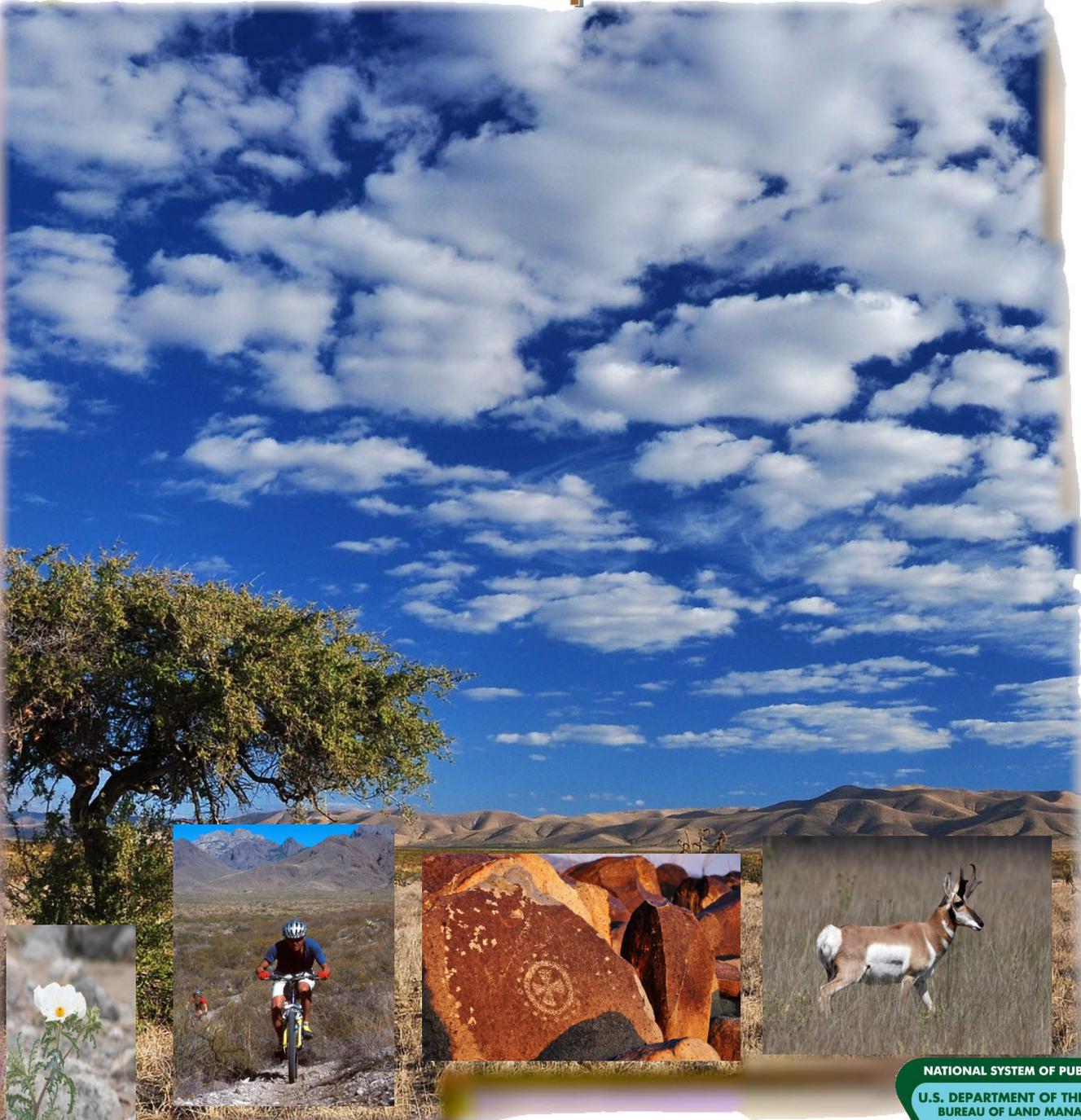


TriCounty

Draft Resource Management Plan/ Environmental Impact Statement



VOLUME II - APPENDICES

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APPENDIX A

ACTS OF AUTHORITY AND MANDATES
FOR THE BLM

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A number of Federal statutes have been enacted over time to establish and define the authority of the Bureau of Land Management (BLM) to make decisions on the management and use of resources on public land. Following is a list of major legal authorities relevant to BLM land use planning.

Federal Land Policy and Management Act (FLPMA) of 1976, as amended (43 United States Code [U.S.C.] 1701, et seq.) provides the authority for BLM's land use planning. This statute and its implementing regulations define principles for the management of public land and its resources. This Act directs the Secretary of the Interior to develop, maintain, and when appropriate, revise land use plans that provide for the use of public land managed on the basis of multiple-use and sustained yield unless otherwise specified by law. Through FLPMA, BLM is responsible for the balanced management of the public land and resources and their various values. FLPMA specifically states that public land will be managed under the principles of multiple-use, and it further indicates that multiple use includes harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment.

- Section 102 (a) (7) and (8) sets forth the policy of the United States concerning the management of BLM land.
- Section 201 requires the Secretary of the Interior to prepare and maintain an inventory of all BLM land and its resources and other values, giving priority to areas of critical environmental concern and, as funding and workforce are available, to determine the boundaries of the public land, provide signs and maps to the public, and provide inventory data to State and local governments.
- Section 202 (a) requires the Secretary of the Interior, with public involvement, to develop, maintain, and when appropriate, revise land use plans that provide by tracts or areas for the use of the BLM land.
- Section 202 (c) (9) requires that land use plans for BLM land be consistent with Tribal plans and, to the maximum extent consistent with applicable Federal laws, with State and local plans.
- Section 202 (d) provides that all public land, regardless of classification, are subject to inclusion in land use plans, and that the Secretary of the Interior may modify or terminate classifications consistent with land use plans.
- Section 202 (f) and 309 (e) provide that Federal, State, and local governments and the public be given adequate notice and an opportunity to comment on the formulation of standards and criteria for, and to participate in, the preparation and execution of plans and programs for the management of the public land.
- Section 302 (a) requires the Secretary of the Interior to manage BLM land under the principles of multiple use and sustained yield in accordance with (when available) land use plans developed under Section 202 of FLPMA, except that, where a tract of BLM land has been dedicated to specific uses according to any other provisions of law, it shall be managed in accordance with such laws.
- Section 302 (b) recognizes the entry and development rights of mining claimants, while directing the Secretary of the Interior to prevent unnecessary or undue degradation of public land.

- Section 603 specifically directs BLM to carry out a wilderness review of public land and directs the BLM to manage such land in a manner so as not to impair the suitability of such area for preservation as wilderness.

The **National Environment Policy Act of 1969**, as amended (42 U.S.C. 4321, et seq.), requires the consideration and public availability of information regarding the environmental impacts of major Federal actions significantly affecting the quality of the human environment. The law further requires the Federal authorized officers to identify and describe the significant environmental issues associated with their decisions and to develop alternatives to a proposed action (including the alternative of no action). Federal authorized officers must disclose the direct, indirect, and cumulative effects of the decisions; adverse environmental effects that cannot be avoided; the relationship between short-term uses of the human environment and the maintenance of long-term productivity; and any irreversible or irretrievable commitments of resources made by the decision.

The **Clean Air Act of 1990**, as amended (42 U.S.C. 7418), requires Federal agencies to comply with all Federal, State, and local requirements regarding the control and abatement of air pollution. This includes abiding by the requirements of State implementation plans. The Clean Air Act provides that each State is responsible for ensuring achievement and maintenance of air quality standards within its borders so long as such standards are at least as stringent as Federal standards established by the U.S. Environmental Protection Agency (EPA).

The **Clean Water Act (CWA) of 1987**, as amended (33 U.S.C. 1251), establishes objectives to restore and maintain the chemical, physical, and biological integrity of the nation's water. Upon passage of the Environmental Quality Acts and adoption of the water quality standards, State agencies were empowered to enforce water quality standards as long as they are at least as stringent as the Federal standards established by the EPA. The State of New Mexico has not been delegated authority from the Federal Government for any of the major water quality programs under the CWA, including the National Pollutant Discharge Elimination System, Pretreatment, Sludge Management, and Wetlands. Also, Section 404 of the CWA, administered by the U.S. Army Corps of Engineers, requires that waters of the United States be protected by permits prior to dredge or fill activities in such areas. Waters include intermittent streams, mud flats, and sand flats. Wetlands that meet jurisdictional criteria of Section 404 of the CWA are partially protected in that a permit is required before any dredge or fill activity can occur in such areas.

The **Endangered Species Act (ESA) of 1973**, as amended (16 U.S.C. 1531, et seq.), provides a means whereby the ecosystems upon which threatened and endangered species depend may be conserved and to provide a program for the conservation of such threatened and endangered species (Section 1531(b), Purposes). The ESA requires all Federal agencies to seek to conserve threatened and endangered species, use applicable authorities in furtherance of the purposes of the ESA (Section 1531(c) (1), Policy), and avoid jeopardizing the continued existence of any species that is listed or proposed for listing as threatened and endangered or destroying or adversely modifying its designated or proposed critical habitat (Section 1536(a), Interagency Cooperation). The U.S. Fish and Wildlife Service (USFWS) is responsible for administration of this Act, which also requires all Federal agencies to consult (or confer) in accordance with Section 7 of the ESA with the Secretary of the Interior, through the USFWS and/or the National Marine Fisheries Service, to ensure that any Federal action (including land use plans) or activity is not likely to jeopardize the continued existence of any species listed or proposed to be listed under the provisions of the ESA, or result in the destruction or adverse modification of designated or proposed critical habitat (Section 1536(a), Interagency Cooperation, and Title 50 Code of Federal Regulations Part 402 [50 CFR 402]). Mitigation measures are developed through the consultation process and are put forth as suggested conservation measures included in a formal USFWS Biological Opinion, which addresses

whether the proposed action would jeopardize the continued existence of any officially listed endangered or threatened species.

The **Land Use Planning Handbook** (BLM Handbook Number H-1601-1) provides supplemental guidance for implementing the BLM land use planning requirements established by Sections 201 and 202 of FLPMA and the regulations in 43 CFR 1600. The handbook provides guidance for preparing and amending land use plan decisions through the planning process, and for maintaining resource management plans. The handbook also provides guidance for developing implementation plans and program-specific and resource-specific decisions.

The **Statewide Resource Management Plan Amendment/Environmental Impact Statement for New Mexico Standards for Public Land Health and Guidelines for Livestock Grazing Management** (*Standards and Guidelines*) established a set of standards and guidelines for public land health and guidelines for livestock grazing management in New Mexico. Standards of land health are expressions of physical and biological conditions or degree of function required for healthy and sustainable land, and defines minimum resource conditions that must be achieved. Standards describe conditions needed for healthy sustainable public rangelands and relate to all uses of public land. They provide the measure of resource quality and functioning condition by which the health of public land will be assessed. To measure the effectiveness of each standard, a set of indicators and associated criteria were identified. Specific standards and indicators are defined for upland sites, biotic communities (including native, threatened, endangered, and special status species), and riparian sites.

Guidelines are practices, methods, or techniques determined to be appropriate to ensure that standards can be met or that significant progress can be made toward meeting those standards. Guidelines are tools such as grazing systems, vegetative treatments, or improvement projects that help managers and permittees achieve standards. Guidelines for livestock grazing are described in the *Standards and Guidelines*. The livestock grazing guidelines were designed to improve public land health and are to be implemented at the watershed, allotment, or pasture level if it is determined that the standards are not being met and that livestock grazing is the cause. Guidelines for activities other than livestock grazing are not mandated through regulation; however, they may be developed should the need arise. If it is determined that the standards are not being met as a result of another activity (i.e., road placement, recreation, etc.), program leads would determine appropriate actions to ensure that standards can be met or that significant progress can be made toward meeting those standards.

The **Federal Water Pollution Control Act** (33 U.S.C. 1323) requires the Federal land manager to comply with all Federal, State, and local requirements, administrative authority, process, and sanctions regarding the control and abatement of water pollution in the same manner and to the same extent as any nongovernmental entity.

The **Safe Drinking Water Act** (42 U.S.C. 201) is designed to make the nation's waters "drinkable" as well as "swimmable." Amendments in 1996 established a direct connection between safe drinking water and watershed protection and management.

The **Resource Conservation and Recovery Act of 1976** (Public Law [P.L.] 89-72) gave the EPA the authority to control hazardous waste from "cradle to grave." This includes the generation, transportation, treatment, storage, and disposal of hazardous waste. The Act also set forth a framework for the management of nonhazardous wastes.

The **National Trails System Act of 1968**, as amended (16 U.S.C. 1241-1249), provides that the establishment of national recreation and national scenic trails would closely follow original routes of national historic significance. The purpose of the Act is to provide for the ever-increasing outdoor

recreation needs of an expanding population and to promote the preservation of public access to, travel within, and enjoyment and appreciation of the open-air, outdoor areas, and historic resources of the nation.

The **Wilderness Act**, as amended (16 U.S.C. 1131, et seq.) authorizes the President to make recommendations to Congress for Federal land to be set aside for preservation as wilderness.

The **Antiquities Act of 1906** (16 U.S.C. 431-433) protects cultural resources (objects of antiquity) on Federal land and authorizes the President to designate national monuments on Federal land based on historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest. By administrative decision, paleontological resources were included under the protection of this Act until FLPMA was passed.

The **Archaeological Resources Protection Act of 1979** (16 U.S.C. 470) secures, for the present and future benefit of the American people, the protection of archaeological resources and sites that are on public land and American Indian land, to foster increased cooperation and exchange of information among governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data that were obtained before October 31, 1979.

The **National Historic Preservation Act**, as amended (16 U.S.C. 470), expands protection of historic and archaeological properties to include those of national, State, and local significance and directs Federal agencies to consider the effects of proposed actions on properties eligible for or included in the National Register of Historic Places. The Act mandates that when Federal undertakings (i.e., Federal projects or federally funded or licensed projects) are planned and implemented, the responsible Federal agencies give due consideration to historic properties (i.e., resources eligible for the National Register of Historic Places), regardless of land status. Regulations for *Protection of Historic Properties* (36 CFR 800) define a process for demonstrating such consideration by consulting with the State Historic Preservation Officers, Federal Advisory Council on Historic Preservation, and other interested organizations and individuals.

The **Paleontological Resources Preservation Act** (PRPA; P.L. 111-11, Title VI, Subtitle D; 16 U.S.C. 470aaa et seq.) is the BLM's new authority for the collection of paleontological resources with or without a permit from public lands. It directs the BLM to manage, protect, and preserve paleontological resources using scientific principles and expertise as well as to provide for public education and awareness, to issue permits for scientific research, and to curate federal paleontological resources. It is BLM's new authority for casual collection of common invertebrate and plant paleontological resources. It institutes confidentiality of paleontological locality information, and criminal and civil penalties for commercial sale, theft, damage, and illegal export and transport of paleontological resources.

The **American Indian Religious Freedom Act of 1978** (42 U.S.C. 1996) establishes a national policy to protect and preserve the right of American Indians to exercise traditional Indian religious beliefs or practices.

The **Historic Sites Act of 1935** (16 U.S.C. 461-467) defines a national policy to identify and preserve historic sites, buildings, objects, and antiquities of national significance. The law authorizes the Secretary of the Interior to conduct surveys, collect and preserve data, and acquire historic and archaeological sites.

The **Archaeological and Historic Preservation Act of 1974** (16 U.S.C. 469-469c) provides for preservation of archaeological and historical information that might otherwise be lost as a result of Federal construction projects and other federally licensed activities and programs. This Act stipulates that up to 1 percent of the funding appropriated by Congress for Federal undertakings can be spent to recover,

preserve, and protect archaeological and historical data. A subsequent amendment authorized the 1 percent limit to be administratively exceeded under certain circumstances.

The **Native American Grave Protection and Repatriation Act of 1990** (25 U.S.C. 3001-3013) protects the human remains of indigenous peoples and funerary objects, sacred objects, and items of cultural patrimony on Federal land. The Act also provides for the repatriation of such remains and cultural items previously collected from Federal land and in the possession or control of a Federal agency or federally funded repository.

The **Curation of Federally Owned and Administered Archaeological Collections** (36 CFR 79) stipulates standards for facilities that curate federally owned archaeological collections, which include not only artifacts but also all associated records and reports, to ensure long-term preservation of such collections.

The **White House Memorandum on Government-to-Government Relations with Native American Tribal Governments of 1994** set forth guidelines requiring Federal agencies to adhere to directives designed to ensure that the rights of sovereign Tribal governments are fully respected.

The **Recreation and Public Purposes Act of 1926**, as amended (43 U.S.C. 869, et seq.), authorizes the Secretary of the Interior to lease or convey BLM land for recreational and public purposes under specified conditions.

The **Land and Water Conservation Fund of 1964** (16 U.S.C. 4601-4, et seq.) provides funding to assist in preserving, developing, and assuring accessibility to outdoor recreation resources including but not limited to parks, trails, wildlife land, and other land and facilities desirable for individual active participation.

The **Surface Mining Control and Reclamation Act of 1977** (30 U.S.C. 1201, et seq.) requires application of unsuitability criteria prior to coal leasing, and also to proposed mining operations for minerals or mineral materials other than coal.

The **Mineral Leasing Act of 1920**, as amended (30 U.S.C. 181, et seq.) authorizes the development and conservation of oil and gas resources.

The **Onshore Oil and Gas Leasing Reform Act of 1987** (30 U.S.C. 181, et seq.) requires that potential oil and gas resources be adequately addressed in planning documents; the social, economic, and environmental consequences of exploration and development of oil and gas resources be determined; and any stipulations to be applied to oil and gas leases be clearly identified.

The **General Mining Law of 1872**, as amended (30 U.S.C. 21, et seq.), allows the location, use, and patenting of mining claims on sites on public domain land of the United States.

The **Mining and Mineral Policy Act of 1970** (30 U.S.C. 21a) establishes a policy of fostering development of economically stable mining and minerals industries and their orderly and economic development as well as studying methods for disposal of waste and reclamation.

The **Geothermal Steam Act of 1970** (30 U.S.C. 1001-1027) governs the lease of geothermal steam and related resources on public land. The Act prohibits issuing geothermal leases on virtually all USFWS-administered land.

The **Minerals Material Disposal Act of 1947**, as amended, establishes the authority under which BLM disposes of timber and other vegetative and forest products.

The **Energy Policy Act of 2005** established federal policy for development of renewable and non-renewable sources of energy.

The **Taylor Grazing Act of 1934** (43 U.S.C. 315) establishes grazing districts of vacant, unappropriated and unreserved land in any parts of the public domain, excluding Alaska, that are not national forests, parks and monuments, American Indian reservations, railroad grant land, or revested Coos Bay Wagon Road grant land, and that are valuable chiefly for grazing and raising forage crops; the Act uses a permitting system to manage livestock grazing in the districts. In addition, the Act provides for the protection, administration, regulation and improvement of the grazing districts; promotes the adoption of regulations and cooperative agreements necessary to accomplish the purposes of the Act; regulates occupancy and use; preserves the land and resources from destruction or unnecessary injury; and provides for orderly improvement and development of the range. The Act also allows for the continuing study of erosion and flood control and performance of work to protect and rehabilitate areas subject to the Act. Willful violations of the Act, or of its rules and regulations, are punishable by fine.

The **Public Rangelands Improvement Act of 1978** (43 U.S.C. 1901) provides that the public rangeland be managed so that it becomes as productive as feasible in accordance with management objectives and the land use planning process established pursuant to 43 U.S.C. 1712.

The **Healthy Forest Initiative Act of 2002** expanded stewardship contracting authority, among other provisions including accelerating unnecessary delays and removing barriers to forest and rangeland restoration activities.

The **Healthy Forests Restoration Act of 2003** (P.L. 108-148) outlines administrative procedures for hazardous-fuel-reduction projects on Forest Service and BLM land to reduce wildfire risks to communities, municipal water supplies, and other at-risk Federal land and to protect, enhance, and restore forest ecosystem components.

The **Carlson-Foley Act of 1968** (P.L. 90-583) directs Federal agencies to enter upon land under their jurisdiction that has noxious plants (weeds) and to destroy noxious plants growing on such land.

The **Federal Noxious Weed Act of 1974** (7 U.S.C. 2801-2814) provides for the control and management of nonindigenous weeds that injure or have the potential to injure the interests of agriculture and commerce, wildlife resources, or the public health. The Act requires that each Federal agency develop a management program to control undesirable plants on Federal land under the agency's jurisdiction; establish and adequately fund the program; implement cooperative agreements with State agencies to coordinate management of undesirable plants on Federal land; establish integrated management systems to control undesirable plants targeted under cooperative agreements. A Federal agency is not required to carry out management programs on Federal land unless similar programs are being implemented on State or private land in the same area.

The Act also directs the Secretaries of Agriculture and the Interior to coordinate programs for control, research, and educational efforts associated with noxious weeds. The Secretaries must identify regional control priorities and disseminate technical information to interested State, local, and private entities.

The **Plant Protection Act of 2000** (P.L. 106-224) prohibits the import, export, and movement in interstate commerce, or mailing of any plant pest unless authorized by the Secretary of Agriculture; authorizes the Secretary to prohibit or restrict the import, export, or movement in interstate commerce of

any plant, plant product, biological control organism, noxious weed, or means of conveyance to prevent the introduction or dissemination of a plant pest or noxious weed; and combines all or a portion of 11 Acts or resolutions into 1 Act.

The **Migratory Bird Treaty Act of 1918**, as amended (16 U.S.C. 703-712), implements various treaties and conventions between the United States and Canada, Japan, Mexico, and the former Soviet Union for the protection of migratory birds. Under the Act, taking, killing, or possessing migratory birds is unlawful.

Bald and Golden Eagle Protection Act of 1940 (16 U.S.C. 668-668d, 54 Stat.250) as amended. This law provides for the protection of the bald eagle (the national emblem) and the golden eagle by prohibiting, except under certain specified conditions, the taking, possession and commerce of such birds. The 1972 amendments increased penalties for violating provisions of the Act or regulations issued pursuant thereto and strengthened other enforcement measures. Rewards are provided for information leading to arrest and conviction for violation of the Act.

The **Fish and Wildlife Coordination Act of 1958**, as amended (16 U.S.C 661-667), proposes to assure that fish and wildlife resources receive equal consideration with other values during the planning of water resources development projects. The Act requires coordination with USFWS by the U.S. Department of Energy when a project is planned that may affect a body of water. It also requires coordination with the head of the State agency that administers wildlife resources in the affected state.

The **Sikes Act of 1960**, as amended (16 U.S.C. 670, et seq.), seeks to promote effectual planning, development, maintenance, and coordination of wildlife, fish, and game conservation and rehabilitation in military reservations.

The **Fish and Wildlife Conservation Act of 1980** (16 U.S.C. 2901-2911) authorizes financial and technical assistance to the States for the development, revision, and implementation of conservation plans and programs for nongame fish and wildlife.

Executive Order 11644: Use of Off-Road Vehicles on the Public Lands (as amended by Executive Order 11989) (37 *Federal Register* [FR] 2877 [1971]) establishes policies and provides for procedures that will ensure that the use of off-road vehicles on public land will be controlled and directed so as to protect the resources of those land, promote the safety of all users of those land, and minimize conflicts among the various uses of those land.

Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (49 FR 7629 [1994]) requires that each Federal agency consider the impacts of its programs on minority populations and low-income populations.

Executive Order 13007: Indian Sacred Sites (61 FR 26771 [1996]) requires Federal agencies to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions to accommodate access to and ceremonial use of American Indian sacred sites by Indian religious practitioners and avoid adversely affecting the physical integrity of such sacred sites.

Executive Order 13287: Preserve America directs Federal agencies to provide leadership in preserving the nation's heritage by actively advancing the protection, enhancement and contemporary use of historic properties owned by the Federal Government, emphasizing partnerships. Under this order, agencies shall cooperate with communities to increase opportunities for public benefit from, and access to, federally owned historic and paleontological properties.

Executive Order 13084: Consultation and Coordination with Indian Tribal Governments provides, in part, that each Federal agency shall establish regular and meaningful consultation and collaboration with Indian Tribal governments in the development of regulatory practices on Federal matters that significantly or uniquely affect their communities.

Executive Order 13112: Invasive Species provides that no Federal agency shall authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species unless, pursuant to guidelines that it has prescribed, the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species and that all feasible and prudent measures to minimize risk or harm will be taken in conjunction with the actions.

Executive Order 11988: Floodplain Management requires each agency to provide leadership and take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains. Each agency must evaluate the potential effects of any actions it may take in a floodplain; to ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and to prescribe procedures to implement the policies and requirements of this order.

Executive Order 11990 Protection of Wetlands required each Federal agency to provide leadership and take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands.

Secretarial Order 3175 (incorporated into the U.S. Department of the Interior's *Departmental Manual* at 512 DM 2) requires that, if the actions of a U.S. Department of the Interior agency might impact American Indian trust resources, the agency explicitly address those potential impacts in planning and decision documents, and the agency consult with the Tribal government whose trust resources would potentially be affected by the Federal action.

Secretarial Order 3206: American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act requires U.S. Department of the Interior agencies to consult with American Indian Tribes when agency actions to protect a listed species, as a result of compliance with the ESA, affect or may affect American Indian land, Tribal trust resources, or the exercise of American Indian Tribal rights.