Keysville
Special Recreation Management Area
Pertinent Legal Direction
5/06/2014

There are numerous considerations that apply to the management of public lands.

- Laws passed by Congress and signed by the President establish an agency’s mission, authority, and direction.
- Executive orders issued by the President must also be followed by federal agencies.
- Regulations are enacted by agencies following public involvement; they lay out the processes to be used to implement the various laws passed by Congress. Regulations have the force of law.
- Policies are developed by agencies within the framework of the authority given by Congress; these are used to guide implementation of laws and regulations.
- Plans for specific areas, developed by agencies with public input, prescribe how an area is to be managed. Plans must comply with all laws enacted by Congress.
- Special rules may be established to ensure compliance with the pertinent plans.
- If the implementation of laws, executive orders, regulations, policies, plans, or supplemental rules is challenged in court, a judge’s decision may further dictate how implementation will occur.

Taken en masse, this direction provides the framework for future planning and implementation. Following is a selection of laws and executive orders that are likely to have some bearing on BLM’s management of Keyesville:

**American Indian Religious Freedom Act** - BLM is obligated to consult with federally recognized or non-federally recognized Indian tribes if BLM’s actions could abridge the tribe’s religious freedom.

**The Antiquities Act of 1906** - The Antiquities Act is the first law to establish that archeological sites on public lands are important public resources. It obligates federal agencies that manage the public lands to preserve for present and future generations the historic, scientific, commemorative, and cultural values of the archaeological and historic sites and structures on these lands. It notes “…any person who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the Government of the United States, without the permission of the Secretary …, shall, upon conviction, be fined … or be imprisoned …”

**Archaeological Resources Protection Act of 1979 (ARPA)** – ARPA was enacted in part “… to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands …”. It provides for the enforcement of civil and criminal penalties for looting and vandalizing of archaeological resources over 100 years of age.
Endangered Species Act of 1973 (ESA) - The ESA requires federal agencies to complete formal consultation with the United States Fish and Wildlife Service (FWS) for any action that “may affect” species listed as federally threatened or endangered, or designated critical habitat. The ESA also requires federal agencies to use their authorities to carry out programs for the conservation of endangered and threatened species.

Executive Order No. 13007 “Indian Sacred Sites” - Among other things, this executive order directs federal land managing agencies to try to avoid adversely affecting the physical integrity of certain sacred sites.

Federal Land Policy and Management Act of 1976 (FLPMA) - FLPMA provides the overall direction for BLM’s management of public lands. It directed the Secretary to manage public lands under principles of multiple use and sustained yield. It established as policy that “public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use”.

Federal Lands Recreation Enhancement Act (2005) (FLREA) – FLREA allows agencies to establish, modify, charge, and collect recreation fees at Federal recreational lands and waters. The Secretary shall not charge an entrance fee for Federal recreational lands and waters managed by the Bureau of Land Management. Fees may not be charged:
  o For general access unless specifically authorized under this section.
  o Solely for parking, undesignated parking, or picnicking along roads or trailsides.
  o For dispersed areas with low or no investment unless specifically authorized under this section.
  o For persons who are driving through, walking through, boating through, horseback riding through, or hiking through Federal recreational lands and waters without using the facilities and services.
  o For camping at undeveloped sites that do not provide a minimum number of facilities and services.
  o For use of overlooks or scenic pullouts.
  o For travel to any land in which a person has any property right.

A Standard Amenity Fee may be charged for use of sites that have a combination of basic amenities - picnic tables, trash receptacles, toilets, developed parking, interpretive signing or kiosks, and security. Additional fees may be charged for developed campgrounds, interpretive programs or tours, and for organized, group, competitive, and commercial activities.

Mining Law of 1872 - The General Mining Act of 1872 as amended authorizes and governs prospecting and mining for valuable minerals, such as gold, platinum, and silver, on federal public lands. This act, along with subsequent legislation, allows for federal (i.e. – publicly owned) minerals to be claimed by private parties.
**National Environmental Policy Act of 1969 (NEPA)** - NEPA establishes a procedure that ensures federal agencies consider the environmental consequences associated with proposed major federal actions. NEPA’s goals include attaining the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences; preserving important historic, cultural, and natural aspects of our national heritage; maintaining, wherever possible, an environment which supports diversity and variety of individual choice; and achieving a balance between population and resource use which will permit high standards of living and a wide sharing of life’s amenities. To help reach these goals, NEPA establishes the framework for the environmental review of federal actions; this is accomplished by agencies through the preparation of environmental impact statements (EISs) and environmental assessments (EAs).

**National Historic Preservation Act of 1966, as amended (NHPA)** - Section 106 of the National Historic Preservation Act (NHPA) requires agencies to identify and evaluate historic properties potentially adversely affected by a proposed undertaking, and seek to resolve any adverse effects through the development of alternatives or modifications that seek to avoid, minimize or mitigate such effects. A process for doing this is set forth in the Protocol Agreement with the California State Historic Preservation Officer (SHPO). This applies to “any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on the National Register, including artifacts, records, and material remains related to such property or resource” as well as “properties of traditional religious and cultural importance.”

Section 110 of the NHPA directs that the heads of all Federal agencies shall assume responsibility for the preservation of historic properties which are owned or controlled by such agency. Each Federal agency shall establish … a preservation program for the identification, evaluation, and nomination to the National Register of Historic Places, and protection of historic properties. Such program shall ensure:

- that historic properties under the jurisdiction or control of the agency, are identified, evaluated, and nominated to the National Register;
- that such properties under the jurisdiction or control of the agency as are listed in or may be eligible for the National Register are managed and maintained in a way that considers the preservation of their historic, archaeological, architectural, and cultural values in compliance with section 106 and gives special consideration to the preservation of such values in the case of properties designated as having National significance.

**Native American Grave Protection and Repatriation Act** - Requires federal land managing agencies to consult with Indian tribes prior to excavating or removing “cultural items,” or in advance of activities that may lead to inadvertent discovery of such items.

**Taylor Grazing Act of 1934** - The Taylor Grazing Act was intended to "stop injury to the public grazing lands by preventing overgrazing and soil deterioration; to provide for their orderly use, improvement, and development; [and] to stabilize the livestock industry dependent upon the public range". It continues to prescribe how livestock grazing is to be managed on public lands.
**Wild & Scenic Rivers Act of 1968** – This act established the policy of preserving, in a free-flowing condition, rivers and their immediate environments that possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values. Rivers on federal lands that meet the criteria shall be considered eligible for inclusion in the national wild and scenic rivers system; the least restrictive of the available categories is:

Recreational river areas – Those rivers or sections of rivers that are readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past. (The Proposed Bakersfield Resource Management Plan identified the Kern River through Keyesville as suitable for designation as a Wild & Scenic River; this is the category identified in the plan. Actual designation requires an act of Congress.)

Each component of the national wild and scenic rivers system shall be administered in such manner as to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values. In such administration primary emphasis shall be given to protecting its esthetic, scenic, historic, archaeologic, and scientific features. Management plans for any such component may establish varying degrees of intensity for its protection and development, based on the special attributes of the area. Nothing in this act shall be construed to abrogate any existing rights, privileges, or contracts affecting Federal lands held by any private party, without the consent of said party.