 1976, 1978, 1979, 1982, 1988, and 2003. Funds are annually appropriated for the implementation of the ESA and have been since 1993.

6.3.2 Resource Assessment and Legal Framework

Candidate species are “any species being considered for listing as an endangered or threatened species, but not yet the subject of a proposed rule” (50 C.F.R. § 424.02(b)).

USFWS is responsible for the identification of critical habitat. Critical habitat is a specific geographic area that contains features essential to the conservation and recovery of a listed species and may require special management or protection. Critical habitat can only include areas that qualify as “habitat.” *Weyerhaeuser Co. v. US Fish and Wildlife Service*, 139 S. Ct. 361, 368 (2018). Thus, in order to be designated as critical habitat, the area must first **be** habitat for the species. *Id.* The use of the word “be” indicates a present tense that both occupied and unoccupied critical habitat must exist in its current state, and not in state that requires some undefined and unidentified “degree of restoration

The ESA does define “habitat.” *Id.* However, the USFWS regulations define “habitat,” for the purpose of designating critical habitat only, as “the abiotic and biotic setting that currently or periodically contains the resources and conditions necessary to support one or more life processes of a species.” 50 C.F.R. § 424.02. Thus, only those settings that currently contain the resources may be designated as critical habitat, and those settings that would require additional modification could not qualify as habitat. *See Id.*; 85 FR 81411. Thus, under the USFWS’s regulatory definition, “habitat” may only exist under the ESA when a listed species could currently survive within the habitat as of the day of the listing. *Id.* Land not currently occupied by an endangered species can only be designated as critical habitat when the Secretary of the Fish and Wildlife Service determines that the land is “essential for the conservation of the species.” 16 USC 1532(5)(A). Land not currently occupied by an endangered species can only be designated as critical habitat when the Secretary of the Fish and Wildlife Service determines that the land is “essential for the conservation of the species.” 16 USC 1532(5)(A). “Essential for the conservation of the species” is also not defined in either the ESA or USFWS regulations. Although economic impacts are not considered during the species listing process, the economic impacts of a critical habitat designation must be analyzed in the designation process. The USFWS may choose to exclude any area from critical habitat if the agency determines that the benefits of such exclusion

outweigh the benefits of designating the area, unless such exclusion would result in the extinction of the species. 16 U.S.C § 1533(b)(2). A decision not to exclude critical habitat for economic reasons is reviewable by courts under an abuse of discretion standard. *Weyerhaeuser*, 139 S. Ct. at 370.

In response to the *Weyerhaeuser* Court's decision allowing decisions not to exclude critical habitat to be reviewed under the Administrative Procedure Act, the Fish and Wildlife Service promulgated rules regarding the exclusion of critical habitat. There are five major items developed in those regulations.

1. The rule gives local governments expert status when discussing the economic and other nonbiological local impacts of critical habitat designation within their jurisdiction.
2. The rule also allows federal land to be excluded from critical habitat designation.
3. The rule sets a meaningful standard as to when critical habitat should be excluded.
4. The rule encourages the USFWS to exclude critical habitat for more than just economic consideration, including whether the critical habitat may harm community development and;
5. The rule allows lands that have proven conservation agreements to be excluded from critical habitat. These agreements can even be agreements created by local governments or the state and not just the USFWS. 50 C.F.R. § 17.90.

The ESA created several additional planning tools, including:

- Recovery plans (population and viability goals; define when delisting may be possible; what is required for delisting to begin).
- Reintroduction plans.
- Habitat conservation plans (define when "take" may occur, defines mitigation options).
- Conservation plans or agreements.
- Candidate Conservation Agreements (CCA) and CCAs with Assurances (CCAA) (private landowner arrangements for the protection of Candidate species that provides the landowner with protection if the species is listed) and Species of Concern. (USFWS, 2018b)

Section 6

Section 6, also known as Cooperation with the States, recognizes the key role that states play in conserving our native wildlife and plants. Section 6 provides funding to States and Territories for species and habitat conservation actions on non-federal lands. Through cooperative agreements, States can receive funding from the USFWS for a variety of conservation actions that contribute toward listed species recovery. Section 6 funds are awarded through four programs:

1. Conservation Grants,
2. Habitat Conservation Planning Assistance Grants,
3. Habitat Conservation Plan Land Acquisition Grants, and
4. Recovery Land Acquisition Grants (USFWS, n.d.-a).

10(j) Rule

Section 10(j) of the ESA allows reintroduced experimental populations of endangered species to be managed as if they were only threatened. These reintroduced populations are nonessential and experimental which increases USFWS management flexibility and indicates that the loss of the experimental population will not threaten the continued existence of the species. Most of the added flexibility is applied to circumventing Section 9 of the ESA and its prohibitions against “taking” endangered species (Cribb, 1998). In 2015 the USFWS in conjunction with the Wyoming Game and Fish Department developed a statewide Section 10(j) designation concerning the introduction of black footed ferret in the state. The County supports the 2015 Section 10(j) management plan.

Candidate, Threatened, and Endangered Species in Weston County

Currently listed threatened and endangered species can be found on the USFWS [Environmental Conservation Online System](#)³¹ (ECOS) (U.S. Fish and Wildlife Service, n.d.). At the writing of this report there are two endangered, threatened, candidate, and proposed species and habitats that have been identified for Weston County. Those species are:

- Northern Long-Eared bat (*Myotis septentrionalis*)- Threatened
- Ute ladies' tresses (*Spiranthes diluvialis*)- Threatened

Bald and Golden Eagle Protection Act

The Bald and Golden Eagle Protection Act (BGEPA) (16. U.S. C 668-668c) was enacted in 1940, with several amendments since, and prohibits anyone from “taking” bald or golden eagles, including their parts, nests, or eggs without a permit issued by the Secretary of the Interior. (USFWS, 2018b)

Migratory Bird Treaty Act

The Migratory Bird Treaty Act (MBTA) is a federal law that carries out the United States’ commitment to four international conventions with Canada, Japan, Mexico, and Russia. Those conventions protect birds that migrate across international borders. The MBTA prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests except as authorized under a valid permit (50 CFR 21.11). The MBTA also authorizes and directs the Secretary of Interior to determine if, and by what means, the take of migratory birds should be allowed and to adopt suitable regulations permitting and governing take (i.e. hunting seasons for ducks and geese). (USFWS, 2020)

Sensitive/Special Status Species

Bureau of Land Management

Special Status Species are designated by the BLM and include species that are federally listed or proposed for listing as threatened or endangered, candidate species, state protected and sensitive species, and other special- status species including federal and state “species of concern”. The BLM designates special-status species where there is credible scientific evidence to document a threat to the continued viability of a species population. Moreover, Special Status Species are typically designated as sensitive by a BLM state director in cooperation with state



agencies that are responsible for managing the species. State natural heritage programs are typically involved as well, where applicable. Species are usually those that fall under the following criteria:

- Could become endangered in or extirpated from a state or within a significant portion of its distribution;
- Are under status review by the USFWS;
- Are undergoing significant current or predicted downward trends in habitat capability that would reduce a species' existing distribution;
- At federal listed, proposed, candidate, or state-listed status may become necessary;
- Typically have small and widely dispersed populations;
- Inhabit ecological refugia or other specialized or unique habitats; or
- Are state-listed but which may be better conserved through application of the BLM Sensitive Species Status. (Bureau of Land Management, 2015)

The Wyoming State BLM Office identifies 82 species as sensitive. These species can be found [here](#)³².

U.S. Forest Service

Previously the 1982 planning rule direction and used the terms Forester's Sensitive Species (RFSS) and Management Indicator Species (MIS), those terms are no longer applicable in the 2012 planning rule direction.

Regulations in 36 C.F.R. § 219.19 and § 219.20 calls for the selection, evaluation, and monitoring of management indicator species and their habitat. Management indicator species may be "plant or animal species and are selected because their population changes are believed to indicate the effects of management activities on other species of selected major biological communities or on water quality" (US Forest Service, 1982). These regulations do not imply that the population dynamics of management indicator species directly represent the population dynamics of other species. Criteria that direct management indicator species consideration include:

- Species is indigenous.
- Species is a year-long resident of the vicinity (non-migratory), or population trends of the species in the local or regional vicinity are closely tied to habitat conditions resulting from land uses on National Forest System (NFS) lands in the same area.
- Species is considered a keystone species or habitat specialist.
- Species is sensitive to management activities on NFS lands in the local or regional vicinity.
- Population trends of the species are assumed to be related to changes in habitat composition, structure, ecological processes, and/or human activities.
- Species is appropriate for the scale that best represents the key issues or management concerns.
- Biologically and economically feasible to monitor populations and habitat of the species at similar spatial scales.

- Populations are of sufficient size or density to be reasonably detected and monitored. Accepted survey protocols exist. Analysis and interpretation of inventory data should produce meaningful and reliable trend information. Species that require high investment for low returns or suspect results should be avoided.
- Species where the scientific literature supports the assumed limiting factors and habitat associations. (USDA Forest Service, 2001)

The Rocky Mountain Region of the USFS has 173 identified sensitive species. These species can be found [here](#)³³. The Black Hills National Forest (BHNF) Land and Resource Management Plan reports the sensitive species list identified in Region 2: Rocky Mountain Region list described below. Threatened and Endangered species within the BHNF is identified and updated by the USFWS. Refer to the current ECOS list on the USFWS [page](#)³⁴. (USDA Forest Service, 2006; USFWS, n.d.-c)

Thunder Basin National Grassland

The Thunder Basin National Grassland (TBNG) comprises a large part of central and western Weston County. In 2020, the TBNG released the land use plan amendment on prairie dog management. The Forest Service currently classifies the black-tailed prairie dog as a Species of Conservation Concern which is in direct conflict with the Wyoming Department of Agriculture's designation of an agricultural pest. Prairie dog populations are cyclic and most problems with them occur when numbers increase substantially. Diseases such as the plague can reduce populations significantly and the cycle continues over time. When prairie dog colonies grow significantly they have the ability to cause significant resource damage.

In 2017, the Thunder Basing Grassland Prairie Ecosystem Association (TBGPEA) finalized a conservation agreement (CCAA/CCA/CA) spanning 13.2 million acres of sagebrush and shortgrass prairie. The agreement spans five counties, including Weston County, promoting landscape management and proactive habitat conservation with economic growth in mind. The species included in the agreement are the sagebrush sparrow, Brewer's sparrow, sage thrasher, black-tailed prairie dog, mountain plover, burrowing owl, ferruginous hawk, and greater sage-grouse. For additional information on TBGPEA's work refer to their [website](#)³⁵. (TBGPEA, 2020; USFWS, 2019)

6.3.3 Threatened/Endangered/Sensitive Species Resource Management Objectives:

- A. Threatened and endangered species are managed using credible data and in conjunction with multiple use mandates in coordination with Weston County and other stakeholders.
- B. Weston County participates in local, state, and federal rulemaking and planning regarding the designation and management of any species designated in any category or classification for protection or consideration of protection, and/or critical habitat designations under the Endangered Species Act in and adjacent to Weston County.

6.3.4 Threatened/Endangered/Sensitive Species Priority Statements:

1. Federal agencies should delist a species once population goals set out in the original recovery plans are achieved, in accordance with the Endangered Species Act.
2. For any species on the Endangered Species Act list, Weston County should be apprised by the appropriate agencies, at minimum, annually of the progress of population recovery objectives for each species.
3. Weston County and other local governments should be notified by federal agencies of all decisions and proposed actions which affect the County regarding sensitive, threatened, or endangered species; critical habitat designation and exclusion; the reintroduction or introduction of listed species; habitat conservation plans; conservation agreements or plans; and candidate conservation agreements and should be given the earliest opportunity to participate as a cooperating agency.
4. Federal agencies should comply with the applicable state and federal statutes, including preparation of an environmental impact statement and performing an exclusion analysis when critical habitat is designated.
5. As stated in *Weyerhaeuser Co. v. US Fish and Wildlife Service*, 139 S.Ct. 361 (2018) in order to be designated as critical habitat, the area must first **be** habitat for the species. The use of the word “be” indicates a present tense that both occupied and unoccupied critical habitat must exist in its current state, and not in state that requires some undefined and unidentified “degree of restoration”.
6. Federal agencies should conduct a robust and full local economic analysis of all proposed critical habitat designations in Weston County and should the economic analysis indicate economic impacts to Weston County the U.S. Fish and Wildlife Service should immediately exclude habitat from critical habitat designation. Economic impacts include, but are not limited to, the economy of a particular area, productivity, jobs and any opportunity costs or losses arising from the proposed critical habitat designation or species management plan (including those anticipated from reasonable and prudent alternatives that may be identified through ESA section 7 consultation) as well as possible benefits and transfers (such as increased outdoor recreation and ecosystem services).
7. With regard to proposed critical habitat designations, the US Fish and Wildlife Service should include an analysis of all “other relevant impacts” (16 U.S.C. § 1533(b)(2)), including, but are not limited to, impacts to Tribes, States and local governments, public health and safety, community interests, the environment (such as increased risk of wildfire or pest and invasive species management), Federal land uses and conservation plans, agreements and partnerships.
8. Federal agencies should create a complete and detailed “extinction analysis” for all particular areas of proposed critical habitat proposed for exclusion by County or Districts.
9. Federal agencies should not “automatically” include federal lands as critical habitat without completion of scientifically based exclusion analysis.
10. Federal agencies should recognize Weston County’s expertise and first-hand knowledge regarding economic and other relevant impacts when analyzing the benefits of inclusion versus the benefits of excluding a particular area from proposed critical habitat.
11. Upon conducting an exclusion analysis, if the agency finds that the economic, relevant and/or non-biological impacts of designating certain areas as critical habitat outweigh the

biological benefit to the species, the U.S. Fish and Wildlife Service shall immediately exclude such habitat from critical habitat designation, unless it is determined that failure to designate that area as critical habitat will result in the extinction of the species concerned.

12. Weston County opposes the introduction or transplant of threatened and endangered species within the boundaries of the County, unless the County consents, the species is introduced as a 10(j) rule experimental nonessential population, and it is done pursuant to specific terms and conditions that avoid disrupting existing land uses and none shall be introduced without NEPA compliance and public input.
13. Should any introductions or re-introductions of threatened or endangered species occur in Weston County or on lands adjacent to the County the population should be designated as a nonessential experimental population.
14. Weston County recommends that proponents of protection, recovery activities, and other threatened and endangered and sensitive species programs finance the activities, including public involvement and compensation to the affected landowners.
15. Federal agencies should not manage special status species as if they were listed under the Endangered Species Act.
16. Federal agencies should work with Weston County to explore alternatives to listing, which may include conservation plans and related conservation agreements with local, state, and federal agencies to address possible threats to species and their habitat and avoid official listing under the Endangered Species Act.
17. Weston County supports the use of candidate conservation agreements with assurances for private land, and candidate conservation agreements for federal lands as a mechanism to provide habitat for candidate species while allowing current land uses to continue.
18. Candidate conservation agreements with assurances currently in place should be taken into consideration when agencies are making critical habitat determinations or making decisions regarding Endangered Species Act listed species or other special status species.
19. Recovery efforts for threatened and endangered species should only be supported, if such efforts consider local interests and impacts, and evaluate, mitigate, and support Weston County's custom and culture, economic viability, and community stability.
20. Any black-footed ferret management and introductions should be coordinated with local governments and accomplished pursuant to the black-footed ferret introduction plan developed for the Thunder Basin National Grassland.
21. Federal agencies should conduct a robust and full local economic analysis of all proposed critical habitat designations in Weston County.
22. Should an economic analysis on critical habitat indicate economic harm to Weston County and its citizens, the U.S. Fish and Wildlife Service should immediately exclude such habitat from critical habitat designation so long as such exclusion would not cause the extinction of the listed species.
23. Federal agencies should support the development of recovery plans within 18 months of listing that include clear objectives to reach for delisting to occur; for species already listed support the development of a recovery plan within 18 months of this document.
24. Single-species management should be avoided in all federal planning efforts.

25. The data used in any listing decision shall meet the minimum credible data standards defined in this Plan and must be quantifiable data.
26. Federal agencies should control predators negatively impacting special status, candidate, or listed species before restricting other multiple uses that could be conflicting.
27. Federal agencies should support proven and efficient control of zoonotic and vector-borne diseases negatively impacting special status, candidate, or listed species before restricting other multiple uses that could be conflicting.
28. Management actions which increase the population of any federally listed species in Weston County without an approved recovery plan is not supported.
29. Federal agencies should support the continued use of existing valid permits and lease rights on lands with listed species wherever possible.
30. At a minimum, copies of legal descriptions showing the exact boundaries of all designated critical habitat shall be provided to local governments in Weston County.
31. Federal agencies should use credible data as a basis for a decision that a species shall be designated a “species of concern” or “sensitive” beyond criteria provided in their respective handbooks.

6.4 FISHERIES

6.4.1 History, Custom and Culture

Fisheries support the recreation and tourism industries in Weston County. Fishing is one of the largest recreation uses of water resources within the northeast basin (HKM Engineering Inc. et al., 2002). The combination of healthy fisheries and public access throughout the County’s reservoirs, lakes, and rivers provide diverse fishing opportunities that attract fishing enthusiasts. Healthy native fishery populations are also an indicator of watershed health.

6.4.2 Resource Assessment and Legal Framework

Fishery Management

The WGFD manages and monitors fishing activity throughout the state. The State of Wyoming classifies trout streams into four separate designations listed below.

- Blue Ribbon (national importance) - >600 pounds per mile
- Red Ribbon (statewide importance) – 300 to 600 pounds per mile
- Yellow Ribbon (regional importance) – 50 to 300 pounds per mile
- Green Ribbon (local importance) - <50 pounds per mile

In 2015, the state of Wyoming established multiple initiatives to protect and utilize water resources. The River Restoration initiative develops strategies, financial tools, and technical expertise to further stream restoration efforts across the state. The Collaborative Fish Passage Initiative takes a similar approach to further fish passage development and infrastructure while meeting water users’ needs. Refer to the WGFD page [here](#)³⁶ for additional information surrounding these initiatives.



WGFD develops aquatic management plans for the state. The 2020 Statewide Wildlife Habitat Plan addresses three major goals: to conserve and protect crucial aquatic and terrestrial wildlife habitats, to restore aquatic and terrestrial wildlife habitats, and to conserve, enhance, and protect fish and wildlife migrations. The plan also lays out strategies for managing priority areas. (WGFD, 2020a)

Currently, WGFD has designated 64 Crucial Priority Areas for aquatic habitats throughout Wyoming. These areas are managed or protected to maintain viable and healthy populations of wildlife. Within Weston County, these designations span the southern border on the southwest corner of the County, as well as along Beaver Creek, Lodgepole Creek, and Black Thunder Creek. For more information on Priority Area designations throughout the state refer [here](#)³⁷. (WGFD, 2015, 2020c)

The major challenges and limiting factors to supporting sport fisheries within Weston County are barriers to natural fish migration, fishery habitat quality, and inefficient irrigation infrastructure which lead to water shortages during critical periods.

Fishery Use

The WGFD has only classified two reaches in Weston County. Both Cold Springs Creek and Stockade Beaver Creek are classified as a yellow ribbon. This is indicative of the basin's flat drainages and common erodible soils not conducive to fishery habitat. The WGFD Fish Stream Classifications map can be found [here](#)³⁸. (HKM Engineering Inc., 2002; WGFD, n.d.-d)

WGFD tracked 1,062 angler-days/annually on streams and 13,732 angler-days/annually on ponds, lakes, and reservoirs within the Cheyenne River Drainage in records prior to 2002. The Belle Fourche River Basin, located in northern Weston County, reported 12,231 angler days/annually on streams and 15,699 angler days/annually on standing water (excluding Keyhole Reservoir). (HKM Engineering Inc., 2002)

6.4.3 Fisheries Resource Management Objectives:

- A. Aquatic resources are managed for healthy and biodiverse fisheries that support recreation and tourism in Weston County.
- B. The introduction and control of aquatic invasive species, that can cause significant harm to an ecosystem if introduced, are to be managed appropriately.

6.4.4 Fisheries Priority Statements:

1. Federal agencies should assist in the improvement of irrigation structures to ensure sufficient water flows during critical times for fisheries.
2. Fisheries management plans shall be generated to protect the overall health of all fisheries resources within an area, not specifically managed for one individual fish species.
3. Fisheries management plans will use independent scientific data, peer-reviewed science, and/or those data meeting the 'credible data' as defined in Chapter 1 and as set forth in each agency's manual to generate fisheries plans.
4. Federal agencies should conduct fisheries habitat monitoring efforts and refine available fisheries habitat data.

5. Federal agencies should conduct water quality monitoring before, during, and after all projects that may have impacts on aquatic resources.
6. Federal agencies should support all river restoration, fish passage, and aquatic/riparian area enhancement projects.
7. Weston County encourages interagency and inter-government enhancement projects.
8. Federal agencies should assist in promotion of boat inspection locations for prevention of aquatic invasive species.

6.5 WILD HORSES AND ESTRAY LIVESTOCK

6.5.1 History, Custom, and Culture

Within Weston County, there have never been any designated herd areas or herd management areas for wild horses.

6.5.2 Resource Assessment and Legal Framework

The Wild-Free Roaming Horses and Burros Act (WFRHBA) was passed by Congress in 1971 and declared wild horses and burros to be “living symbols of the historic and pioneer spirit of the West” (16 U.S.C. § 1331). The law requires the BLM and USFS to manage and protect herds in their jurisdiction in areas where wild horses and burros were found roaming in 1971. Under WFRHBA, “wild free-roaming horses and burros” on BLM land are under the Secretary of the Interior’s jurisdiction for the purpose of management. (16 U.S.C. § 1333(a)). The act requires that the Secretary and BLM must inventory and determine appropriate management levels (AMLs) of wild horses and burros, determine if overpopulation exists, and “shall immediately remove excess animals from the range so as to achieve AMLs” (16 U.S.C. §§ 1333(b) (1) and (2) and 43 C.F.R. § 4720.1).

Herd Areas

Herd areas are areas in which wild horses and burros were found in 1971 and are the only areas BLM may manage horses by law. Herd areas are not currently managed for equines by the BLM but some may have feral horses or burros. There are currently no Herd Areas designated within Weston County managed for wild horses.

Herd Management Areas (HMAs)

Herd management areas (HMAs) are the areas selected within each herd area that were evaluated by BLM to have adequate food, water, cover, and space to sustain healthy and diverse “wild” horse and burro populations over the long term and were calculated using geographical information system (GIS). (National Horse & Burro Rangeland Management Coalition, 2015)

Herd management areas (HMAs) are lands under the supervision of the BLM that are managed for the primary but not exclusive benefit of free-roaming wild horses and burros. There are 16 wild horse HMAs covering nearly five million acres of the state of Wyoming. There are currently no Herd Management Areas within Weston County. (BLM, n.d.-b)



Estray

"Estray" means any animal found running at large upon public or private lands, fenced or unfenced, in Wyoming whose owner is unknown, whose owner cannot be found, or that is branded with two or more disputed brands for which neither party holds a bill of sale. An estray includes any animal for which there is no sufficient proof of ownership found upon inspection (W.S. 11-24-101 through 11-24-115).

6.5.3 Wild Horses and Estray Livestock Resource Management Objectives:

- A. No Herd Management Areas or Herd Areas will be designated or created in Weston County without coordination.
- B. Any estray livestock from public or private lands are immediately gathered and removed per Wyo. Stat. § 11-24-101.

6.5.4 Wild Horses and Estray Livestock Priority Statements:

1. Weston County opposes any proposed creation, enlargement, or expansion of the current herd management area (HMA) or herd area (HA) boundaries and the designation of any additional new HMAs or HAs within the County.
2. Federal agencies should notify and coordinate with Weston County if there are any intentions to designate or create Herd Management Areas or Herd Areas within the County.
3. Any equine animal released from private individuals, tribes, or neighboring lands onto public lands after 1971 shall be considered as estray and be removed immediately.

CHAPTER 7: ECONOMICS & SOCIETY

7.1 TOURISM AND RECREATION ON FEDERAL LANDS

7.1.1 History, Custom, and Culture

Weston County offers a variety of recreational opportunities, many of which generate revenue for the local economy. Recreationalists enjoy access to activities on public lands in Weston County but are expected to demonstrate ethical behavior that respects and maintains the sustainability of the County's natural resources.

7.1.2 Resource Assessment and Legal Framework

Recreational activities in Weston County include, but are not limited to: hunting, fishing, four-wheeling, snowmobiling, hiking, trail running, motor biking, camping, biking, golfing, berry picking, sightseeing, bird-and-wildlife watching, picnicking, swimming, geo-caching, horseback riding, boating, waterskiing, kiteboarding and windsurfing, snowshoeing, cross-country skiing, rock hounding, fossil viewing and digs, target shooting, and rodeo. The recreational opportunities provided in Weston County benefit county residents' quality of life. Weston County is also a gateway to the popular Devil's Tower (located in Crook County)

Tourism brings many people into and through Weston County. In 2019 Weston County recorded \$22.1 million in travel spending across the County, generating \$3.7 million in earnings, according to the Wyoming Travel Impacts Report. Travel-generated state sales tax distributions made-up nearly 10% of total sales tax distributions in the County in 2019. Of the total travel spending, the majority was destination spending (\$17.8 million) compared to 'other travel' (\$4.3 million). Accommodations and food services had the largest industry earnings, with campgrounds being the most commonly used accommodations. (Wyoming Office of Tourism, 2019)

For additional information on recreation areas within the County refer to Section 3.3 Special Designation and Management Areas. section

7.1.3 Tourism and Recreation Resource Management Objectives:

- A. Recreational resources are managed to promote access and availability to the public for both tourism and recreational uses, while maintaining benefit to Weston County's economy across important industries including agriculture, mineral development, and tourism.
- B. Tourism and recreational activities are managed based on the ability of the natural resources to sustainably handle the level of impact.

7.1.4 Tourism and Recreation Priority Statements:

1. Weston County shall be notified and be given the opportunity to participate as a cooperating agency at the earliest time possible for proposed federal agency actions or decisions affecting recreational and tourism opportunities in Weston County.



2. Federal agencies should coordinate with Weston County to identify and promote recreational opportunities that do not conflict with adjacent property owners or create undue burden on the limited county resources to support them.
3. Federal agencies should support access to recreational opportunities on public lands within Weston County.
4. Federal agencies are encouraged to promote responsible tourism through educational outreach that explains the historical significance of areas, sites, and roads.
5. Federal agencies should encourage a year-round multiple use management approach for use on public lands as a means of continuing and enhancing recreation opportunities within Weston County while supporting other approved uses and associated private land rights.
6. Federal agencies should coordinate with Weston County when implementing land use fees and/or fee increases, or the creation of new fees for the recreational use of federal lands or State Parks within the County.
7. Federal agencies should coordinate and consult with Weston County to manage tourist and recreational activities based on the ability of natural resources to sustainably handle the level of impact.
8. Federal agencies should coordinate with Weston County when new special recreation permits are requested.
9. Federal agencies should coordinate with Weston County to actively manage recreation uses to ensure resource protection.
10. Federal agencies should encourage recreational activities that enhance opportunities for economic development and maintain the custom and culture of Weston County.
11. Federal agencies should encourage recreational activities on the lands in Weston County that increase the capacity for federal and state land resources to provide more economic return to the County.
12. Federal agencies should encourage implementation of plans and programs that provide a balance of motorized and non-motorized recreational opportunities in Weston County.

7.2 LAW ENFORCEMENT AND EMERGENCY MANAGEMENT

7.2.1 History, Custom, and Culture

Law enforcement is critically important to the citizens of Weston County. The Wyoming Livestock Board partners with the Weston County Sheriff's Department to aid in cases that transcend County and State boundaries. In general, cases regarding livestock theft are prosecuted through the County attorney's office.

7.2.2 Resource Assessment and Legal Framework

Law Enforcement

Law enforcement is critically important to the citizens of Weston County. Law enforcement in Weston County includes actions on both public and private lands. Public lands within Weston County are subject to law enforcement coordination when issues related to natural resource management and public lands arise, such as livestock theft or search and rescue operations. State



law enforcement officials operating in Weston County include Wyoming Highway Patrol, Wyoming Livestock Board, Wyoming Game and Fish Department Game Wardens, Wyoming Department of Criminal Investigation, and State Park Rangers. Federal law enforcement officials operating in Weston County include BLM, USFWS, USFS, U.S. Marshals, and the EPA. As the use of public lands has increased, so has the need for law enforcement and coordination of federal law enforcement agents with the County Sheriff. The Weston County sheriff's office has MOUs with both the BLM and USFS to clearly lay out the roles, responsibilities, and coordination of these federal agencies with the County in law enforcement situations.

The Property Clause of the United States Constitution sets out the jurisdictional powers of state, local, and federal law enforcement officers on federal lands. Generally, federal lands have either proprietary or concurrent jurisdiction, meaning that local law enforcement is either the exclusive law enforcement agency in the area or that both local law enforcement and federal agency law enforcement share jurisdiction together to enforce laws on federal lands. Other federal lands, such as post offices or military bases have exclusive jurisdiction, and only the federal government may enforce federal laws within those areas (United State Constitution Article IV, Section 3, Clause 2). The Assimilative Crimes Act allows federal law enforcement agencies who lack an appropriate federal charge to use an appropriate state law in federal court whenever necessary (18 U.S.C. § 13).

FLPMA gives the BLM authority to retain BLM law enforcement officers who enforce federal law within BLM jurisdiction. Those officers have the authority to enforce federal laws, but do not have the authority to enforce state laws without written authorization from the local law enforcement agency in charge. FLPMA and the BLM's regulations specifically give BLM law enforcement officers traditional police powers such as enforcing federal laws, carrying firearms, serving search warrants, making arrests with or without a warrant, and conducting searches of places or people with or without a warrant in accordance with applicable laws and seizing evidence. (BLM, n.d.-b)

NFMA gives the USFS similar law enforcement authority. USFS law enforcement officers also have the authority to enforce federal laws and regulations within the national forests, but not state laws. Many of the USFS law enforcement regulations can be found in 36 C.F.R. Part 261. Their primary responsibility is "the protection of natural resources, protection of Forest Service employees and the protection of visitors." (USFS, n.d.)

The Wyoming Livestock Board (WLSB) is responsible for the protection of livestock interests in the State from disease and theft. Seven members are appointed by the Governor and approved by the Senate for six-year terms. The State is divided into "appointment districts" as set by the Legislature. The Livestock Board Law Enforcement have several benefits that help with law enforcement regarding livestock in the county. These include:

- They are livestock law specialists.
- They can conduct case work across county lines.
- They collaborate with other state livestock investigators.



- They partner with county Sheriff Departments on cases
- They provide training for other state law enforcement agencies.

Emergency Management

Natural Disasters

When a natural disaster is declared, the Federal Government, led by the Federal Emergency Management Agency (FEMA), responds at the request of and in support of States, Tribes, Territories, Insular Areas, and local jurisdictions impacted by a disaster. FEMA coordinates the federal government’s role in preparing for, preventing, mitigating the effects of, responding to, and recovering from natural disasters. (Federal Register, n.d.)

In 2018, the Wyoming Region 1 (Campbell, Crook, Johnson, Sheridan, and Weston counties) [Hazard Mitigation Plan](#)³⁹ was updated. The plan assesses risk potential for different hazards including avalanche, drought, earthquake, flooding, geologic, severe thunderstorms (hail, lightning), tornado, wildland fire, wind/windblown deposits, winter storm/blizzards, communicable and infectious disease, dam failure, hazardous material release, and terrorism. The plan also ranks communities for each identified hazard.

Search and Rescue

Wyoming law requires the Sheriff of each county to maintain a search and rescue (SAR) team. Search and Rescue (SAR) is defined as the employment, coordination, and utilization of available resources and personnel in relieving distress, preserving life, and removing survivors from the site of a disaster, emergency, or hazard to safety in case of lost, stranded, entrapped, or injured people. The Wyoming Office of Homeland Security serves as the account manager for SAR programs and operates using guidance from Wyo. Stat. 19, Chapter 13, Article 3, and the Wyoming Search and Rescue Council. The Wyoming Search and Rescue Council was established to assist Wyoming sheriffs, who are charged by state statute to conduct SAR operations. Council members are appointed by the governor.

Fire

Wildland fire within Weston County is discussed in Section 3.4 Wildfire Management. Weston County has the Weston County Fire Protection District which is responsible for the fire protection in the unincorporated areas of Weston County, which is all of Weston County except the City of Newcastle and Town of Upton. The Fire District has equipment at three stations throughout the County – one in Newcastle, one in Osage, and one in Upton. These stations house fire engines and other firefighting equipment for all types of fires including residential, industrial, and wildland. In addition to the three stations, the District also places wildland engines at strategic rural locations throughout the County to provide a quicker response to wildland fires. The Weston County Wildfire Protection Program is a cooperative effort involving the National Fire Plan, the Wyoming State Forestry Division, and the Weston County Fire Protection District. The program can assist private landowners with cost-share funding to help mitigate the threat of wildfire to homes and property. (Weston County Fire District, n.d.)

Communication and Technology

Communications and associated technology are essential to the long-term viability of Weston County. Construction of communication and technology infrastructure requires rights-of-way across federal land. Recent proposals to restrict new rights-of-way across public land threaten the ability of the County to develop the necessary technological infrastructure necessary to support communication and technological services.

Communication infrastructure maintenance and development is vital to Weston County for the health and safety of its citizens, economic development, business development, and equal education opportunities.

In January of 2019, [Executive Order 13821](#)⁴⁰ was signed which ordered the promotion of better broadband services in rural America. The order sought to accelerate the deployment and adoption of affordable, reliable, modern high-speed broadband connectivity in rural America for rural homes, farms, small businesses, manufacturing and production sites, tribal communities, transportation systems, healthcare facilities, and education facilities. Agencies should seek to reduce barriers to capital investment, remove obstacles to broadband services, and more efficiently employ government resources.

7.2.3 Law Enforcement and Emergency Management Resource Management Objectives:

- A. Public lands within Weston County are managed for orderly use and management in coordination with the County Sheriff's office.
- B. Law enforcement and emergency services have unfettered access to public lands in order to protect the health, safety, and welfare of the residents and visitors of Weston County.
- C. Communication infrastructure is developed on public lands to ensure emergency communication services exist throughout Weston County and citizens and visitors to the County can seek emergency assistance throughout the entire County.

7.2.4 Law Enforcement and Emergency Management Priority Statements:

- 1. All federal law enforcement actions within Weston County shall be coordinated through the Weston County Sheriff's Office.
- 2. Promote federal agency recognition of the Weston County Sheriff as the primary law enforcement official in the County.
- 3. The Weston County Sheriff's Office shall be notified immediately when there is a life-threatening situation, criminal act, project structure failure, resource contamination, natural phenomenon (landslide, flood, or fire), and/or cultural resources site disturbance on public lands.
- 4. Weston County requires that federal agencies allow prompt, safe, and unrestricted access to federal land for law enforcement and emergency services.
- 5. Federal agencies should work and coordinate with Weston County and other surrounding counties and agencies within the region to ensure that the County's telecommunications and informational highway interests are heard and addressed to protect and promote the health, safety, and general welfare of the citizens of the County.



6. Federal agencies should support increasing the number of adequate broadband T1-lines available within the community to enhance emergency response and protect the health, safety, and welfare of the community.
7. Federal agencies should encourage the introduction of the newest technology for accessibility from all areas within Weston County.
8. Federal agencies should recognize and provide for the fact that some communication equipment is site-sensitive and should have priority over other uses.
9. Federal agencies should support the development of communication technologies (i.e., cell phone towers, internet, etc.) on public lands to ensure communications are available during natural disaster events.

7.4 ECONOMIC AND SOCIOECONOMIC CONSIDERATIONS

7.4.1 History, Custom, and Culture

Weston County is approximately 20% federally owned land with 301,020 acres of land under federal management. The main drivers of the Weston County economy are agriculture, mining, and oil and gas development. Since settlement of the valley, cattle ranchers and sheep herders were the primary residents of what is now present-day Weston County. Today's cattle ranchers are heavily reliant upon grazing leases on federal lands in order to maintain healthy and productive stock. The livestock industry accounts for a substantial portion of Weston County's agricultural income, is the oldest continuing industry in the County, and is still the single largest user of federal land.

Mineral and materials mining is another long-standing sector of the Weston County economy. Mining of coal, uranium, and bentonite, and production of oil and gas contributed to the economic development of the County and continue to be important industries today.

7.4.2 Resource Assessment and Legal Framework

The structure and trends within a region's economy are important to local officials, state governments, federal agencies, and the general public in more effectively conducting and participating in public policy decision making processes.

Summary of Employment

From 2000 to 2019, the population in Weston County increased by 4%. Since 1970 the population has had an 11% increase in the county (Figure 19) In this same time, employment in the County grew from 2,950 jobs in 1970 to 3,976 jobs in 2019, a 35% increase (Figure 20). Personal income grew from \$157.3 million to \$323.2 million from 1970 to 2019, a 105% increase (Figure 21) (Headwaters Economics, 2021)

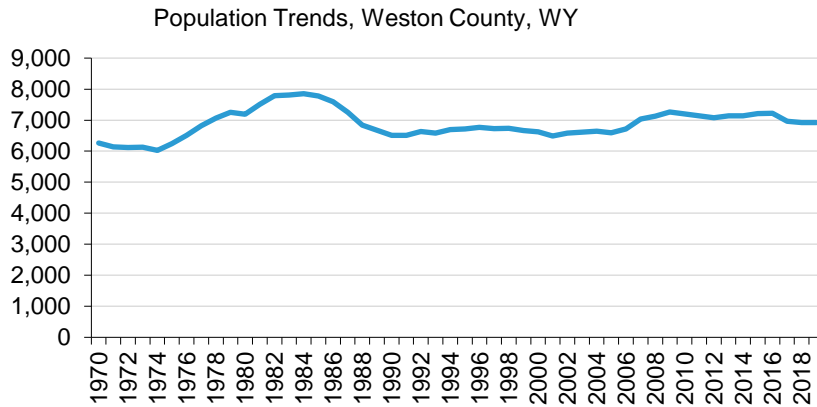


Figure 19. Population trends in Weston County from 1970 to 2019. (Headwaters Economics, 2021)

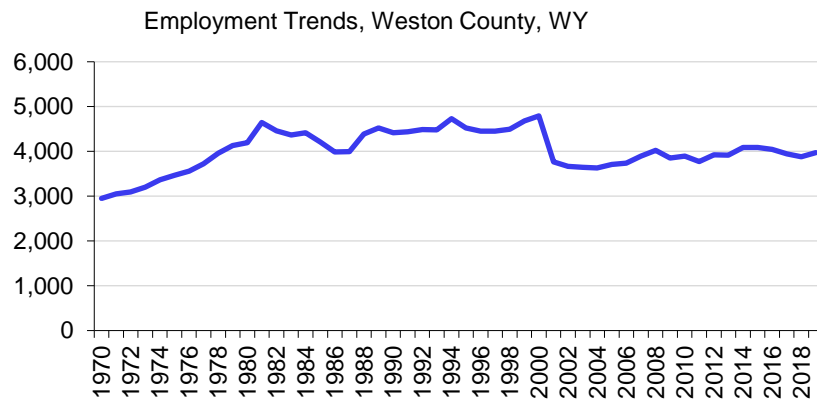


Figure 20. Employment trends for Weston County from 1970 to 2019. (Headwaters Economics, 2021)

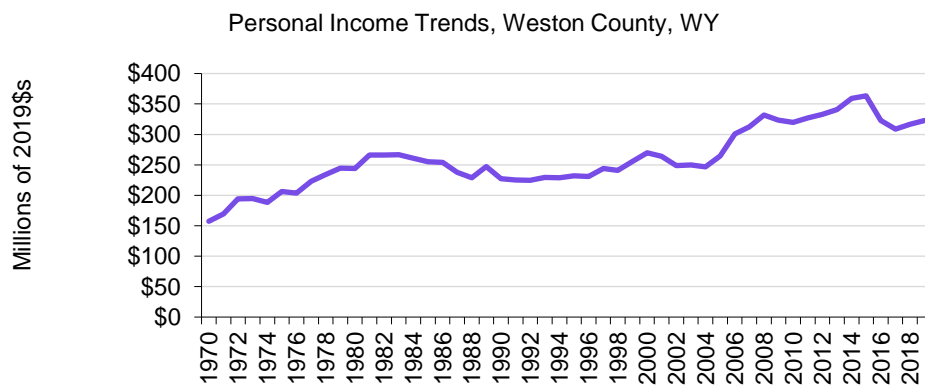


Figure 21. Personal income trends for Weston County from 1970 to 2019. (Headwaters Economics, 2021)

Employment by Industry

Employment data are categorized using two different systems. From 1970-2000, the Standard Industrial Classification system was used, since 2001, industry-level data have been organized using the North American Industrial Classification System.

From 1970-2000, the three industry sectors that added the highest number of new jobs were services (586 new jobs), retail trade (263 new jobs), and finance/insurance/real estate (257 new jobs) (Figure 22). (Headwaters Economics, 2021)

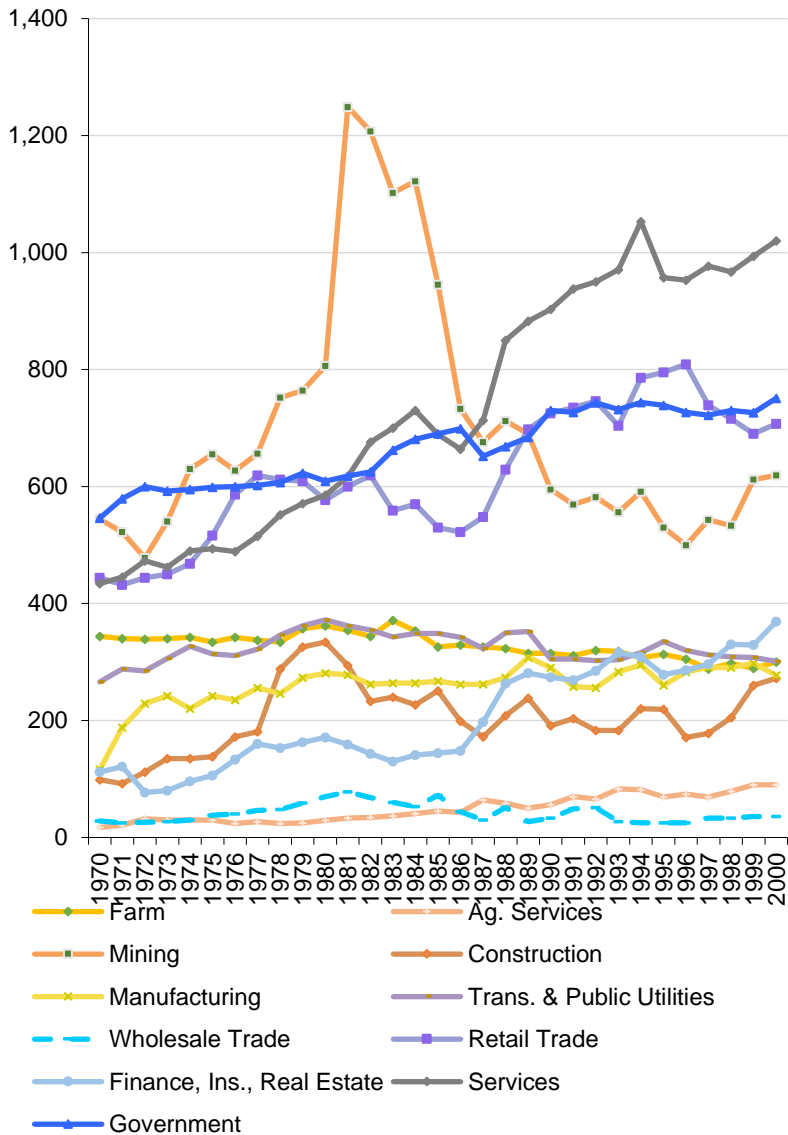


Figure 22. Employment by industry in Weston County from 1970-2000. (Headwaters Economics, 2021)

From 2001 to 2019, total employment increased from 3,767 jobs to 3,976 jobs. Non-service-related industries (e.g., farming, mining, and construction) decreased from 1,232 to 1,209, a 2%

decrease. Jobs in the services-related industries (e.g., transportation and warehousing, utilities, retail) grew from 1,437 to 1,592 jobs, an 11% increase. During this same time, jobs in government grew from 764 jobs to 845 jobs, an 11% increase. Since 2001, the three sectors that have added the most jobs are real estate and rental/leasing (89 new jobs), government (81 new jobs), and healthcare/social assistance (50 new jobs) (Figure 23). (Headwaters Economics, 2021)

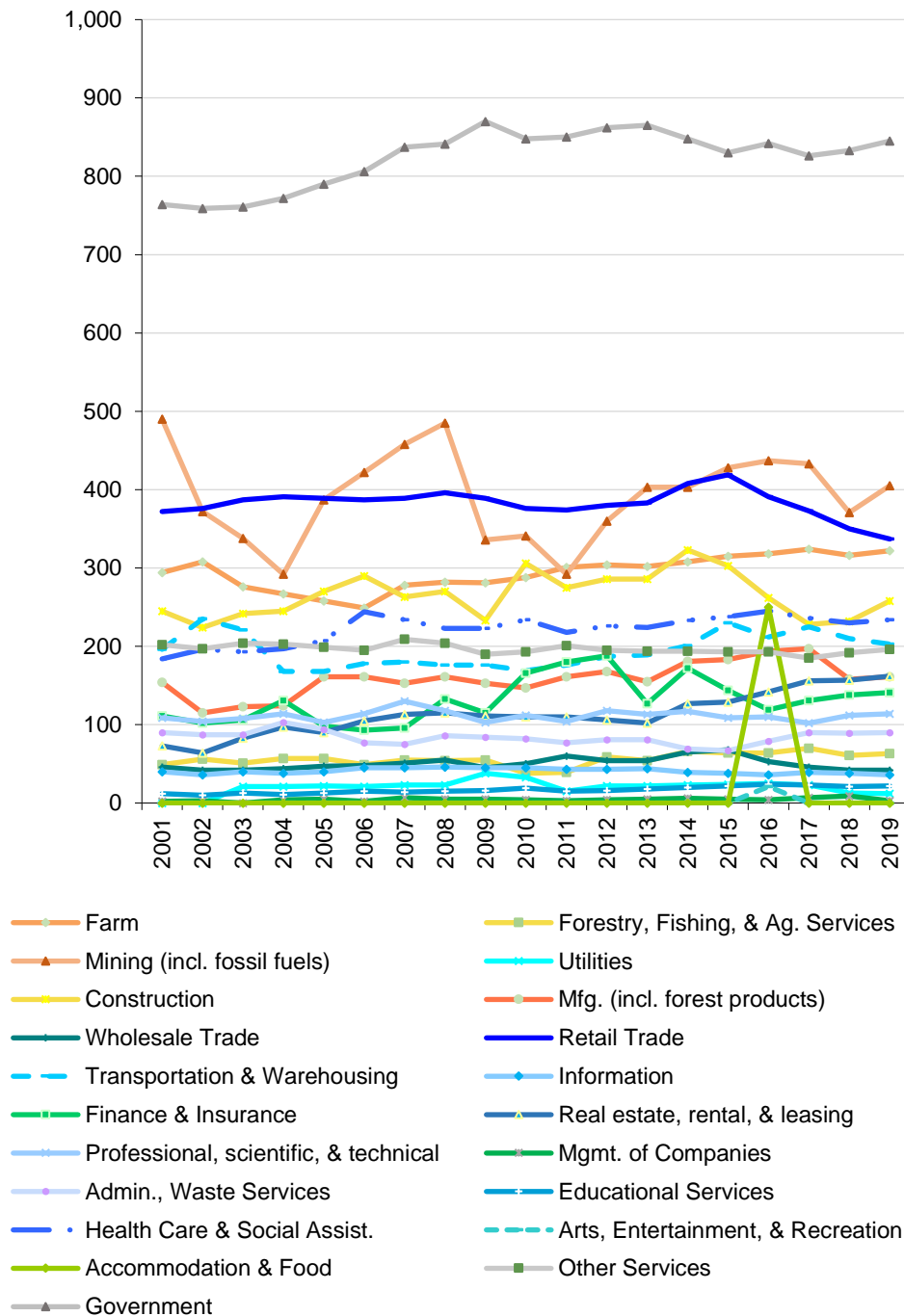


Figure 23. Employment by industry for Weston County from 2001 to 2019. (Headwaters Economics, 2021)



Earnings by Industry

From 1970-2000, earnings from non-services grew from \$48.7 million to \$66.3 million, a 36% increase. Earnings from services grew from \$49.0 million to \$68.1 million, a 39% increase. Earnings from government grew from \$23.1 million to \$33.2 million, a 43% increase. The Three industry sectors that added the most earnings were services (\$11.2 million), government (\$10.0 million), and manufacturing (\$7.9 million) (Figure 24). (Headwaters Economics, 2021)

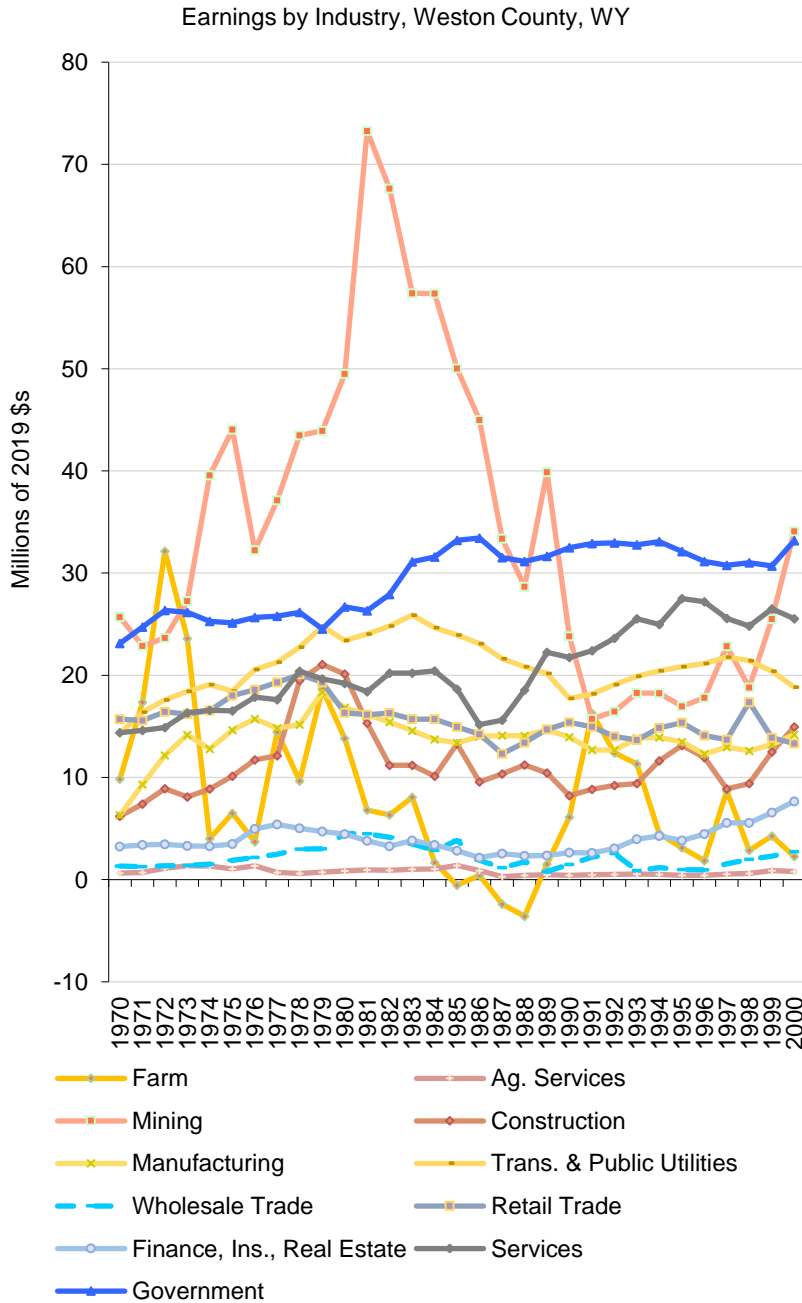


Figure 24. Earnings by industry for Weston County between 1970 and 2000. (Headwaters Economics, 2021)

From 2001 to 2019, earnings in non-services related industries decreased from \$65.5 million to \$46.7 million, a 29% decrease. Earnings in services related industries grew from \$49.2 million to \$54.1 million, a 10% increase. From 2001 to 2019, earnings in government grew from \$35.7 million to \$56.8 million, a 59% increase. Th three industry sectors that added the most earnings were government (\$21.1 million), transportation and warehousing (\$6.2 million), and health care/social assistance (\$3.1 million) (Figure 25). (Headwaters Economics, 2021)

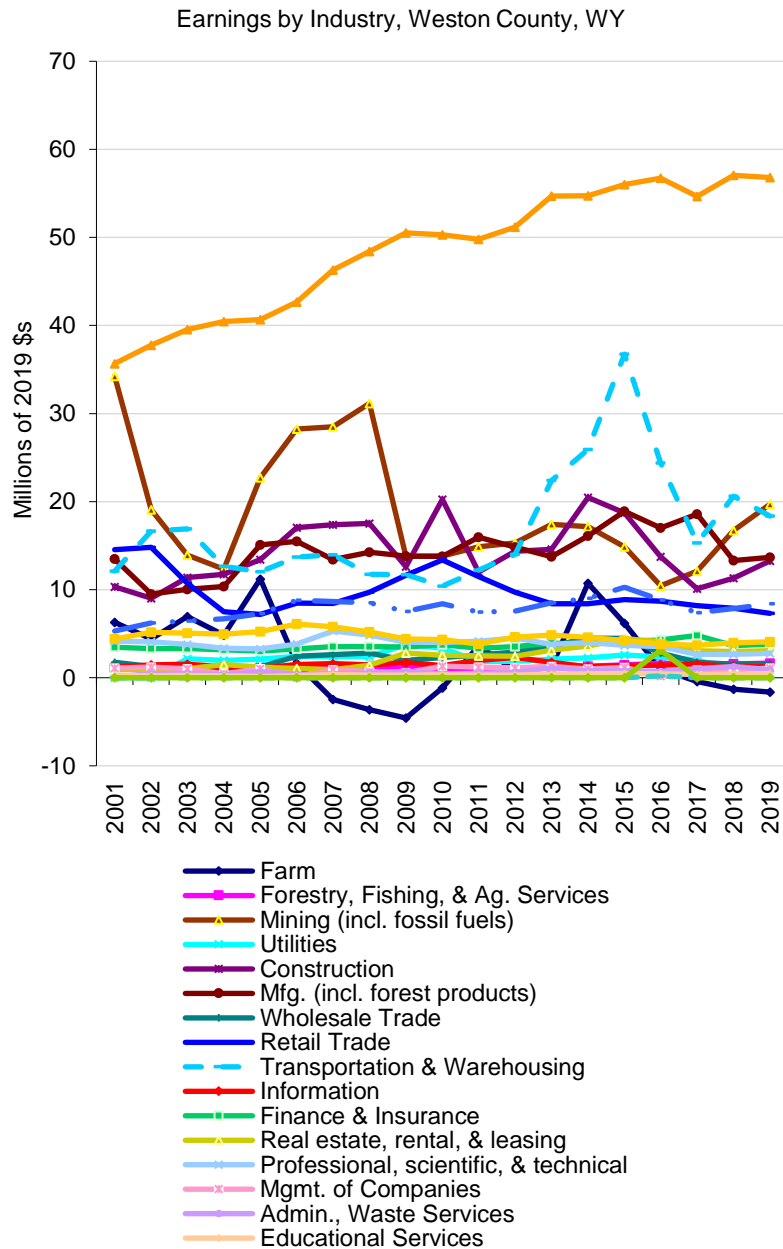


Figure 25. Earnings by industry for Weston County between 2001 and 2019. (Headwaters Economics, 2021)

Employment and Wages by Industry

In 2019, 2,340 jobs had an average salary of \$42,649. Non-services related jobs paid the highest wage (\$60,872) and services related jobs paid the lowest (\$30,406). Trade, transportation, and utilities jobs employed the largest number of people (391) and information jobs employed the lowest number (26) (Figure 26). (Headwaters Economics, 2021)

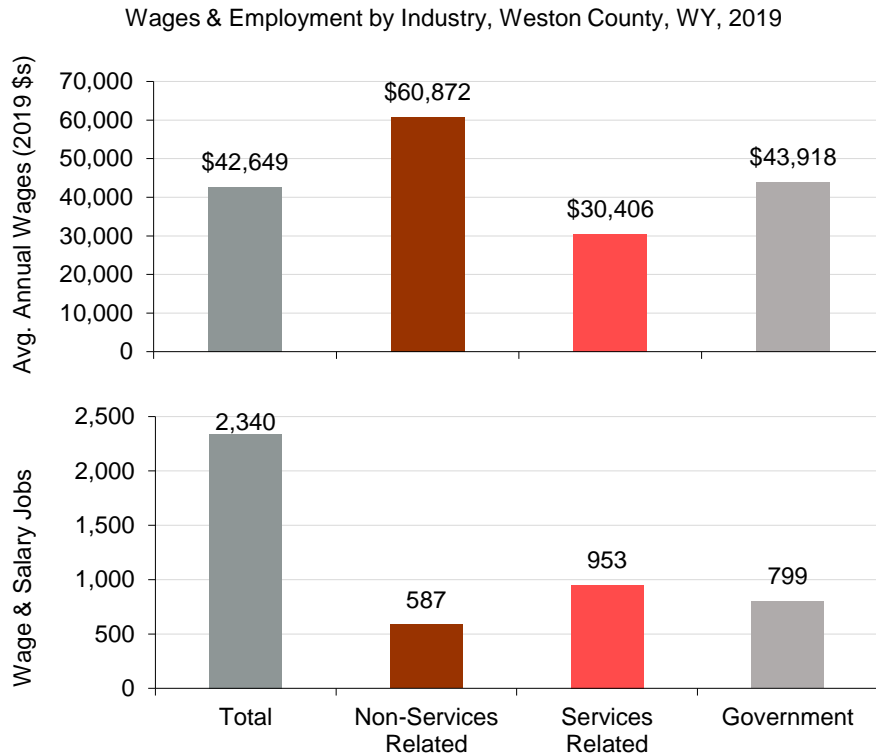


Figure 26. Wages and employment by industry for Weston County in 2019. (Headwaters Economics, 2021)

Employment Changes During Recessions

Five national recessions have occurred between 1976 and 2010, and the most recent occurred in 2020 (data not yet available). From 1976 to February 2020, employment in Weston County grew from 2,471 to 3,706 jobs, a 50% increase (Figure 27). (Headwaters Economics, 2021)

Employment & National Recessions, Weston County, WY

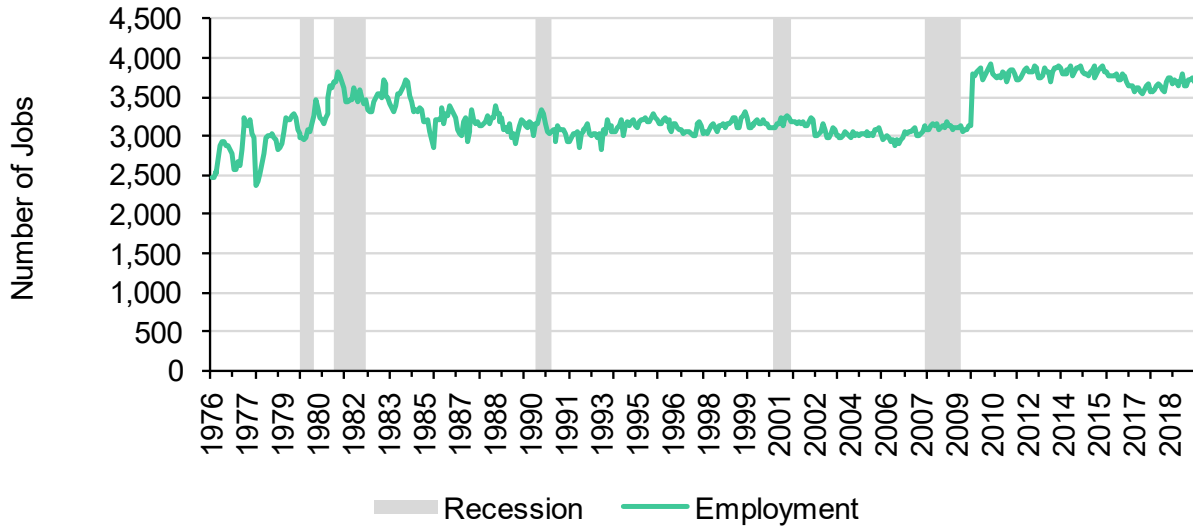


Figure 27. Employment trends during National Recessions for Weston County. (Headwaters Economics, 2021)

Unemployment

Since 1990, the annual unemployment rate ranged from a low of 2.8% in 1981 to a high of 9.2% in 1986 (annual 2020 data not yet available). The lowest monthly unemployment rate was November of 2019 at 2.4% and the highest monthly unemployment rate was May of 2016 at 6.2% (Figure 28). (Headwaters Economics, 2021)

Average Annual Unemployment Rate, Weston County, WY

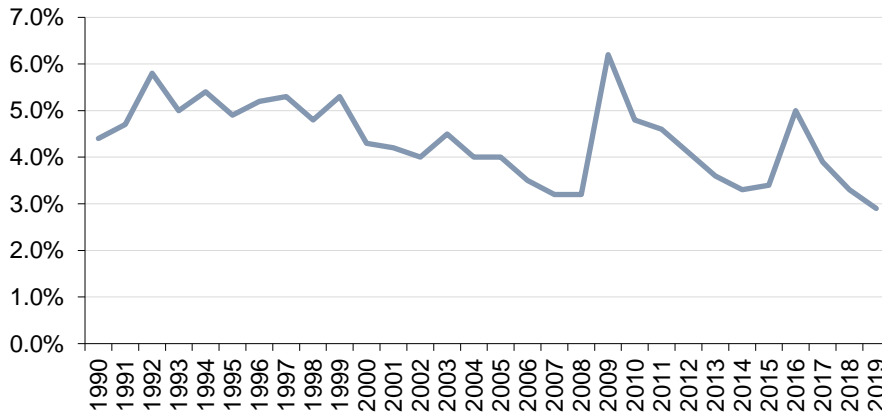


Figure 28. Average annual unemployment for Weston County. (Headwaters Economics, 2021)

National Environmental Policy Act

The National Environmental Policy Act (NEPA) can play a crucial role in the economic and socio-economic well-being of a community. NEPA applies to “every major Federal action significantly affecting the quality of the human environment” (42 U.S.C. § 4332(1)(C)). The courts have interpreted this to generally mean that every time the federal government decides for almost any action that may have an environmental impact, NEPA compliance is required. Some courts have even required agencies to follow NEPA when the agency spends a small amount of money on a project or program that they are not the lead agency (*See e.g., Citizens Alert Regarding the Environment v. United States Environmental Protection Agency*, 259 F.Supp.2d 9, 20 (D.D.C. 2003)). On July 16, 2020, the Council on Environmental Quality issued a final rule in the Federal Register finalizing major regulation reforms to NEPA, including updated rules trying to clarify what is a “major federal action.”

On July 15, 2020, the Council on Environmental Quality announced major regulation reforms to NEPA, including new rules trying to clarify what is a “major federal action” (*See* 85 F.R. 43304 (July 16, 2020)). The CEQ regulations define a “Major Federal Action” as “an activity or decision subject to Federal control and responsibility” (40 C.F.R. § 1508.1(q)). However, those activities and decisions are limited to those decisions that are discretionary or in which the federal government has sufficient control and responsibility over the outcome of the project. This means that those projects that the government has a minor role are not included. Further, minor actions that do not typically do not have a significant effect on the human environment (such as allowing certain range improvements on a grazing allotment) are categorically exempt from NEPA (40 C.F.R. § 1508.1(d)).

NEPA requires that agencies undertake an environmental analysis to determine whether a federal action has the potential to cause significant environmental effects. If a proposed major federal action is determined to significantly affect the quality of the human environment, federal agencies are required to prepare an Environmental Impact Statement (EIS). The regulatory requirements for an EIS are more detailed and rigorous than the requirements for an Environmental Assessment (EA). NEPA does not mandate results or substantive outcomes. Instead, NEPA’s purpose is to “provide for informed decision making and foster excellent action” (40 C.F.R. § 1500.1(a)). Thus, NEPA ultimately does not require a specific result, but should be utilized to ensure that federal agencies “conduct environmental reviews in a coordinated, consistent, predictable, and timely manner, and to reduce unnecessary burdens and delay.” Therefore, for an agency to be NEPA compliant, they need to make timely and coordinated decisions that are based on informed decision-making.

One of the greatest economic harms for a local community is the typical several-year delay of an important project due to NEPA. Since 2010, the average EIS completion time was approximately 4.5 years and averaged more than 600 pages. Even more disturbing, over a quarter of the EISs during that time span took more than 6 years to complete (Council on Environmental Quality, 2010). CEQ regulations now require that EAs not exceed 75 pages and one year to complete unless a senior agency official of the lead agency approves a longer period in writing and establishes a new time and page limit (40 C.F.R. § 1501.5, 1501.10). Similarly, CEQ regulations



now require that EISs not exceed 150 pages (300 for proposals of unusual scope or complexity) and two years to complete, unless a senior agency official of the lead agency approves a longer period in writing and establishes a new time and page limit (40 C.F.R. § 1502.7).

To increase efficiency in the NEPA process, agencies are supposed to include cooperating agencies at the earliest time practicable to participate. Additionally, agencies are supposed to eliminate duplication of efforts by cooperating with local governments and form (1) joint planning processes; (2) joint environmental research and studies; (3) joint public hearings; (4) joint environmental assessments (40 C.F.R. § 1506.2(b)). Further, agencies, unless specifically prohibited by law, allow local governments to be joint lead agencies in certain NEPA decisions and cooperate in fulfilling local government requirements that may not conflict with federal law.

Environmental Justice

In February of 1994, Executive Order 12898 “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” was signed and directed each federal agency to “make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, polices, and activities on minority populations and low-income populations” including tribal populations. Environmental justice mitigation measures must be outlined or analyzed in EA, Findings of no significant impact (FONSI), EISs, and RODs. (EPA, 2015)

7.4.3 Economic and Socioeconomic Resource Management Objectives:

- A. The socioeconomic and economic viability of Weston County is prioritized, protected, and enhanced in all federal actions or decisions.
- B. Weston County is included early in the scoping process whenever an agency action or decision may impact the economic or socioeconomic viability of the County.

7.4.4 Economic and Socioeconomic Priority Statements:

1. Weston County requires consultation and coordination from federal agencies at the earliest time possible for any proposed action, change of existing activities, newly permitted activities, or changes in regulations that may affect the economic basis of the County.
2. Federal agencies should support continued access to natural resources development/use on federal lands to maintain economically viable communities in Weston County.
3. Weston County supports “no net loss” in the County economic base due to federal agency decisions.
4. Federal agencies should include Weston County in all discussions regarding mitigation if necessary, to protect the economic base of the County.
5. Federal agencies should support the analysis of social and economic factors at the lowest possible level, such as on a County-wide basis, in addition to consideration on a state-wide or national scale.
6. Federal agencies should promote the economic and socioeconomic growth of Weston County and engage in consultation and coordination between federal agencies and the County regarding any issues and activities on public land that affect or influence the County’s economic and socioeconomic viability.



7. Weston County supports impact assistance opportunities and funding (i.e., sewer, water, fire, law enforcement, emergency, natural resource mitigation etc.) as early in the industrial development process as possible.
8. Weston County supports the achievement of a sustainable balance between economic, recreational, and conservation use of lands for economic growth and quality of life.
9. Federal agencies should support increasing the number of adequate broadband T1-lines available within Weston County.
10. Weston County supports federal Payment in Lieu of Taxes.
11. Weston County requires a full analysis by the federal agencies of the impact each proposed decision or federal action will have on the local economy. If it is determined that the decision will have significant negative impact on the local economy, the alternative/decision is not supported.

CHAPTER 8: AGRICULTURAL RESOURCES

8.1 AGRICULTURAL PRODUCTION

8.1.1 History, Custom, and Culture

Agricultural lands contribute to the County’s landscape and scenic beauty, provide wildlife habitat, and provide recreational opportunities for residents and visitors alike for hunting, fishing, snowmobiling, and other tourism-related activities. Agriculture is an invaluable source of employment, affordable food, raw materials, and open space to the County. Agriculture also provides numerous opportunities for environmental stewardship to benefit local ecosystems and serves as key component of the County’s sustainable economy.

8.1.2 Resource Assessment and Legal Framework

Agriculture is an important industry in Weston County. In 2017, 79% (1,536,000 acres) of the land in Weston County was devoted to agriculture. The 2017 Weston County Census of Agriculture Profile ranks the County as third in the state for cultivated Christmas trees and short-rotation woody crops, seventh for milk from cows, and tenth for poultry and eggs. The 2017 total market value for livestock products was \$33,657,000 and for crop products was \$617,000. Agriculture, particularly livestock, is a prominent source of revenue and employment for Weston County. (USDA, 2017)

The climate of the region provides for a short growing season that is often dry and cold. Irrigated agriculture relies on the distribution of water from rivers and reservoirs through canals and pipelines. Some or all of these may reside on or pass through federal and state lands where permitting issues are triggered for maintenance and expansion. According to the U.S. Census of Agriculture, Weston County had 4,159 acres of irrigated land. This makes the retention and proper management of water rights important for the citizens of Weston County. (USDA, 2017)

Right to Farm Laws

Rights to farm laws have been enacted in all fifty states. These laws seek to protect qualifying farmers and ranchers from nuisance lawsuits filed by individuals who move into a rural area where normal farming operations exist, and who later use nuisance actions to attempt to stop those ongoing operations. Wyoming’s right to farm laws are known as the “Wyoming Right to Farm and Ranch Act.”

The basis for these priority statements in this NRMP is to carry out the state law mandate to protect agricultural practices through the ‘Right-to-Farm’ statutes as listed below.

“To protect agriculture as a vital part of the economy of Wyoming, the rights of farmers and ranchers to engage in farm or ranch operations shall be forever guaranteed in this state.” (W.S. 11-44-104(a)). (National Agricultural Law Center, n.d.)

8.1.3 Agricultural Production Resource Management Objectives:

- A. Agricultural production is maintained as a viable and major component of the economy, custom, and culture of Weston County.



- B. Federal actions affecting agriculture are made in consultation with Weston County.
- C. The agriculture custom and culture – value opportunities, resources, and communities are preserved within Weston County.

8.1.4 Agricultural Production Priority Statements:

1. Federal agencies should support development of all plans and policies that directly or indirectly affect agriculture with the intent of increasing the stability and expansion of the industry as well as encourage innovative techniques that improve the efficiency of crop and livestock production.
2. Federal agencies should quickly process permits on federal lands for the construction, maintenance, or expansion of water distribution systems to private lands, and allow maintenance where those rights already exist through a range improvement agreement.
3. Federal agency actions should be consistent with Right to Farm laws, to the extent applicable.
4. Right to Farm laws should be considered when coordinating on federal and state land use decisions.
5. Federal agencies should support production agriculture and the responsible use of natural resources to sustain agricultural enterprises.
6. Any agricultural property damage or crop loss caused by an escaped prescribed burn, fire suppression efforts, or damage caused by government agency action, resulting in economic loss in the County shall be considered justification for economic compensation and restoration by the responsible agency to the property owner at current market values.
7. Wildlife and federal lands managers, including but not limited to the Bureau of Land Management, U.S. Forest Service, U.S. Fish and Wildlife Service, Army Corps of Engineers, Bureau of Reclamation, and Wyoming Game and Fish Department are expected to coordinate with private property owners to minimize impacts to private property and property rights.
8. Federal agencies should streamline the application process for range improvements and applications should be approved in six months or less.
9. The individual that files for an improvement/development permit on Bureau of Land Management shall be allowed to manage the resource and the permit shall be in their name if it is approved.
10. The individual that files for an improvement/development permit on United States Forest Service should be allowed to manage the resource and the permit should be in their name if it is approved.
11. Federal agencies should encourage agricultural operations within Weston County and promote their sustainability.
12. In conjunction with ranch owners/managers, local, state and federal planning partners, develop economically sustainable strategies to maintain working ranches.
13. Weston County discourages the conversion of arable, productive agriculture lands from agriculture production into rural residential housing.

14. Federal planning-level and project-level National Environmental Policy Act documents should properly characterize and analyze the area, recognizing the benefit of ecosystem services provided by working ranches to adjacent or nearby public lands.
15. Federal agencies should notify those impacted by a National Environmental Policy Act decision and allow them to participate in the scoping process.

8.2 LIVESTOCK GRAZING

8.2.1 History, Custom, and Culture

The vegetation in Weston County evolved under tens of thousands of years of grazing and periodic fire. Grazing in the region began to shape the modern vegetation we see today around 18,000 years ago in the Pleistocene. These grazers included ancient muskox, antelope, Pleistocene bighorn sheep, ancient bison, camels as well as mammoths. (Martin & Gilbert, 1978; US National Park Service, 2015). Eventually, these species were replaced by the wildlife we know today. Wildlife, wildfire, and early humans continued to shape the vegetation of the basin. In the late 1600s to mid-1700s Native Americans obtained the horse and became pasture managers as well as wildlife managers, manipulating the vegetation and animal populations.

Permitted grazing on federal lands is a critical piece of livestock operations in Weston County. The intermingled BLM and private lands allow ranching to continue in the County. Access to federal lands is critical to the continued ability to maintain the ranching community and the viability of the County.

Livestock grazing has been an important industry in Weston County since early settlement. It continues to be a vital part of the custom and culture of the County as well as a critical economic driver. The most efficient operations use a combination of private and federal lands. Historically, ranchers across Wyoming have grazed animals on open ranges and mountains on federal and state lands during summer months and moved the stock to private lands during the winter months where livestock can be fed hay from the irrigated pastures. Such operations are some of the most efficient, sustainable, and economically productive for producing livestock.

The contribution of the ranching industry to the County goes beyond the critical economic livestock sales. Studies in similar counties have shown that ranchers tend to spend the majority of their dollars in the County they reside in on fuel, food, supplies, and equipment. A thriving agriculture industry helps maintain local economies. (Miller & Heaton, 2015)

8.2.2 Resource Assessment and Legal Framework

Most federal land in the County is laid out in a checkerboard pattern of alternating sections of private and federal land. When federal land management policies are enacted they influence the management of the associated private land. There are many management challenges that accompany the checkerboard federal and private lands, including access, land use, water rights, and grazing rights. With the federal agencies managing the majority of the rangeland in the County, ranchers must rely on obtaining federal grazing leases. There are seven BLM and eight USFS grazing allotments in Weston County encompassing approximately 4,068 acres and 10,641 acres respectively (Figure 29).



A large part of the vegetation in the County is lower producing saltbush and sagebrush areas, while many of the forested leases are highly productive but with limited forage available due to dead and downed timber. Low-productivity rangelands make for a narrow profit margin. When agencies make a management decision without considering the economic impact on a rancher or a group of ranchers they can be impacted along with the local community. When federal agencies reduce permitted livestock numbers for any operator, their entire operation is impacted, especially economically. Any reduction in livestock on federal lands directly affects the economy and culture of Weston County.

The reduction in livestock numbers on federal and state lands can be a result of natural factors, including wildfire and drought. The primary factors in determining livestock grazing capacity on federal land is the quality and availability of the resources. Proper grazing management is an important tool for the management of the resources, and can be used to mitigate invasive species impacts, wildfire impacts, and can improve rangeland health.

Livestock grazing, irrigated farming, and other intensive agriculture are integral to this community's ability to remain viable with a diverse and sustainable economy. Ranching and agricultural operations maintain open space and large landscapes to support multiple uses.

Taylor Grazing Act

The Taylor Grazing Act (TGA) of 1934 (43 U.S.C. 315) established the Grazing Service, which eventually became known as the BLM. Local BLM grazing advisory boards created an adjudication process to determine where, when, and what type of livestock grazing could occur on public rangelands. To receive an allotment through this process, the stockman had to have (1) "commensurate base property" on which he could graze his livestock when they were not using the federal lands, (2) have an economically viable livestock operation and (3) be members of the local community and support the local stability of the community (43 U.S.C. § 315b). The TGA gives individuals the right to apply for grazing permits on federal lands based upon the ownership of qualified base property (43 U.S.C. § 315(b)). The purpose of the TGA is "to stabilize, preserve, and protect the use of public lands for livestock grazing purposes..." (*Barton v. United States*, 609 F.2d 977 (10th Cir. 1979)). As the court in *Public Lands Council v. Babbitt*, explained, "Congress enacted the [TGA], establishing a threefold legislative goal to regulate the occupancy and use of the federal lands, to preserve the land and its resources from injury due to overgrazing, and 'to provide for the orderly use, improvement, and development of the range'" (154 F.3d 1160, 1161 (10th Cir. 1998)). Once a grazing district is established, grazing must occur on the land (*See generally, Mountain States Legal Foundation v. Andrus*, 499 F.Supp. 383 (D. Wyo. 1980)) (holding that FLPMA intended to limit the ability of the Secretary of the Interior to remove large tracts of public land from the operation of the public land laws). Further, Congress intended that once the Secretary established a grazing district under the TGA, the primary use of that land should be grazing (*Public Lands Council v. Babbitt*, 167 F.3d 1287, 1308 (10th Cir. 1999) *aff'd on other grounds*, 529 US 728 (2000)). The Secretary can modify the boundaries of a grazing district, but unless land is removed from designation as grazing, or the TGA designation is terminated, the Secretary must use it for grazing (43 U.S.C. § 315).

When modifying the boundaries of a grazing district or terminating the TGA designation of an allotment, the Secretary must classify the land as no longer “chiefly valuable for grazing.” May 13, 2003, Solicitor’s Memorandum to the Assistant Secretaries for Policy, Management and Budget, Land and Minerals Management and the Director, Bureau of Land Management, clarifying the Solicitor’s Memorandum M-37008 (issued October 4, 2002). Thus, a permittee may relinquish a permit but, barring the Secretary determining that there is a better use for the land through land use planning, the forage attached to the permit must be available for grazing. Thus, except upon the showing that the land is no longer “chiefly valuable for grazing,” the Secretary does not have discretion to bar grazing within a grazing district and must therefore review applications for grazing permits and make a final decision in a timely fashion when they are filed.

Grazing Flexibility

Flexibility for grazing is allowed under 43 CFR § 4130.3-2(f) which states “Provision for livestock grazing temporarily to be delayed, discontinued or modified to allow for the reproduction, establishment, or restoration of vigor of plants, provide for the improvement of riparian areas to achieve proper functioning condition or for the protection of other rangeland resources and values consistent with objectives of applicable land use plans, or to prevent compaction of wet soils, such as where delay of spring turnout is required because of weather conditions or lack of plant growth;”

The BLM recently implemented an initiative known as Outcome-Based Grazing Authorizations (OBGAs). The initiative is designed to offer a more collaborative approach between the BLM and its partners within the livestock grazing community when issuing grazing authorizations. The purpose behind OBGAs is to improve BLM’s management of grazing on public lands by offering livestock operators greater flexibility to respond more readily to changing on-the-ground conditions, such as drought or wildfire. This will better ensure their ability to manage ranching operations that are economically sustainable while also providing healthy rangelands and high-quality wildlife habitat. Decreasing the response time to changing field conditions is one of the primary goals of the demonstration project. The program highlights BLM’s commitment to partnerships, vital to managing sustainable, working public lands.

The flexibility outcome-based grazing provides is to support:

- Enhanced partnerships for managing livestock grazing;
- Implement grazing based on conservation performance and ecological outcomes rather than hardline metrics;
- Improvement, management and/or protection of public lands within a grazing allotment or specified geographic area; and,
- Continued achievement or attainment of positive economic and social outcomes.

As part of the initial implementation program, eleven ranches across the west were selected as pilot projects for OBGAs. The projects on these specific ranches are being used to share experience and demonstrate or develop best practices to be considered in other BLM grazing permit renewals. As part of the process, the pilot projects developed goals and objectives as part



of their permit (often including goals and objectives for ecological, social, and economic aspects of the operation). A monitoring plan was also required for the pilot projects that laid out short-term and long-term monitoring objectives to capture the results of the increased flexibility. Range improvements were also identified as part of the OBGA pilot projects to help with the ability to become more flexible on the different operations. Several of the pilot projects are into the implementation phase, while several others are still working through the NEPA process for approved grazing permits. The information acquired through these pilot projects will allow for recommendations for regulatory modifications that could better provide for the ability to issue OBGAs that maximize and normalize the use of flexibility to address changing conditions. The BLM and its partners will not only share the responsibility for reaching the mutual objectives of this project but also for monitoring its success.

Range Improvements

BLM Range Improvements

All range improvements on BLM lands must be authorized by the agency. There are two options for authorization: A Cooperative Range Improvement Agreement or a Range Improvement Permit. The Cooperative Range Improvement Agreement identifies how the costs of labor, materials, and maintenance are divided between the agency and the permittee. Range Improvement Funds can be used for labor, materials, and final survey and design of projects to improve rangelands. The Range Improvement Permit requires the permittee or lessee to provide full funding for the construction and maintenance of the improvement. NEPA analysis is not required for normal repair and maintenance of range improvements that are listed on a term grazing permit; permission of the authorized officer is also not required. However, for the reconstruction of a range improvement or construction of new improvements, NEPA analysis and a decision by the authorized officer is required. Range improvements such as water developments benefit wildlife in addition to livestock (43 C.F.R. Part 4100).

USFS Range Improvements

All range improvements on USFS lands must be authorized by the agency. The USFS allows structural improvements (e.g., fencing) and non-structural improvements (e.g., change in management practices). Any requirements for permittee construction or development of range improvements are identified in the grazing permit with credits for improvements (if any) to be allowed toward the annual grazing fee. It is a common practice for the USFS to furnish materials and the permittee to provide labor for structural improvements. If significant costs are expected, the permittee can assume responsibility for the improvement (maintenance) but the USFS generally holds title to the improvement. Should the improvement not be adequately maintained, the USFS can take action against the permittee for non-compliance with their grazing permit. Range Betterment Funds are available for planning and building rangeland improvements. (USFS, 2005)



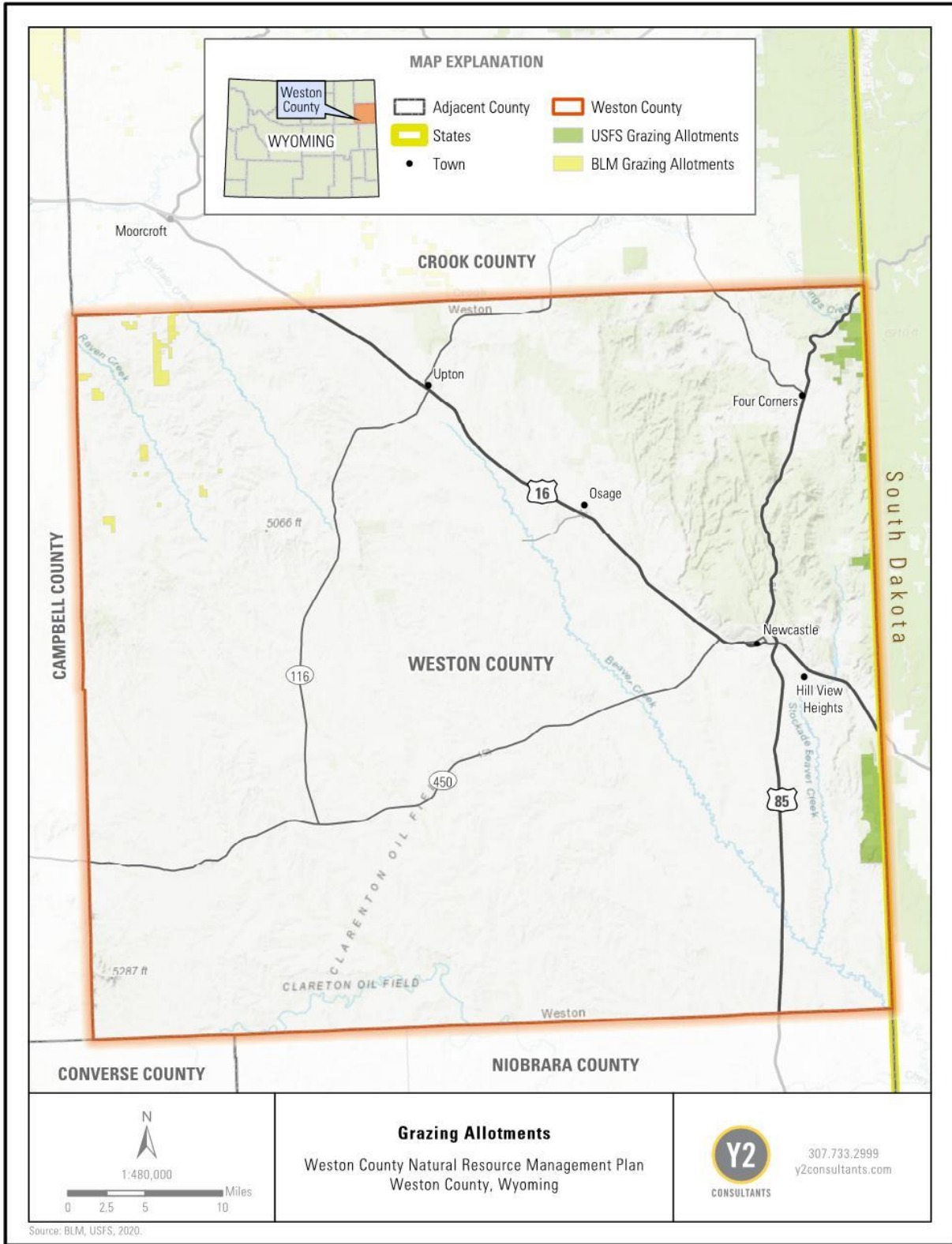


Figure 29. Weston County public land grazing allotments.

8.2.3 Livestock Grazing Resource Management Objective:

- A. Livestock grazing is maintained as a viable major component of the economy, custom, and culture of Weston County.
- B. Weston County is consulted early in the scoping process whenever a proposed decision will impact grazing, local agriculture producers, or the economy.
- C. The full amount of animal unit months on Bureau of Land Management and U.S. Forest Service Lands within Weston County are available.

8.2.4 Livestock Grazing Priority Statements:

- 1. Federal grazing allotments that are not officially closed or not actively being used shall be grazed.
- 2. Federal agencies should support the recognition and protection of the right to graze livestock on public lands through legal recognition of grazing preference rights.
- 3. Federal agencies should support range livestock production that is environmentally and economically viable.
- 4. Federal agencies should recognize locally led and coordinated resource management planning to resolve management conflicts and to ensure involvement of all interests.
- 5. Federal agencies should coordinate with the Wyoming Game and Fish Department and Wyoming Department of Agriculture to ensure that wildlife and big game numbers do not outstrip habitat and to reduce conflicts between rangeland resources for livestock grazing and wildfire forage and habitat needs.
- 6. Federal agencies should manage rangelands to maintain and enhance desired plant communities for the benefit of watersheds, wildlife, water quality, recreation, and livestock grazing.
- 7. Federal agencies should comply with all applicable state and federal rangeland and livestock grazing laws, with state law being applied when there is no clear federal preemption.
- 8. Federal agencies should use coordinated range management plans for each grazing allotment that allows for the flexibility and updating of management during the ten-year term of the grazing permit.
- 9. Federal agencies should utilize rangeland standards and guidelines that are scientifically proven and peer reviewed.
- 10. Federal agencies should facilitate range improvement projects and enhancement of habitat to benefit rangeland, soil, water, livestock, and wildlife.
- 11. Federal agencies should make range improvement management decisions on an allotment basis.
- 12. Federal agency should not restrict the development of livestock water or other rangeland improvements.
- 13. Federal agencies should work cooperatively with the local ranchers and other interested parties to address resource concerns on a site-specific basis.
- 14. Federal agencies should facilitate the use of prescribed fire and other approved methods to manage sagebrush, control weeds and tree encroachment, and to enhance, maintain, or increase current grazing levels.

15. Any decision to end livestock grazing must be reported to Congress, and the Bureau of Land Management must revise its land use plan to reflect the elimination of grazing, and applicable executive orders must be modified.
16. Federal agencies should work with producers to increase productivity of rangeland to increase and/or maintain animal unit months to maximum sustainable levels on rangelands in Weston County.
17. Federal agencies should use mechanisms to allow flexibility for grazing allotments or grazing lease agreements.
18. Weston County requests cooperating agency status with respect to amendments or revisions of land use plans, activity plans, or allotment management plans.
19. Livestock grazing management decisions shall be made based on the best available scientific information that is applicable to the rangeland resources in Weston County.
20. Federal agencies should work in coordination with Weston County, local grazing boards, and grazing permittees to develop and employ best management practices for the purpose of improving rangeland health so that suspended animal unit months can be returned to active status.
21. The Bureau of Land Management and U.S. Forest Service should prioritize bringing grass banks back into production and returning retired grazing allotments to part of the actively managed grazing system.
22. Federal agencies should support livestock grazing where appropriate on federally owned and operated lands as an integral part of habitat management.
23. Full site-specific economic and resource analysis of suspending grazing for allotment closures should be completed within one-year of closure.
24. Federal agencies should create adaptive grazing management guidelines that allow permittees to respond to changes in resource conditions. These shall include focused monitoring, triggers and responses, and alternative management.
25. The reduction of domestic livestock grazing animal unit months to provide additional forage for another species or strictly for conservation purposes is not supported by Weston County.
26. Animal unit months (AUMs) on federal lands shall not be reduced unless a documented resource condition indicates a need for temporary reduction to improve condition. Any reduction shall include a plan to reinstate AUMs when the resource condition has been addressed.
27. Timely processing of all term grazing permit renewals is a priority of Weston County.
28. All federal and state land management agencies shall use the most current ecological site descriptions developed by the Natural Resource Conservation Service to create appropriate objectives for livestock and wildlife management.
29. Native seed mixes consistent with the Ecological Site Description and free of noxious weeds and invasive species are encouraged for all reclamation efforts and must be beneficial to both livestock and wildlife and developed collaboratively with the permittee.
30. Federal agencies shall collaboratively develop and implement rangeland monitoring programs in cooperation with the permittee using currently accepted scientifically based monitoring methods and return intervals utilizing properly trained rangeland personnel

with an understanding of rangeland and its management to ensure proper collection and analysis of data.

31. Federal agencies should review and incorporate legal and credible data collected by a permittee, contractors or subcontractors of a permittee, qualified team, or local government for use in management decisions.
32. Federal agencies should develop additional rangeland improvements when the opportunity arises.
33. Grazing rest prescriptions related to either wildfires or prescribed burns should be determined on a site-specific basis. Post-fire grazing will not be limited when unbiased post-fire monitoring and evaluation produces relevant, accurate data demonstrating that grazing will not unduly harm the range.
34. Livestock grazing should return to pre-fire levels when post-fire monitoring data shows established objectives have been met or have been achieved to an extent allowed by the site potential. Require the use of credible data as previously defined to make these determinations.

8.3 PREDATOR CONTROL & LIVESTOCK PREDATION

8.3.1 History, Custom, and Culture

Predatory wildlife is important to the ecology of an ecosystem. However, predators have negative impacts on livestock operations, developing communities, and other agriculture operations. For these reasons, it is important to properly manage predators to ensure safe communities and stock, and healthy functioning ecosystems.

During the settlement of the western states, depredation was an issue across livestock operations. Predators were controlled on an individual basis until the early 1900s when stock growers began asking for government assistance. By the 1960s, with the release of the Leopold Report, the importance of proper management of predators became known (deCalesta, n.d.). The common public mindset began to shift to the control of predators threatening stock operations and communities while allowing natural predator populations to exist (deCalesta, n.d.).

8.3.2 Resource Assessment and Legal Framework

The Animal and Plant Health Inspection Service (APHIS) is located within the U.S. Department of Agriculture and provides a Wildlife Damage Program and a Pests and Diseases Program. The Wildlife Damage Program researches and develops wildlife damage management methods and provides resources to the public (APHIS, n.d.). The Wyoming State Legislature has established and updated predator control statutes in Title 11, Chapter 6 since the 1990s. Article 3 defines predatory animals within the state as any coyote, jackrabbit, porcupine, raccoon, red fox, skunk or stray cat; and gray wolves except where they are designated as trophy game animals. The statutes provide for general provisions, district boards, and the Wyoming State Animal Damage Management Board. The district for the County is the Weston County Predator Management District. Weston County maintains the appointed Predator Management District Board, which directly administers the predator management program.



There are a variety of predators and/or carnivores within the County that are not classified within the Wyoming predator statutes, those not classified under Title 11, Chapter 6 are often managed by WFGD. Predators are managed variably in accordance with their individual designations. Many common large predators are classified and managed as game animals, such as mountain lions and black bears, and some mid-sized predators are managed as furbearers, like the bobcat. Predators within the County may also be protected under ESA or MBTA, such as the raven and birds of prey. Predator population management is highly variable depending on the species and the population in question.

Predator control within the County affects the economic stability of the livestock industry and the sport hunting/fishing industry. Predator control has been used to protect the health and safety of the public by reducing human-wildlife conflict and the spread of diseases commonly carried by predators. The more common predatory animals in Weston County and the surrounding area include mountain lion and black bear (game animals), bobcat (furbearer), birds of prey and corvids (variable classification per species); and coyote, fox, porcupine, skunk, and raccoon which are classified as predators. It is important to recognize that changes in wildlife population dynamics and management in surrounding areas are likely to influence wildlife populations and behavior within Weston County.

8.3.3 Predator Control Resource Management Objectives:

- A. Predator populations are managed to maintain healthy ecological levels, while still prioritizing reducing the occurrence of livestock depredation and the health and welfare of citizens of Weston County.
- B. Control of predatory animals is supported by Weston County to reduce property damage and to protect wildlife and the local economy and tax base, including the viability of the agriculture community.

8.3.4 Predator Control Priority Statements:

- 1. Federal agencies should support trapping as a historic and environmentally-sound method of controlling predatory animals.
- 2. Federal agencies should protect private lands bordering federal and state lands from predatory animals.
- 3. Federal agencies should retain and expand animal damage control plans for the protection of livestock and crops through the Weston County predator boards and the control of disease-carrying animals.
- 4. Federal agencies should support predator control based on a balance between the best science available, economics, and logistics, evaluated by utilizing currently recognized methods of predator control that remain as viable options for predator control.
- 5. Federal agencies should support management of predator populations at levels consistent with the optimum utilization of forage by wild and domestic ungulates.
- 6. Predatory animals and predacious birds, which are disease-bearing vectors that are recognized as threats to public health should be controlled.
- 7. Coordination, communication, and cooperation between local, state, and federal health officials, along with veterinarians, weed and pest authorities, and predator boards is



encouraged regarding pest and predator control action and regulations affecting Weston County.

8. Reintroduction and introduction plans for predators should provide for compensation to livestock operators for actual value of loss, including replacement cost, and direct and incidental expenses relating to the loss and prompt payment thereof.
9. Predator control measures are supported on all lands within Weston County.
10. Federal agencies should recognize proactive efforts such as aerial hunting, snares, and leg traps to control predator populations.
11. Predator species as defined under state law shall be deterred from migrating or re-locating to areas that impact the health, safety, and welfare of the people.
12. When addressing a decline in sensitive species, predator control shall be employed prior to placing any restrictions on resource-based industries like livestock grazing.
13. Federal agencies should coordinate with Weston County in the determination of any impact of management of predator species when related to the management of Endangered Species Act listed species or the use of Animal and Plant Health Inspection Service funds, as required by federal agency mandates. This includes impacts on the economy, culture, custom and safety of the residents of Weston County.
14. Federal agencies should coordinate with Weston County in the determination of any impact of management of predator species when related to the management of Endangered Species Act listed species or the use of APHIS funds, as required by federal agency mandates. This includes impacts on the economy, culture, custom and safety of the residents of the County.
15. Wildlife management agencies should dedicate financial and personnel resources to predator management.
16. Federal agencies should support funding for predator control.

8.4 NOXIOUS AND INVASIVE WEEDS AND PESTS

8.4.1 History, Custom, and Culture

Noxious and invasive species can be plants, animals, diseases, or insects. Invasive species and pest management is defined as the ability to control species and pests that interfere with management objectives. An invasive species can be a native or non-native species that is occurring where it is not wanted or in unwanted numbers that may result in negative economic impacts. A noxious weed is any plant designated by federal, state, or local government officials as injurious to public health, agriculture, recreation, wildlife, or property. Once a weed is classified as noxious, authorities can implement quarantines and take other actions to contain or destroy the weed and limit its spread. (Weed Science Society of America, 2016)

Current control tactics include but are not limited to: education (plant identification, life cycles, mapping infestations, etc.); prevention (cleaning equipment, buying quality seed, rangeland management, early detection and control, etc.); mechanical and physical controls (burning, mowing, cultivation, rotating land uses, establishment of desirable competitive plants, etc.); biological (grazing, parasites, pathogens, etc.); chemical (herbicides, weed oils, plant growth regulators, etc.); law enforcement (remedial requirements, hearings, etc.); training (private and



commercial applicator training and certification, etc.); rodent control (minimize disease threats and control losses); and Board of County Commissioners actions (emergency declarations, budgeting, public meetings, etc.) (Wyoming Weed and Pest Council, n.d.). Cooperative agreements and legal actions, if warranted, may be utilized to assure the protection of vital land resources from noxious weed and pest occupation or invasion.

Weston County has traditionally practiced weed and pest control as a means to increase the productivity of the lands within the County and as a means of promoting the health, safety, and general welfare of the residents of the County. The Weston County Weed & Pest was established per the Wyoming Weed & Pest Control Act of 1973, which stated that all private, state, federal, and municipally owned lands are included in the District with the boundaries of the District the same as those of the County.

8.4.2 Resource Assessment and Legal Framework

The Wyoming Weed and Pest Act of 1973, as enacted by the legislature of Wyoming, created Weed and Pest Control Districts and the regulations which govern the districts. Within the Act, the composition of districts is defined at W.S. § 11-5-103:

“All land within the boundaries of Wyoming including all Federal, State, private and municipally owned lands, is hereby included in the weed and pest districts within the County in which the land is located,”

The act also specifically defines which weeds and pests are designated as weeds and pests in W.S. § 11-5-102. The Weed and Pest Act of 1973 in W.S. § 11-5-109 also spells out enforcement provisions which could result in heavy fines if persons are convicted.

“A landowner who is responsible for an infestation and fails or refuses to perform the remedial requirements for the control of the weed or pest [...] may be fined. [...] Any person accused under this act is entitled to a trial by jury” (W.S. §11-5-109e).

The District Board accepts the directive of the Act and their responsibilities seriously. Programs are in place with the long-term goal of continuity and sustainability in managing Designated Weeds and Pests and Declared Species. All control tactics within the Integrated Pest Management toolbox are considered, within the limitations of an annual budget. Realizing in most cases eradication is not possible across a landscape, it still becomes the primary focus of new or insipient invasions. Paramount to that effort is the statewide concept of Early Detection Rapid Response and the Play-Clean-Go initiative.

Another State Statute, the Special Management Program (SMP), formally known as the Leafy Spurge Law, provides for a District to request an additional mill levy from the County Commissioners for the purpose of implementing an integrated management system on up to two undesirable plants, pests or combination thereof. However, leafy spurge shall receive priority in the program. Under this Statute, all state or federal agencies owning or administering lands which

are untaxed for the purpose of this Act, shall contribute the total cost of the treatment program on those lands, obviously within the limitations of their respective budgets.

Funding for a long-term strategy implementing weed and pest control tactics has been lacking. Various state and federal agencies support weed and pest management by utilizing funds from discretionary or general fund sources. This only secures short-term funding for specific weed and pest infestations that generally last no more than one season.

Weston County works to suppress and eradicate all federally designated, State of Wyoming designated, and Weston County declared weeds and pests. The current federal noxious weeds list is maintained on the USDA Plants Database (NRCS, 2019). The declared Weston County noxious weeds are:

- Black medic (*Medicago lupulina*)
- Broom snakeweed (*Gutierrezia sarothrae*)
- Cheatgrass / downy brome (*Bromus tectorum*)
- Common purslane (*Portulaca oleracea*)
- Curly dock (*Rumex crispus*)
- Musk mustard (*Chorispora tenella*)
- Puncturevine (*Tribulus terrestris*)
- Sulfur cinquefoil (*Potentilla recta*)
- Wild licorice (*Glycyrrhiza lepidota*)

Several state declared noxious weed species are also of concern in Weston County. These include:

- Leafy spurge (*Euphorbia esula*)
- Hoary cress/whitetop (*Lepidium draba*)
- Canada thistle (*Cirsium arvense*)
- Field bindweed (*Convolvulus arvensis*)
- Toadflax (*Linaria vulgaris*)
- Common burdock (*Arctium* spp.)
- Bulbous bluegrass (*Poa bulbosa*)
- Salt cedar (*Tamarix* spp.)
- Hounds tongue (*Cynoglossum officinale*)
- Musk thistle (*Carduus nutans*)
- Scotch thistle (*Onopordum acanthium*)
- Diffuse knapweed (*Centaurea diffusa*)
- Spotted knapweed (*Centaurea stoebe*)
- Russian knapweed (*Rhaponticum repens*)

In addition to these plants, aquatic plants like hydrilla (*Hydrilla verticillata*), Eurasian watermilfoil (*Myriophyllum spicatum*), curly pondweed (*Potamogeton crispus*) and didymo (rock snot) (*Didymosphenia geminata*) are of concern. Several animal species are also of concern such as aquatic invasive species like zebra and quagga mussels (*Dreissena polymorpha*, *Dreissena bugensis*), New Zealand mudsnail (*Potamopyrgus antipodarum*), Asian carp (*Cyprinus* spp.) and rusty crayfish (*Orconectes rusticus*). Almost all of these species can have a negative impact on

irrigation structures if they become established and they can clog up or break down irrigation structures (ISAC, 2016). White pine blister rust (*Cronartium ribicola*), pine borers (*Dendroctonus* spp.), and spruce bud worms (*Choristoneura* spp.) can also be problem invaders in the forested regions of the County. Several agricultural pests exist that can negatively impact the agricultural regions of the County.

U.S. Forest Service

The USFS has a [National Strategic Framework for Invasive Species Management](#)⁴¹ that provides broad and consistent strategic direction across all USFS Deputy Areas and agency programs. It also describes how the National and Regional Invasive Species Issue Teams will coordinate activities with the USFS and with Federal, State, and local partners. It lays out the framework for prevention, detection, control and management, and restoration and rehabilitation on USFS lands. (USFS, 2013)

Bureau of Land Management

The BLM keep the National Invasive Species Information Management System (NISIMS) database which provides a comprehensive tool for managers to use to standardize the collection of invasive species and treatment data. The database can be found [here](#)⁴².

The BLM also recognizes the PlayCleanGo Campaign which is an educational outreach program with the goal to protect valuable natural resources while encouraging the public to enjoy the great outdoors. PlayCleanGo promotes awareness, understanding, and cooperation by providing clear call to action to be informed, attentive, and accountable for stopping the spread of all invasive species. (NAISMA, n.d.)

8.4.3 Noxious and Invasive Weed and Pest Resource Management Objectives:

- A. Noxious weeds and invasive species (plants and animals) are managed to maintain healthy ecological levels using best management practices within Weston County.
- B. Federal agencies coordinate and communicate all invasive, noxious, pest, or weed management actions and plans with the Weston County Weed and Pest District.

8.4.4 Noxious and Invasive Weed and Pest Priority Statements:

1. Weston County encourages the cooperation of local, state, and federal governments for procurement of additional funding for Weston County Weed and Pest for the control of weeds on all lands in the County.
2. Federal agencies should support Weston County Weed and Pest District's current and future efforts to identify the location of all designated or declared noxious weeds and initiate management and/or control.
3. Federal agencies should cooperate in noxious weed control to improve the productivity of federally managed rangelands consistent with local, state, and federal law and policies to control noxious and invasive weeds, and to enhance native vegetation.
4. Federal agencies should support cooperative agreements to assure the protection of all lands from noxious weed invasion or occupation.

5. Federal agencies should communicate, coordinate, and consult with local and state governments on education about the control of potential invasive alien species.
6. Federal agencies should recognize the State of Wyoming Noxious Weed Act (Wyo. Stat. §11-5-102(a)(xii)) and assist Weston County Weed and Pest in monitoring efforts of invasive plant species and noxious weed infestations throughout the County.
7. Weston County encourages protection of private property bordering federal and state lands from noxious weeds, prairie dogs, grasshoppers, and insects, including the use of preventative management and control such as quarter mile buffer zones along borders on federal and state lands.
8. Federal agencies should work closely with local, state, and federal health agencies to manage and monitor zoonotic and vector-borne diseases, including mosquitoes that transmit viruses, such as West Nile.
9. Promote coordination with other local, state, and federal agencies to allow Weston County Weed and Pest access to and across public lands as may be necessary to carry out active control measures on both public and private lands.
10. Federal agencies should evaluate prescribed burns and capitalize on wildfires as an opportunity to control weed species and enhance rangeland health to support and expand multiple use.
11. Federal agencies should find ways to utilize prescriptive grazing techniques to control or manage noxious or invasive plant species.
12. Federal agencies should work with Weston County, State, and other federal land managers to provide flexibility for permittees to utilize this control option.
13. Federal agencies should elevate the awareness and priority of controlling any new or existing infestations of Ventenata and/or Medusahead rye in Weston County.
14. Federal agencies should support the ongoing efforts and additional research to control cheatgrass populations within Weston County.
15. Weston County supports habitat enhancement projects that have a defined and funded weed control and monitoring plan over the anticipated life of the enhancement.
16. Federal agencies should consider how their activities might have an adverse effect on any historical or cultural sites in Weston County.
17. Weston County supports the use of pesticides.
18. Federal agency processes should consider adaptive or new control techniques and pesticides.
19. Weston County supports and encourages programs to mitigate prairie dogs; and encourages State and federal agencies to adopt policies to allow for prairie dog control as good neighbors and responsible stewards of the lands they are entrusted to manage.
20. Federal agencies should implement weed control practices that include mapping as an integrated management tool.
21. Federal agencies should work with partners to prevent and manage aquatic nuisance species, although not listed Designated or Declared, (i.e., zebra mussels, quagga mussels) on all waters within Weston County.
22. Weston County supports the Play, Clean, Go initiative and other education/awareness programs for public and private land users in weed identifications and understanding vectors of weed spread.

23. Federal agencies should use aerial equipment such as drones, helicopters or fixed wing as a critical use for weed monitoring and control.
24. Federal agencies should recognize and support the State of Wyoming designation of black-tailed prairie dog as being classified as an agricultural pest [Wyoming Statute 11-5-102(a)(xii)] and should employ the appropriate management prescriptions to be consistent with this designation.
25. Federal agencies should require an adequate buffer zone between prairie dog towns on State and Federal lands and private lands to ensure the health, safety and economic protection of neighboring private landowners.
26. Federal agencies should monitor prairie dog colonies for evidence of plague and other communicable diseases. If any evidence is noted, it should be reported to the Wyoming Department of Public Health.
27. Weston County supports the use of rodenticides such as Rozol for prairie dog control.
28. Weston County opposes any translocation and/or introduction of prairie dogs within the County.
29. Federal agencies should support the use of and various application methods of herbicides to control noxious weeds in special designation and management areas as allowable.
30. Federal agencies should work with Weston County and the Weed and Pest District to control leafy spurge throughout the county.

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ACRONYMS

ACEC- Areas of Critical Environmental Concern

APHIS – Animal and Plant Health Inspection Service

ARPA – Archeological Resources Protection Act

AUM- Animal Unit Month

BLM- Bureau of Land Management

BMP-Best Management Practice

BOR- Bureau of Reclamation

CAP-SSE-- Community Assistance Program – State Support Services

CCA – Candidate Conservation Agreements

CCAA – Candidate Conservation Agreements with Assurances

CEQ- Council on Environmental Quality

CWA – Clean Water Act

EA- Environmental Assessment

EIS- Environmental Impact Statement

EPA- Environmental Protection Agency

ERFO – Emergency Relief for Federally Owned Roads

ESA- 1973 Endangered Species Act

FAST – Fixing America’s Surface Transportation act

FDQA – Federal Data Quality Act

FHWA- Federal Highway Administration

FLAP – Federal Lands Access Program

FLMPA- 1976 Federal Land Management and Policy Act

FLTP – Federal Lands Transportation Program



FSA – Farm Service Agency

GHG- Greenhouse Gas

GLO - General Lands Office

GPC—Groundwater Pollution Control

IPCC- International Governmental Panel on Climate Change

LUP- Land Use Plan

MOA - Memorandum of Agreement

MOU - Memorandum of Understanding

MUSY- 1960 Multiple Use Sustained Yield Act

NAAQS – National Ambient Air Quality Standards

NEPA- 1973 National Environmental Policy Act

NFHL – National Flood Hazard Layer

NFIP – National Flood Insurance Program

NFMA- 1976 National Forest Management Act

NFS – National Forest System

NPS- National Park Service

NRCS – Natural Resource Conservation Service

NRMP- Natural Resource Management Plan

NSFLTP – Nationally Significant Federal Lands and Tribal Projects Program

NSS – Native Species Status

NWR – National Wildlife Refuge

OAA-1897 Organic Administration Act

OHV – Off-Highway Vehicle

OMB - Office of Management and Budget



PFC—Proper Functioning Condition
PILT- Payments In Lieu of Taxes
SWAP – State Wildlife Action Plan
USACE – US Army Corps of Engineers
USFS- United States Forest Service
USFWS – US Fish and Wildlife Service
USGS- United States Geological Survey
WDEQ – Wyoming Department of Environmental Quality
WEQA – Wyoming Environmental Quality Act
WGFD – Wyoming Game and Fish Department
WOGCC – Wyoming Oil and Gas Conservation Commission
WQD—Water Quality Division
WSA – Wilderness Study Area
WWDC – Wyoming Water Development Commission
WWDO – Wyoming Water Development Office
WYDOT- Wyoming Department of Transportation



APPENDIX A: WEBSITE LINKS

1. https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmpolicymanual1283.pdf
2. <https://www.usbr.gov/main/qoi/>
3. <https://www.epa.gov/quality/about-epas-quality-program>
4. https://www.publications.usace.army.mil/Portals/76/Publications/EngineerRegulations/ER_25-1-110.pdf
5. https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5409879.pdf
6. <https://www.fws.gov/stand/>
7. <http://deq.wyoming.gov/wqd/surface-water-quality-standards-2/>
8. <https://www.fs.usda.gov/science-technology/geology/paleontology>
9. <https://www.usbr.gov/cultural/fossil.html>
10. <https://www.fws.gov/historicPreservation/crp/index.html>
11. <https://www.blm.gov/programs/cultural-resources>
12. <https://www.fs.usda.gov/detail/mbr/landmanagement/?cid=stelprd3802740>
13. <https://www.fs.fed.us/emc/nepa/roadless/2001RoadlessRuleFR.pdf>
14. <https://www.fs.fed.us/t-d/pubs/pdf/11771811.pdf>
15. <https://www.doi.gov/pressreleases/fact-sheet-president-biden-take-action-uphold-commitment-restore-balance-public-lands>
16. <https://www.doi.gov/sites/doi.gov/files/report-conserving-and-restoring-america-the-beautiful-2021.pdf>
17. <https://wsfd.wyo.gov/fire-management/fuels-mitigation/county-wildfire-protection-plans>
18. https://www.blm.gov/sites/blm.gov/files/documents/files/PublicRoom_Wyoming_StandardsandGuidelinesforHealthyRangelands1997.pdf
19. <https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>
20. <https://www.arcgis.com/apps/webappviewer/index.html?id=3f7ab99343c34bd3ac5ae6ac8c04d95a/>
21. <https://waterplan.state.wy.us/plan/newy/newy-plan.html>
22. <https://wwdc.state.wy.us/irrsys/2019/raterept.html>
23. <https://www.epa.gov/wotus/current-implementation-waters-united-states>
24. <http://deq.wyoming.gov/wqd/surface-water-quality-standards-2/>
25. <https://www.fema.gov/flood-maps/national-flood-hazard-layer>
26. <https://www.archives.gov/federal-register/codification/executive-order/11988.html>
27. <https://www.archives.gov/federal-register/codification/executive-order/11990.html>
28. <https://wgfd.wyo.gov/WGFD/media/content/PDF/Habitat/SWAP/Wyoming-SGCN.pdf>
29. <https://wgfd.wyo.gov/Habitat/Sage-Grouse-Management/Sage-Grouse-Local-Working-Groups>
30. https://wgfd.wyo.gov/WGFD/media/content/PDF/Habitat/Sage%20Grouse/Governor-Gordon-Greater-Sage-Grouse-EO-2019-3_August-21-2019_Final-Signed_2.pdf



31. <https://ecos.fws.gov/ecp/>
32. <https://www.blm.gov/sites/blm.gov/files/docs/2021-01/wy2010-027atch2.pdf>
33. <https://www.fs.usda.gov/detail/r2/landmanagement/?cid=stelprdb5390116>
34. https://www.fws.gov/wyominges/Species_WYESlist.php
35. <https://www.tbgpea.org/>
36. <https://wgfd.wyo.gov/Habitat/Aquatic-Habitat/Water-Strategy>
37. <https://wgfd.wyo.gov/Habitat/Habitat-Priority-Areas/Statewide-Maps>
38. <https://wgfd.maps.arcgis.com/apps/MapTools/index.html?appid=31c38ed91cf04fb7bb8aebd29515e108>
39. https://www.sheridancounty.com/wp-content/uploads/dlm_uploads/SC_HMP/Region_1_Mit_Plan.pdf
40. <https://www.federalregister.gov/documents/2018/01/11/2018-00553/streamlining-and-expediting-requests-to-locate-broadband-facilities-in-rural-america>
41. https://www.fs.fed.us/foresthealth/publications/Framework_for_Invasive_Species_FS-1017.pdf
42. https://webmaps.blm.gov/Geocortex/Html5Viewer/index.html?viewer=NISIMS_Publication.NISIMS_Publication_HTML51

APPENDIX B: STEERING COMMITTEE MEMEBERS

Member	Affiliation
Caleb Carter	Weston County Natural Resource District
Daniel Tysdale	Weston County Fire Chief
Joe Sandrini	Wyoming Game and Fish
Marty Ertman	Weston County Commissioner
Nathan Todd	Weston County Commissioner
Tony Barton	Weston County Commissioner
Ed Wagoner	Weston County Commissioner
Don Taylor	Weston County Commissioner
Conner Nicklas	Budd-Falen Law Office (Consultant)
Bree Burton	Y2 Consultants (Consultant)
Dru Palmer	DRU Consulting (Consultant)



APPENDIX C: WESTON COUNTY RESOLUTIONS



COUNTY COMMISSIONERS

Ted M. Elliott, Chairman

Billie L. Barton

Donna Baldwin Hunt

John S. Berdahl

Martin Tysdal

COUNTY CLERK

Paulette A. Thompson

COUNTY ASSESSOR

Kurt D. Kremke

COUNTY TREASURER

JoAnn Fassbender

CLERK OF COURT

Léona Cool

COUNTY ATTORNEY

Tracy Hunt

COUNTY SHERIFF

Donal C. Howell

COUNTY OF WESTON

1 West Main

Newcastle, Wyoming 82701

94-10

RESOLUTION AND BINDING ACTION SUPPORTING COUNTY CUSTOM,
CULTURE AND HERITAGE IN DECISION MAKING REGARDING FEDERAL
LANDS IN WESTON COUNTY, STATE OF WYOMING

WHEREAS, the government of the United States of America exercises control over a significant portion of the land and resources within and surrounding the geographic boundaries of this county, and

WHEREAS, decision governing federal land in and adjacent to Weston County, State of Wyoming, have a direct and broadly based impact on the interrelated heritage of cultural, environmental, and economic well-being and stability of residents, and

WHEREAS, Congress has expressly intended to act in cooperation with county governments while using all practicable means to create and maintain conditions on federal lands allowing for productive harmony between man and nature while fulfilling the social, economic, environmental and cultural requirements of present and future generation of Americans, and

WHEREAS, efforts of Congress seeking to coordinate Federal plans with county government, maintaining a balance between population and resources, and encouraging a high standard of living and a wide sharing of life's amenities can be enhanced by both increased cooperation between Weston County and those federal officials involved with the administration by the federal government of the needs of citizens of this county will be directly and indirectly impacted by agency decisions regarding the use of federal lands, and

WHEREAS, there now exists a significant, urgent need for the promotion of the involvement of Weston County, State of Wyoming, in the management of federal lands and the development of criteria that are meaningful in that federal decision making process.

IT IS HEREBY RESOLVED AND DETERMINED, that the following procedural protections shall be followed to ensure that there is full and complete information and cooperation provided to federal entities in their decision making process regarding management of lands located within and adjacent to Weston County, State of Wyoming, and federal consideration of the impact of their decision making and actions have on the preservation of the interrelated heritage of cultural, custom, environmental and economic well-being and stability of this county:

1. These procedural provisions are intended to apply to all decisions undertaken by any agency, department or other federal entity within the Department of Interior, Department of Agriculture, or Environmental Protection Agency

(hereinafter known as federal entities") that do or will have a direct or indirect impact on federal and private lands within the geographic confines of Weston County, State of Wyoming, and federal lands adjacent to Weston County.

2. Within thirty (30) days of adoption of this resolution and at the beginning of each calendar year after this resolution becomes effective, the Chairman of the Board of the Weston County Commissioners, as executive officer; of this county, or his designee, shall give written notice to federal entities as follows:

a. That the county government of Weston County, State of Wyoming, desires to have full and complete notice and opportunity for involvement in the decision making processes of the federal entity that either (i) are taken or are being proposed to be taken regarding federal lands located within Weston County, State of Wyoming, (ii) involves the listing, de-listing, or reclassification of a threatened or endangered species or critical habitat within Weston County, State of Wyoming, or (iii) involves any major federal action significantly affecting the quality of the human environment within Weston County, State of Wyoming.

b. That any decision of federal entities to not afford the government of Weston County either (i) complete notice, (ii) opportunity for involvement beyond that afforded each citizen or (iii) limit the role of county government to a local public hearing is presumed as a matter of law to reduce the role that Weston County has in the planning process and be prejudicial to the government of Weston County and its residents.

c. That all zoning regulations lawfully in force and lawfully licensed business enterprises of any kind, are expressions of interrelated environmental, cultural and economic policies that this County deems to be critical to the maintenance of the well-being and stability of the residents of this county and their government.

3. That within present budgetary constraints, affirmative action shall be taken to notify federal entities of any other evidence of our interrelated historic, cultural, and environmental heritage as well as the anticipated impact on the same of any use of federal or private lands located in the county.

4. If proposed implementation of a critical habitat designation or federal policies or practices over federal lands located within the geographic boundaries of this county or elsewhere will likely result in either (a) the alteration of present county and local zoning regulations without being previously voluntarily initiated by this county, or (b) make

it infeasible for existing businesses to continue their present operation, the proposed federal action is presumed to both create a negative impact on the interrelated environmental, cultural, and economic well-being and stability of this county and its residents and not be the preferred alternative to resolve the environmental and other concerns of the federal entities.

5. Nothing herein in is intended to conflict with any existing federal or state statute, or applicable regulation that governs lands within Weston County, State of Wyoming. Any section, paragraph, sentence, phrase or word that is found to do so as a matter of law may be severed from this resolution without limiting the enforceability of the non-conflicting portion.

DATED this 5th day of October, 1994.

Ted M. Elliott
Ted M. Elliott, Chairman

Martin Tysdal
Martin Tysdal, Vice-Chairman

Bill Barton
Bill Barton, Member

John S. Berdahl
John S. "Stew" Berdahl, Member

Donna Baldwin Hunt
Donna Baldwin Hunt, Member

RESOLUTION NUMBER 94-12

A RESOLUTION OF WESTON COUNTY, WYOMING
ESTABLISHING A PROCESS OF ENVIRONMENTAL REVIEW
FOR PLANS, PROGRAMS AND PROJECTS INITIATED BY FEDERAL AND
STATE GOVERNMENTS COORDINATED WITH
THE WESTON COUNTY LAND USE PLAN
ENTITLED
"THE WESTON COUNTY ENVIRONMENTAL REVIEW PLAN."

The County Commissioners of the County of Weston, State of Wyoming resolve:

The Weston County Environmental Review Plan is established to read as follows:

Section 1-1. DECLARATION OF PURPOSE AND INTENT

1. The custom, culture and economy of Weston County is affected by plans, programs and projects initiated by federal and state governmental agencies. An effective, coordinated process of environmental review prior to implementation of such plans, programs and projects is in the best interest of the citizens of Weston County.

2. The policy of planning and review in Weston County, as it relates to plans, programs and projects initiated by federal and state governmental agencies, is designed to promote the stated purposes and philosophy of the National Environmental Policy Act (NEPA)¹

To declare a national policy which will encourage the productive and enjoyable harmony between man and his environment; to promote efforts which will eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the nation...

^{1/} National Environmental Policy Act of 1969, effective January 1, 1970 (42 USC 4231 et seq.). Section 2, Purpose.

3. Federal statutes and presidential executive orders provide the framework for coordinated planning between Weston County and federal agencies. Federal statutes and regulations require federal agencies to coordinate their initial planning efforts with local government.² NEPA requires federal agencies to work in close consultation with local governments and coordinate plans, functions, programs and resources.³ Further, it is the responsibility of the federal government to assure for all Americans safe, healthful, productive and aesthetically and culturally pleasing surroundings;⁴ preserve important historic, cultural, and natural aspects of our national heritage, and maintain, whenever possible, an environment which supports diversity and variety of individual choice.⁵

4. Wyoming Statute 18-5-208, authorizes Weston County to participate in efforts to coordinate the Weston County Land Use Plan, as adopted by the Weston County Board of County Commissioners on December 19, 1977, with federal agencies. Presidential Executive Order 12372 requires federal agencies to coordinate actions and projects with local governments so that local impacts arising from federal projects

2/ See for example, 16 USC 1601; 43 CFR 1604 (a).

3/ 42 USC 4331(a) and (b).

4/ 42 USC 4331(b) (2).

5/ 42 USC 4331(b) (4).

may be identified. See also Presidential Executive Order 12866 - Regulatory Planning and Review, Sept. 30, 1993.

5. Federal and state lands make up a substantial part of Weston County. Moreover, Weston County's economy, tax base, and community stability are dependent on business activities on these federal and state lands. These activities are inseparably tied to the privately owned lands in Weston County.

6. In order to carry out these important policies and objectives for plans, programs and projects initiated by federal and state governmental agencies which may significantly affect the quality of the human environment in Weston County, it is necessary, consistent with applicable federal and state law, for all such agencies to comply with the provisions and policies of this ordinance, including any rules and regulations promulgated hereunder, as well as the applicable provisions of NEPA.

7. The overriding purpose of this resolution is to assist federal and state agencies in coordinating governmental agency initiated planning activities with Weston County. The nature and intent of this resolution is to protect the environment, the local community economic stability and the custom and culture of Weston County's citizens through protection of private property rights, the facilitation of a free market economy and the establishment of a process to ensure self-determination by local communities and individuals. Further, public agencies engaged in activities which may be otherwise exempt from NEPA are nonetheless invited and encouraged to participate voluntarily in this process.

8. Therefore, this resolution and any rules and regulations hereunder are applicable only to federal and state agencies which initiate plans, programs and projects that affect Weston County where such governmental agencies are directed or instructed by applicable federal and state law and Executive Orders to coordinate or otherwise involve Weston County in planning for such governmental actions.

9. As used in this resolution, the terms "environment" and "environmental" include, without limitation, the custom, culture and economic resources of Weston County.

10. The Weston County Commissioners expressly provide that this resolution is adopted pursuant to W.S. 18-5-208 as the Weston County effort to coordinate the Weston County Land Use Plan with federal regional forest and other resource management plans, but this resolution is not and shall not deemed or construed to be a zoning ordinance.

Section 1-2. WESTON COUNTY ENVIRONMENTAL POLICY

1-2-1. The Weston County Commissioners finds and declares the following general environmental policy:

The protection of the custom and culture of Weston County is important to the present and future preservation of environmental quality for its people. The assurance for all Weston County citizens of a safe, healthy, productive, and culturally and aesthetically supportive environment is essential to the quality of life and human environment. There is a need to understand the relationship between the maintenance of nature and

the general welfare of the people who live, work and play in Weston County, including the use of its natural resources. It is the intent of the Weston County Commissioners to maintain the quality of the environment and to protect the economic stability of the county which supports its customs and culture. Effective management of natural resources requires systematic and coordinated efforts between public and private interests to maintain environmental quality and economic stability. State and federal agencies initiating plans, programs and projects which may adversely affect private citizens who contribute to the economic stability of Weston County, should, consistent with applicable federal and state law, assure that major consideration is given to protecting the environment without depriving county citizens.

1-2-2. The Weston County Board of Commissioners further finds and declares the following specific environmental policies regarding LAND DISPOSITION AND LAND USES; WATER RESOURCES; AGRICULTURE; TIMBER AND WOOD PRODUCTS; RECREATION, WILDLIFE AND TOURISM; AND MINERAL RESOURCES:

A. LAND DISPOSITION AND LAND USES: Recognizing that land is essential to local industries and residents and is certainly a consideration "in the public interest," it is the policy of this County to assist and participate in the planning, design and development of all land disposal and acquisition, including land adjustments and exchanges, initiated by federal or state agencies. To define "public interest" as required by federal law, the Commission requests consideration of the following policies:

1. POLICIES

a. Increase opportunities for local economic development.

b. Federal and state land agencies are encouraged not to initiate acquisition of any private lands or rights in private lands within Weston County without first ensuring:

(1) That as a minimum, the stability of the local economy is maintained; and

(2) That private property interests are protected and enhanced in accordance with the United States Constitution and the Wyoming Constitution; and

(3) That such acquisitions be in the best interest of the citizens of Weston County.

c. Consistent with applicable federal and state law, the general public, the Weston County Commission, and local Weston County communities should be notified of, consulted with, and otherwise involved in all land adjustments initiated by federal or state agencies whether it be by disposal or acquisition, exchange or change in use. It is intended that such adjustments and actions should specifically include, but are not limited to, any proposed changes in livestock grazing, recreation areas, wildlife habitat, wildlife recovery plans, timber sales volume projections, restricted access, road closures, mineral resources, mineral exploration, visual classification, designation of sensitive plants and animals, and primitive or wilderness study area designations. In addition, such proposed adjustments and actions, including federally proposed wild and scenic river designations, should, consistent with applicable federal and state law, be coordinated

with the Weston County Commission through this Environmental Review Plan prior to adoption and implementation. It is the intent of the County to assist federal and state agencies in the planning and management of the natural, cultural, and economic resources on public lands located within Weston County.

d. Consistent with applicable federal and state law, Weston County seeks to be involved in the planning and determination of land withdrawals or acquisitions for hazardous and non-hazardous waste storage as well as the types and points of origin of such waste.

e. Weston County hereby establishes a Joint Committee as follows:

(1) The Joint Committee shall be composed of five members, including one member from each of the following committees operating under this Environmental Review Plan: Agriculture Committee, Timber Committee, Mining Committee, and Recreation, Wildlife and Tourism Committee. Each such member of the Joint Committee shall be selected by his or her respective committee from that committee's membership by the majority vote of such committee. The fifth member of the Joint Committee shall be an at large member who is not otherwise serving on any other committee under this Environmental Review Plan. This at large member shall be appointed directly by the Weston County Commissioners.

(2) The Joint Committee may develop and make available local, historical and economic studies for the purposes of measuring impacts on issues of land use and withdrawal and water

resources in regard to the cultural, historical and economic interests of the County through this Environmental Review Plan.

(3) The Joint Committee may also oversee protection and recovery of all federal and state listed threatened or endangered species.

B. WATER RESOURCES: It is the policy of Weston County to recognize that the protection and development of its water resources are essential to its short and long term environmental, economic and cultural viability.

1. POLICIES

a. The protection of existing water rights and water uses within the County is of primary importance to the County's economic and cultural well-being. Therefore, transfers in water use should be carefully considered in relationship to the history, traditions, and culture of Weston County. Weston County may, as determined from time to time under this Environmental Review Plan, prepare or be involved in the preparation of plans for the protection of aquatic Threatened and Endangered Species within its boundaries. Federal and state agencies managing waterways and wetlands containing such species should, consistent with applicable federal and state law, coordinate their management activities and plans with the Weston County Commission through this Environmental Review Plan.

b. Weston County recognizes the historic and economic use of existing water rights and promotes future water use for agricultural, municipal, industrial, domestic, recreation and

hydroelectric power purposes.

c. Consistent with applicable federal and state law, the Weston County Commission should be notified of all actions initiated by state and federal agencies that have any impact on the water of the County prior to actions being initiated including federally proposed Wild and Scenic River designations through this Environmental Review Plan.

d. Weston County may develop Wild and Scenic River designations of its own design and requests full federal compliance in the acceptance and enforcement of such designations through this Environmental Review Plan as is consistent with applicable federal law. In addition, the County may develop riparian management plans in concert and coordination with landowners, ranches, and the appropriate state and federal agencies through this Environmental Review Plan.

e. Weston County recognizes the principles of all water law contained in the Wyoming Codified Laws.

f. Issues of water resources within the jurisdiction of this Environmental Review Plan shall be addressed by the Joint Committee established hereunder.

C. AGRICULTURE: The custom and culture associated with agricultural production in Weston County is necessary to the livelihood and well-being of its citizens. Therefore, it is the policy of Weston County to protect agricultural pursuits by protecting private property rights, relying on self-determination and ensuring open market conditions.

1. POLICIES

a. Opportunities for grazing livestock on federal and state lands should be continued at levels consistent with environmental stewardship, custom and culture and the protection of property rights. Federal and state land managing agencies should, consistent with applicable federal and state law, coordinate with the Weston County Commissioners on all matters affecting livestock grazing on public lands through this Environmental Review Plan.

b. Weston County hereby establishes an Agriculture Committee with the following duties:

(1) The Agriculture Committee shall be made up of three individuals, at least two of whom are presently agricultural producers or are engaged in or employed by an agricultural business or agency actively operating within the County.

(2) The Agriculture Committee may develop and make available local, historical and economic studies for the purposes of measuring impacts on the agricultural industry in regard to the cultural, historical and economic interests of the County through this Environmental Review Plan.

D. TIMBER AND WOOD PRODUCTS: Through a long and important history of timber harvesting on federally owned forestlands in Weston County and the surrounding region, the customs and culture of the County's citizens have developed a close and dependent association with management and harvesting of timber from such forestlands. Weston County recognizes humans are part of the

natural management of forests and when done in a proper manner this same management will yield not only economic benefits for our society but also will provide a healthy habitat for all species that presently exist in Weston County. Therefore, Weston County states the following policies intended to assist the County in maintaining the forest and forest products industry in a way that is sustainable for County citizens, and to provide environmental protection, economic opportunity, reliance on self-determination, and insuring open market conditions:

1. POLICIES

a. Weston County seeks to assist in providing protection from human or naturally caused events that would negatively affect the productivity and sustainable values that have been historically produced from federal and state lands within the County and upon which the County's custom and culture are dependent.

b. Weston County encourages promotion of a sustainable harvest of trees from federal and state lands based upon the best scientific information available.

c. Weston County encourages application of proper forest management practices upon all public forestlands within the County to encourage the flow and availability of raw materials to the widest spectrum of users in support of local entrepreneurship.

d. Weston County encourages exploration of markets and incentive systems seeking to reduce federal and state administration program costs on federal and state lands within the County.

e. Weston County encourages promotion and development of new commercial uses of raw materials from trees harvested within the County.

f. Weston County encourages promotion and development of new commercial opportunities to utilize slash and precommercial thinning material, and trees of different species within the County on public forest lands.

g. Weston County encourages the education and increased awareness of its citizens regarding the sources of raw wood materials and how management of natural forest resources can benefit society economically and environmentally.

h. Weston County hereby establishes a Timber Committee with the following duties:

(1) The Timber Committee shall be made up of three individuals, at least two of whom are presently engaged in or employed by a timber, forest products or logging business actively operating within the County.

(2) The Timber Committee may develop and make available local, historical and economic studies for the purposes of measuring impacts on the timber industry in regard to the cultural, historical and economic interests of the County through this Environmental Review Plan.

E. RECREATION, WILDLIFE AND TOURISM: It is the policy of Weston County to promote and facilitate public and private recreational, cultural and wildlife opportunities compatible with environmental stewardship and local custom and culture within

the constraints of private property rights and local self-determination.

1. POLICIES:

e. Weston County hereby establishes a Recreation, Wildlife and Tourism Committee with the following duties:

(1) The Recreation, Wildlife and Tourism Committee shall be made up of three individuals, at least two of whom are presently a member of or are engaged in or employed by a public or private recreation or tourism business, club, organization, association or agency actively operating within the County or who are wildlife professionals.

(2) The Recreation, Wildlife and Tourism Committee may develop and make available local, historical and economic studies for the purposes of measuring impacts on the recreation and tourism industry and wildlife in regard to the cultural, historical and economic interests of the County through this Environmental Review Plan, and may coordinate with Federal and State land and wildlife and recreation management and enforcement agencies on all matters regarding wildlife through this Environmental Review Plan.

F. MINERAL RESOURCES: It is the policy of Weston County to recognize that the mining/mineral extraction industries are valuable and vital industries and that the development of mineral resources is an essential and important part of its' culture, history and future economic development.

1. POLICIES

a. Weston County supports the preservation of viable

mineral industries and recognizes the role of these industries in the custom, culture and history of the county and its people.

b. Weston County encourages mineral exploration and extraction of mineral resources on state and federal lands.

c. Weston County seeks to keep state and federal lands open to mineral exploration and extraction of mineral resources.

d. Weston County encourages environmentally responsible mining on public lands as defined by state and federal regulation.

e. Weston County seeks to assist in providing protection from events that would negatively affect the productivity and viability of the mineral industries which have historically been a significant portion of the county's customs, culture and economic stability.

f. Weston County supports the maintenance of private ownership of sub-surface real property rights including those under ownership of split estate.

g. Weston County encourages the education and increased awareness of its citizens regarding the mineral industry's importance to the local and national economy and its benefits to society.

h. Weston County hereby establishes a Mineral Resources Committee with the following duties:

(1) The Mineral Resources Committee shall be made up of three individuals, at least two of whom are presently engaged in or employed by a mineral industry actively operating within the County.

(2) The Mineral Resources Committee may develop and make available local, historical and economic studies for the purposes of measuring impacts on the mineral industries in regard to the cultural,

historical and economic interests of the County through this Environmental Review Plan.

Section 1-3. OBJECTIVES OF ENVIRONMENTAL PLANNING & REVIEW

The Weston County Board of Commissioners has identified six (6) primary objectives:

1. To disclose to decision makers and the public significant environmental consequences of proposed actions of state and federal governmental agencies on nature, society, custom and culture, property rights, and economic stability of Weston County.

2. To identify means to mitigate or eliminate adverse impacts to the environment, including nature, society, custom and culture, property rights, and the economic stability of Weston County.

3. To prevent injury to this environment by requiring implementation of feasible alternatives or mitigation measures consistent with applicable federal and state law.

4. To foster and encourage intergovernmental coordination and cooperation.

5. To encourage and enhance public participation and education in the environmental review process.

6. To plan and manage natural resources consistent with environmental and community standards in Weston County and applicable federal and state law.

Section 1-4. CRITERIA AND PROCEDURES

In order to achieve the objectives expressed in Section 1-3, above, the following procedures shall apply to all plans, programs

and projects initiated by state or federal agencies, consistent with applicable federal and state law;

1. Interagency agreements are necessary to a coordinated process of environmental review. Such agreements should include the development of a system of involving the Weston County Commission and the committees established under the Environmental Review Plan in the planning process, including but not limited to the timely notification of the Weston County Commission of upcoming or anticipated agency actions, plans, programs and projects which have the potential to affect the environment. An interagency agreement which proposes to comprehensively address the goals and objectives of this resolution may be utilized as an alternative to the procedures established herein upon notification to and acceptance by the Weston County Board of Commissioners through the assistance and recommendation of its committees operating under this Environmental Review Plan.

2. Consistent with the obligations of the proponent agency to coordinate and consult with the county government, an Initial Assessment Report (IAR) shall be prepared by the proponent agency whenever there is an indication that the plan, program or project initiated by that agency may have an adverse impact on the environment. To avoid redundancy, the IAR may be included as a separately titled component of other written environmental assessments required under NEPA(6) provided that all other

6/ See for example, 40 C.F.R. Part 1506, Section 1506.2, 1508.9 (NEPA)

requirements of this resolution are met. The IAR shall include, (a) a description of the plan program or project; (b) the environmental setting; (c) an assessment of potential environmental impacts; (d) a description of mitigation measures proposed to reduce or eliminate environmental impacts; and (e) the consistency of the plan, program or project with the Weston County Environmental Review Plan.

3. Based on conclusions and findings contained in the IAR and such other data as may be necessary to make a determination, the Weston County Commissioners through the assistance and recommendation of its committees hereunder and the federal or state proponent agency shall, within thirty (30) days of receipt of the IAR, jointly determine whether to conduct a Coordinated Environmental Review and Assessment (CERA) or find that the plan, program or project presents no significant environmental impacts.

4. If the Weston County Board of Commissioners through the assistance and recommendations of its committees hereunder and the proponent agency determine to conduct a CERA, it shall be prepared as a written report by the proponent agency and submitted to the Joint Committee under this Environmental Review Plan who shall review the same and assign it for further review to a lead committee (being either the Joint Committee, Agriculture Committee, Timber Committee, Mineral Resource Committee, or Recreation, Wildlife and Tourism Committee, depending upon which of such committees has the primary responsibility concerning a majority of the issues addressed in the CERA). The Joint Committee shall also act as an

oversight committee to coordinate communication between the lead committee and the other committees hereunder for purposes of consultation on issues contained in the CERA relative to each committee's area of responsibility to ensure fulfillment of the objectives and policies of this Environmental Review Plan. After such consultation, the Joint Committee shall thereafter make its recommendations to the Weston County Commissioners. To avoid redundancy, the CERA may be included as a separately titled component of other written environmental assessments, statements or reports required under NEPA. As relevant to the goals of the plan, program or project, the discussion and analysis should include the following:

- A. Impacts on county natural resources and environmental quality, including:
 - (1) impacts on forest and timber resources;
 - (2) impacts on range or dry land crops;
 - (3) impacts on watershed resources;
 - (4) impacts on private surface and groundwater rights and irrigated cropland;
 - (5) impacts on air, water (including surface and groundwater), energy and soils;
 - (6) impacts on integrated resource planning and management in which the county, private parties and/or other public agencies are involved;
 - (7) impacts on multiple use, sustained yield and range resource laws and regulations;

(8) impacts on private investment in public land and resources;

(9) impacts on the production and enjoyable harmony between man and his environment, stimulation of the health and welfare of man, and support of diversity and variety of individual choice as assured under NEPA;

(10) impacts on hunting, fishing and other outdoor recreation;

(11) impacts on wildlife and fish; and,

(12) impacts on mining and mineral resources.

B. Impacts on county society, custom and culture, governance, schools and other local public services, including:

(1) impacts on culture due to population loss;

(2) impacts from proposed or foreseeable limitations or restrictions on cultural beliefs and practices, and maintenance of cultural and community cohesion and kinships;

(3) impacts on cultural and community aesthetics, including historical natural resource vistas, river ways and landscapes;

(4) impacts on the ability of local government to protect the health, safety, social and cultural well being of its citizens;

(5) impacts on the ability of local government to

promote local environmental values, resource protection and development;

(6) impacts on the ability of local government to finance local public programs and services through bonding, lending and other financing mechanisms;

(7) identification of tax revenue loss to local government and schools;

(8) impacts from identified tax revenue loss on the ability of local governments and schools to deliver public services;

(9) impacts on local emergency medical services, law enforcement, fire protection and nuisance abatement;

(10) impacts on local government infrastructure, including transportation, public community water systems, including those provided through irrigation and reclamation districts, and landfill services;

(11) cumulative and long term impacts on local community stability and well-being;

C. Impacts on local economy, customs, services and businesses, which shall include;

(1) impacts on private, investment backed expectation;

(2) impacts on the economic value of privately held water rights and real property;

(3) direct and cumulative impacts on employment and wages;

(4) direct and cumulative impact on agriculture and

related industries;

(5) direct and cumulative impacts on local retail and service industries;

(6) impacts on housing and related residential services such as water, sewer, sanitation and energy;

(7) impacts on thresholds for business demand and markets;

(8) direct and cumulative impacts on community stability and well being related to private ability to maintain current and future debt service;

(9) direct and cumulative impact on timber and the timber industry;

(10) direct and cumulative impacts on mining/mineral exploration and the mining/mineral exploration industry; and,

(11) direct and cumulative impacts on tourism and recreation and related industries.

D. Takings Implication Assessment. The CERA shall identify and assess impacts of the plan, program or project on private property rights in the county utilizing the criteria established in Presidential Executive Order 12630, entitled "Governmental Actions and Interference with Constitutionally Protected Property Rights". This identification and assessment shall also apply to regulatory takings. In addition, this component of CERA shall include discussion and analysis of the following:

(1) whether the plan, program or project constitutes an

actual physical intrusion or actual taking of private property;

(2) potential for loss of economic value or investment backed expectations;

(3) related impacts on custom and culture;

(4) whether the agency action conforms to constitutionally protected property rights and commonly accepted notions of fairness and due process.

E. Mitigation. For the purpose of this component of the CERA, it is the policy of the County of Weston that plans, programs or projects initiated by federal or state agencies should not be approved as proposed if feasible alternatives or mitigation measures exist which would, if implemented, reduce or eliminate significant impacts on the environment. As relevant to the goals of the plan program or project, proposed mitigation measures should:

(1) identify each impact which the mitigation measure is intended to address;

(2) identify the party or agency responsible for the implementation and monitoring of the proposed mitigation measure;

(3) Specify, for each mitigation alternative, (a) how impacts may be avoided by not taking particular action;

(b) how impacts may be minimized by limiting the degree or magnitude of the proposed action; (c) how impacts may be rectified through repair, rehabilitation or

restoration of the affected environment; (d) how impacts may be reduced or eliminated over time through preservation and maintenance over the life of the proposed action; and (e) how the agency could compensate for the impact by providing substitute resources of equal economic value;

(4) Specify, for each mitigation measure, its (a) legal authority; (b) technical feasibility; (c) fiscal and economic feasibility; and (d) social, political and cultural feasibility;

(5) Draft a detailed mitigation monitoring plan which shows as to each mitigation measure specific objectives and performance standards to ensure implementation of mitigation measures during the life of the plan, program or project.

F. Cumulative Effects. Because the monitoring and maintenance efforts of state and federal agencies have, in some cases, historically proved inadequate to measure effectively the cumulative and long term effects of their plans, programs and projects, these impacts may remain unmeasured in any sense that will admit to remedial action. This can be especially true for the impacts on multiple uses of natural resources and economic stability. To assist in providing necessary tools for addressing these issues, the County may develop, or participate in the development of, and may make available through its committees operating under this

Environmental Review Plan, local economic studies containing unit cost and other indices for the purpose of measuring economic impacts. One of the primary reasons for enacting the procedures contained in this resolution for the development of accurate data is to assist public agencies to identify systematically both present and cumulative impacts associated with their actions and to develop effective and feasible mitigation measures and alternatives so that these adverse impacts may be eliminated or substantially reduced.

G. Public Participation. Another key component of effective environmental review is public participation in the process. During the preparation of environmental documentation for plans, programs and projects which are subject to this resolution, Weston County through its Commissioners and the committees operating under this Environmental Review Plan and the proponent federal or state agency should, consistent with applicable federal and state law, provide opportunities for the involvement of Weston County citizens, residents, local governments, schools, utilities, civic, business and other community groups. Such opportunities should be provided through notices, public hearings and meetings, or other methods calculated to give actual notice of and a meaningful opportunity to participate in the environmental review and assessment.

Section 1-5. GENERAL REQUIREMENTS

1-5-1. In addition to the procedures contained in this

resolution, the County Shall:

1. adopt such administrative rules and regulations deemed necessary to carry out its objectives;
2. establish an oversight committee or other organization as may be deemed necessary to assure that the intent and purposes of the procedures established by this resolution are maintained;
3. develop such environmental and resource related cooperative agreements, memorandums of understanding, joint policy statements, and joint letters of intent with appropriate state and federal agencies, so that the goals and objectives of this resolution may be carried out.

1-5-2. Each member of any committee established under this Environmental Review Plan shall be a full-time resident of Weston County while such member is serving on a committee.

1-5-3. All committees established under this Environmental Review Plan shall operate and conduct their business pursuant to Roberts Rules of Order.

1-5-4. Each member of a committee established under this Environmental Review Plan shall be appointed by the Weston County Commission (except as otherwise provided for the Joint Committee), and shall serve terms of three years (except for the initial committee terms of office as explained below). No committee member may service more than two consecutive terms of office (whether initial or full term). The initial terms of office for the Agriculture Committee, Timber Committee, Mineral Resource Committee and Recreation, Wildlife and Tourism Committee, (with three

members) shall be as follows: one member shall serve an initial one year term of office, one member shall serve an initial two year term of office, and one member shall serve an initial three year term of office. After serving the foregoing initial terms of office, such terms of office shall all be three years and the committee membership of the Agriculture Committee, Timber Committee, Mineral Resource Committee and Recreation, Wildlife and Tourism Committee shall rotate on an annual schedule as established herein.

1-5-5. The at-large member of the Joint Committee shall be appointed to serve an initial term of three years. The remaining four members of the Joint Committee shall be selected as provided in Section 1-2-2 of this ordinance. Joint Committee membership shall rotate in accordance with the respective terms of office of its members.

Section 1-6. SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this resolution or the application thereof to any person or circumstances is declared invalid or unconstitutional by the decision of a court competent jurisdiction, that decision does not affect the validity of the remaining portions of this resolution. The Weston County Commissioners declare that it would

have adopted this resolution irrespective of the fact that any section, subsection, clause, phrase or portion is unconstitutional or invalid.

After passage of this resolution, the county clerk shall cause it to be published pursuant to the Wyoming Codified Laws.

The foregoing resolution was introduced at a general meeting of the Weston County Commissioners on Dec. 7, 1994 and adopted at a meeting held on Dec 7, 1994.

Jack M. Elliott
Chairman, Weston County
Board of Commissioners

ATTEST
[Signature]
County Clerk
COUNTY CLERK
COUNTY OF WESTON
STATE OF WYOMING

RESOLUTION NO. 2021-11

RESOLUTION OPPOSING THE FEDERAL GOVERNMENT'S "30 X 30" LAND PRESERVATION GOAL

WHEREAS, Weston County is a legal and political subdivision of the State of Wyoming for which the Board of County Commissioners is authorized to act; and

WHEREAS, Weston County containing about 1,536,064 acres of land situated in North East corner of Wyoming; and

WHEREAS, the federal government owns 20.04% of the land within the County, and the Forest Service and Bureau of Land Management are responsible for managing over 307,840 acres of these federal lands as illustrated in *Exhibit A*, attached hereto"; and

WHEREAS, designating lands as wilderness does not assure its preservation. Left in an undisturbed or natural state, these lands are highly susceptible to wild land wildfires, insect infestation and disease, all of which degrades the natural and human environment; and

WHEREAS, the well- being, health, safety, welfare, economic condition, and culture of the County, its businesses, and its citizens depend on private land ownership and the use of these resources; and

WHEREAS, many of Weston County's businesses and its citizens are involved in or otherwise depend on industries that utilize private lands and their resources, including the forest products industry, livestock grazing, oil and gas exploration and production, mining and mineral development, recreational industries, hunting and other outdoor recreation]; and

WHEREAS, these industries are important components of the Wyoming economy, and are major contributors to the economic and social well being of Weston County and its citizens; and

WHEREAS, on January 27, 2021, President Joseph R. Biden, Jr., issued Executive Order 14008 entitled Tackling the Climate Crisis at Home and Aboard (86 Fed. Reg. 7,619); and

WHEREAS, in Section 216 of Executive Order 14008, President Biden directed the Secretary of the Interior, in consultation with the Secretary of Agriculture and other senior officials, to develop a program to conserve at least 30 percent of the lands and waters in the United States by 2030, which is called the "30 x 30" program; and

WHEREAS, under the 30 x 30 program, some 680 million acres of our Nation's lands would be set aside and permanently preserved in its natural state, preventing the productive use of these lands and their resources; and

WHEREAS, there is no constitutional or statutory authority for the President, the Department of the Interior, the Department of Agriculture, or any other federal agency to set aside and permanently preserve 30 percent of all land and water in the United States, and no such authority is referenced in Executive Order 14008; and

WHEREAS, placing private lands into permanent conservation status will cause dramatic and irreversible harm to the economies of many states, including Wyoming, and in particular rural counties such as Weston County whose citizens depend on private lands for their livelihoods; and

WHEREAS, the 30 x 30 program, if implemented, will conflict with the plans, policies and programs of Weston County as expressed in Weston County Land Use Plan, adopted December 19, 1977 which obligates the federal government to coordinate its policy development with Weston County Commissioners and.; and

WHEREAS, Executive Order 14008 at 216(a) directs the Secretary of the Interior, in consultation with other relevant federal agencies to "submit a report to the Task Force within 90 days of the date of this order recommending steps that the United States should take, working with State, local, Tribal, and territorial governments, agricultural and forest landowners, fishermen, and other key stakeholders, to achieve the goal of conserving at least 30 percent of our lands and waters by 2030."



NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Weston County, Wyoming, as follows:



1. The Board opposes the 30 x 30 program, including its objective of permanently preserving 30 percent of the Nation's lands in its natural state by 2030, or any similar program that will set aside and prevent the productive use of millions of acres of our lands.
2. The Board further opposes the designation of lands in Weston County for the purposes as expressed in the 30 x 30 program which may restrict public access to such lands and which may prevent the development of and productive use of the resources on or within such lands.
3. The Board supports the continued private ownership of land in the County, recognizing the Nation's need for domestic sources of minerals, energy, timber, food, and fiber.
4. The Board recognizes and supports the State of Wyoming's water rights system, including the doctrine of prior appropriation and other state laws and programs governing water rights and water use, and opposes any federal designation of waters and watercourses within the County that would impair or restrict water diversions and uses authorized under Wyoming law.
5. The Board supports reasonable national, regional, and global greenhouse gas emissions policies and goals that are comprehensive, practical, cost-effective, and do not unnecessarily single out specific industries or activities, but opposes the use of global climate change as an excuse to set aside large tracts of land as preserves or open space to fulfill the 30 x 30 program's objectives.
6. The Board also maintains that any lands or other rights that are acquired to fulfill the 30 x 30 program's objectives should be acquired only from willing landowners and for the payment full and fair market value for all rights and interests acquired, and not through regulatory compulsion, and only after analyzing and considering the impacts of such land acquisitions on the well-being, health, safety, welfare, economy, and culture of Weston County, its businesses, and its citizens.
7. The Board shall send a copy of this Resolution to the Department of Interior and all other relevant Federal and State agencies; and


DATED this 5th day of October, 2021 in Weston County, Wyoming

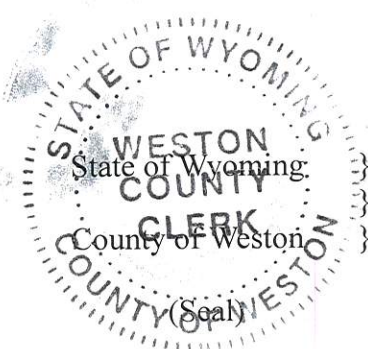
BOARD OF COUNTY COMMISSIONERS IN AND FOR WESTON COUNTY, WYOMING


**BOARD OF COMMISSIONERS
WESTON COUNTY, WYOMING**


 _____ Chairman








 BECKY HADLOCK, WESTON COUNTY CLERK
 My term of office expires January 2, 2023

APPENDIX D: PUBLIC COMMENTS RECEIVED

Comment Received From	Comment Recieved	Response
Wyoming Game and Fish Department	Change wording to: The WGFD utilizes a State Wildlife Action Plan (SWAP), revised in 2017, to provide a strategy for managing groups of wildlife in need of conservation, including mammals, birds, reptiles, amphibians, fish, and mussels. This plan is neither a legal document, a regulatory document, recovery Plan under the ESA nor NEPA decision document (WGFD, 2017b).	Correction was made to document.
Wyoming Game and Fish Department	Change wording to: Sage-grouse habitat or range spans most of Weston County, and there are 568,082 acres of sage-grouse core area designated within Weston County. The remainder of the County that is outside sage grouse core habitat, and a few areas within core habitat, currently harbor isolated “island” populations of sage grouse that are trending towards extirpation. It is projected that Weston County is likely to loose most of the sage-grouse populations outside of the core areas in the near future unless long term population trends change (personal communication with J. Sandrini, WGFD).	Correction was made to document.
Wyoming Game and Fish Department	Change wording to: Prairie dogs particularly affect agriculture. Perhaps the greatest harm that the prairie dogs cause local agricultural operations is overconsumption of grassland vegetation that can significantly reduce available forage for livestock.	Correction was made to document.



Wyoming Game and Fish Department	Change wording to: The Thunder Basin National Grassland (TBNG) comprises a large part of central and western Weston County. In 2020, the TBNG released the land use plan amendment on prairie dog management. The Forest Service currently classifies the black-tailed prairie dog as a Species of Conservation Concern which is in direct conflict with the Wyoming Department of Agriculture designation of an agricultural pest. Prairie dog populations are cyclic and most problems with them occur when numbers increase substantially. Diseases such as the plague can reduce populations significantly and the cycle continues over time. When prairie dog colonies grow significantly they have the ability to cause significant resource damage.	Correction was made to document.
Wyoming Game and Fish Department	The following statement should be clarified with respect to how the \$98.91 figure was calculated, or a citation referencing such provided. : When determining the value an AUM means to a rancher, one cannot look purely at the AUMs lost, but also must look at how those lost AUMs will affect the ranching operation as a whole and take away from other areas. When considering the change in total ranch production resulting from the change in federal grazing, which ultimately affects the optimal use of the rest of the forage resources, one AUM is worth \$98.91 annually.	Correction was made to document.

