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DRAFT Converse County Natural Resource Management Plan



CONSULTANTS

Natural Resource Management Plan

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CHAPTER 1: INTRODUCTION

1.1 PURPOSE

1.1.1 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 well-being, culture, and customs of a local community are adequately considered in federal decisions (Budd-Falen, 2018).

The Converse County Natural Resource Management 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 NRMPs 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. A 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 management of federal lands in their area (Budd-Falen, 2018).

1.1.2 Statutory Requirements and Legal Framework

Federal agencies are required to identify and analyze the impacts to 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 NRMP 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(2)(C)). The courts have interpreted this to mean that every time the federal government makes a decision for most actions 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 when 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 agencies undertake an environmental analysis to determine whether a federal action has the potential to cause significant environmental effects. If a proposed action has been classified by an agencies' procedures as a categorical exclusion (CE) because it does not individually or cumulatively have a significant effect on the human environment, then no further



environmental analysis is needed (40 C.F.R. § 1501.1). If a CE does not apply to a proposed action, then the federal agency must prepare an Environmental Assessment (EA) to determine whether the proposed action will have a significant impact on the quality of the human environment. 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 EA.

There are several ways local governments can participate in the NEPA process depending on the level of analysis, type of federal decision, level of commitment of the local government, and the goals of the local government. First, local governments 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 while 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 local governments to take advantage of consistency review requirements, a written and adopted local NRMP is required. With a written NRMP, this analysis happens even when the local government does not request consistency review for the pending decision or action if the NRMP was provided in advance to the reviewing federal agency.

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(2)(c)). As there is no requirement for federal agencies to discuss the inconsistencies of a proposed action with comments from state or local governments, written comments submitted by a local government not tied to a formally adopted NRMP require less rigorous analysis than those tied to an adopted NRMP.

Local governments can participate in the NEPA process as a "cooperating agency" (40 C.F.R. § 1508.5), an action separate from NRMP consistency review. 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 analysis and decision-making process at its inception, the government may request "cooperating agency status" to the deciding federal agency. "Cooperating agency status" allows local governments to work with federal agencies throughout the development of a federal plan or proposal, including before public feedback is solicited. It does not require a written NRMP prepared by local governments. Should a local government request cooperating agency status for a particular agency proposed action (for example, the designation of critical habitat for a listed threatened or endangered species), the local government can, at the request of the lead agency, participate in drafting portions of the relevant NEPA document (40 C.F.R. § 1501.6(b)(3)). 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. A NRMP, while not required, can aid this 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.

Participation in federal processes as a cooperating agency can be expensive, time consuming, and cumbersome and may be particularly challenging for communities with limited resources. A 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. Additionally, the Forest Service is mandated to “engage the public, including State and local governments early throughout the planning process.” 36 C.F.R. § 219.4(a)(1).

The USFS is also obligated to perform a consistency review. For 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)).



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 County’s NRMP in their review of the proposed federal action.

1.2 CONVERSE COUNTY NATURAL RESOURCE MANAGEMENT PLAN PROCESS

1.2.1 Plan Organization

This NRMP considers the current conditions of federal resources within Converse County, 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 for each resource. Resource Management Objectives address the question, “What does the County want for and from this resource?”
- **Priority Statements.** Describes specific priorities on how to achieve the County’s Resource Management Objective for each resource. Priority statements tied 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 Development Process

Consistent with Wyo. Stat. § 9-4-218(a)(viii)(D), Converse 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.

A public scoping meeting kicked off the development of the NRMP. The meeting was held in Douglas, WY on September 17, 2020 and reviewed the purpose and intent behind development of the NRMP. The draft NRMP document was released for a 45-day public comment period that began on January 14, 2022 and ended on February 28, 2022. A public meeting was held in Douglas on February 8, 2022 in which the public had the opportunity to participate and contribute comments to the plan as well as ask questions about the purpose and intent of the plan. Written comments received during the public comment period were analyzed and reviewed by the Commissioners and incorporated into the final plan as appropriate. The final plan will be presented to the Converse County Board of County Commissioners for final adoption in Spring 2022.

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).

1.2.3 Amending the Natural Resource Management Plan

It is recommended to review the Converse County Natural Resource Management Plan every five years. Economic data and minor changes within the plan may be updated more frequently as updated information is available. This plan can be amended following the Wyo. Stat. § 9-4-218(a)(viii)(B) and the public meetings laws. Amendments to the plan only require that the NRMP with amendments is presented and adopted by the Converse County Board of County Commissioners during one of their regular meetings. The proposed action item to make amendments to the plan must be on the Converse County Board of County Commissioners Agenda before the meeting and the changes should be made available for the public when the agenda is posted.

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 Converse 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 90 days** of the date of adoption of this plan, the 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 to attend such meetings if there are proposed decisions or issues to discuss. At minimum, the County would like a quarterly update on the following topics:
 - a. Minerals (including oil and gas leasing)



- b. Wildlife
 - c. Livestock grazing
 - d. Invasive species management
 - e. Road improvements
 - f. Any proposed changes to access of public lands
 - g. Any decisions that may affect water quality, water rights, or obligations to current interstate water compacts
 - h. Proposed land exchanges or purchases
 - i. An update on all permits or management decisions awaiting a final decision from the agency, including the length of time the permittee has waited on a decision and proposed timelines for the agency to make those pending decisions.
2. **Within 90 days** of the date of adoption of this plan, the County will transmit a copy of this local land use plan to the state, regional, and local federal agency offices doing business within Converse County for their consideration as part of any consistency review that is required pursuant to federal statute. Those agencies include:
- a. Bureau of Land Management – Casper Field Office (Casper, WY)
 - b. Bureau of Land Management – Wyoming State Office (Cheyenne, WY)
 - c. U.S. Forest Service – Douglas Ranger District (Douglas, WY)
 - d. U.S. Forest Service – Medicine Bow-Routt National Forests, Thunder Basin National Grassland (Laramie, WY)
 - e. U.S. Fish and Wildlife Service (USFWS) – Region 6 Office (Lakewood, CO)
 - f. Bureau of Reclamation (BOR) – Wyoming Area Office (Casper, WY)
 - g. Environmental Protection Agency (EPA) – Region 8 Office (Denver, CO)
 - h. Wyoming Governor’s Office (Cheyenne, WY)
 - i. Wyoming Department of Environmental Quality (WDEQ) (Cheyenne, WY)
 - j. Wyoming Game and Fish State Office (Cheyenne, WY)
 - k. Office of State Lands and Investments (Cheyenne, WY)
 - l. Wyoming Oil and Gas Conservation Commission (Casper, WY)
 - m. Wyoming Department of Agriculture (Cheyenne, WY)
3. **Within 90 days** of the adoption of this plan, the County will contact the BLM and USFS 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, the 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.

The Converse County Commissioners invite and welcome all agencies to their monthly Commission meetings to give an update on any items that need discussed. The County Commissioner meetings are typically held on the first and third Tuesday of every month, the official schedule can be found on the Converse County [website](#)¹ (**Note: website links can be found in Appendix A**). To assist in keeping an open line of communication and simplify coordination and scheduling between the County and the agencies, all correspondences between



the agency and the County will be initially directed to the Converse County Clerk as the main point of contact.

1.2.4.1 Converse County Expectation Objectives:

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

1.2.4.2 Converse County Expectation Priority Statements:

1. Federal agencies should inform Converse 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. Converse County requests the inclusion of at least one representative from the County Commission Board as a cooperating agency for any decision-making or management decision, which may affect wildlife resources or the economic viability of the County.
3. Federal agencies should give regular (where regular is defined as not less than biannually) updates or as needed updates on the permit status for current and proposed projects within Converse County's jurisdiction and support reasonable timelines and explanations for issuance of delays from permitting agencies.
4. Federal agencies should achieve a sustainable land use balance between economic growth and sustainability, energy development, recreation, agriculture, conservation use of lands, quality of life, Converse County's custom and culture, and the environment by coordinating with Converse County on all decisions.
5. Federal agencies should support traditional multiple land uses within Converse County to maintain continuity in the local economy and assure the sustainability of existing agricultural, recreational, and industrial interests while maintaining or improving the present environmental quality of life.
6. A full analysis of the impact each alternative and subsequent "decision" will have on the local economy, health, safety, and welfare of Converse County 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 by the County without a thorough review.

7. Federal agencies should inform and encourage those impacted by decisions to substantively participate in scoping process on a National Environmental Policy Act decision.
8. Federal agencies should follow the 2020 National Environmental Policy Act regulations which state that Environmental Impact Statements should be completed within 2 years from the issuance of a Notice of Intent and 150 pages or less excluding appendices and Environmental Assessments be completed within 1 year from the issuance of a Notice of Intent and be no greater than 75 pages.
9. Minimize the threat from developments to the health, safety, and welfare of those residing in rural areas within Converse County.
10. Inform Converse County and other local governmental entities how its information and recommendations were considered in federal land management decisions, including explanations particularly if County input was not adopted or incorporated.
11. The Converse County Clerk will serve as the first point of contact between the federal agencies and the Converse County Board of Commissioners.
12. Conduct annual meetings between the Converse County Commissioners, and/or its representative, and the BLM and Forest Service to discuss ongoing or upcoming projects along with potential policy or regulatory changes and any other pertinent business affecting the county.

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 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 is provided below:

- BLM [1283 Data Administration and Management \(Public\) 2012](#)²
- Bureau of Reclamation – [Quality of Information](#)³
- Environmental Protection Agency (EPA) - [EPA Quality System Guidelines](#)⁴
- U.S. Army Corps of Engineers (USACE) – [Information Management Enterprise Data Management Policy Corporate Information](#)⁵
- USFS – [Forest Service Handbook 1909.12 – Land Management Planning Handbook Chapter 40 – Key Processes Supporting Land Management Planning](#)⁶
- U.S. Fish and Wildlife Service (USFWS) – [Data Standards](#)⁷
- Wyoming Department of Environmental Quality (WDEQ) – [WDEQ Standards](#)⁸

The Wyoming State Statute also defines credible data as scientifically valid chemical, physical, and biological monitoring data collected under an accepted sampling and analysis plan, including quality control, quality assurance procedures and available historical data (Wyoming State Statute §35-11-103(c)(xix)). Chapter 1, Section 35 of the Wyoming Water Quality Rules also defines credible data, that definition can be found [here](#) and is similar to that defined in Wyoming State Statute.

1.3.1 Credible Data Resource Management Objective:

- A. Credible data has a universal meaning for all federal agencies in Converse 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.
2. Federal and state agencies should include quantitative data in land use planning processes that meets 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 Converse 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 Converse 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.

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CHAPTER 2: CONVERSE COUNTY CUSTOM AND CULTURE

2.1 COUNTY OVERVIEW

Converse County is in the central eastern portion of Wyoming. The County is bounded on the north by Campbell County on the northeast by Weston County, on the east by Niobrara County, on the southeast by Platte County, on the south by Albany County, on the southwest by Carbon County, on the west by Natrona County, and on the northwest by Johnson County. The southern part of the County contains portions of the Medicine Bow National Forest. The northeastern part of the County contains portions of the Thunder Basin National Grasslands. The North Platte River flows south to north through the County. The headwaters of the Cheyenne River also originate in northeastern Converse County from the confluence of Antelope Creek and Dry Fork Creek.

The estimated total population of Converse County according to the 2020 U.S. Census data is 13,751 people (U.S. Census Bureau, 2019). Over 66% of the residents of Converse County live in established cities, towns, and communities of Douglas, Glenrock, Rolling Hills, Esterbrook, Orin, and Lost Springs.

Converse County is the ninth largest county in Wyoming spanning over 2.7 million acres (4,254 square miles). Approximately 14% of the surface estate and 60% of the mineral estate in Converse County are federally owned, with the largest portions being held by the BLM and the USFS, and small acreages held by the BOR. This leaves approximately 76% of the surface estate being owned by private landowners with an estimated 9% held by the State of Wyoming. This situation that creates a severed mineral and surface estate is commonly referred to as “split estate” which occurred through the passage of numerous laws enacted by the federal government over time.



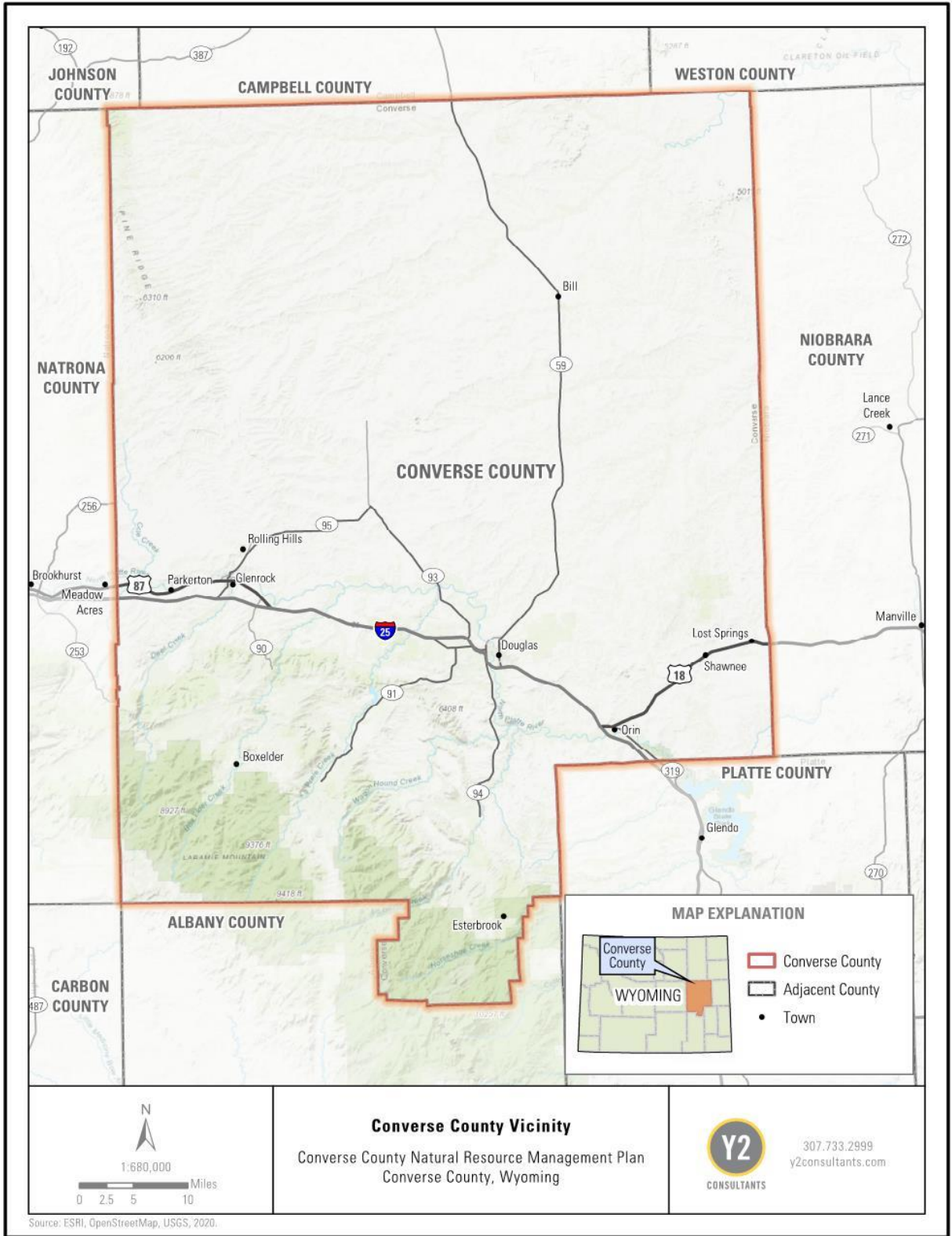


Figure 1. Converse County Natural Resource Management Plan Area.



2.1.2 Converse County History, Custom, and Culture

Converse County Custom and Culture

County Commissions in the State of Wyoming have been charged with responsibility for the preservation of the custom and culture of Wyoming counties in matters relating to the NEPA and federal land planning. Since the customs, culture, and history of Converse County are inseparably tied to the use of and access to land and resources managed by federal agencies, the Board of County Commissioners will use the policies set forth in this NRMP to represent the vital interests of the County in federal natural resource planning efforts.

Farming, ranching, energy development, and recreation provided the heritage of the County's residents, and such activities continue today. The customs and culture of Converse County have historically been driven by open rangeland used for livestock and agricultural production. Rangeland used by livestock and agricultural producers continues to be the dominant land use in the County. Utilization and appreciation of wildlife have also been important components of the County's long-standing heritage and practice. Hunting, along with non-consumptive uses of wildlife, continues to be an important part of the County's culture. In more recent years, development of energy resources including coal, oil, gas, uranium, and wind have become increasingly dominant.

Converse County History

The settlement of present-day Converse County began in the 1820s as trappers began moving west following the North Platte River. From the 1820s through the 1840s emigrants bound for Oregon, California, and Utah moved through the area following the North Platte. In the 1850s and 1860s stagecoaches and the Pony Express used the same routes in what is now known as the Oregon Trail. (McInnis, 2014)

An early trading post that served as a stage stop, Pony Express outpost, and telegraph station was built near where Deer Creek flows into the North Platte, near the present western boundary of Converse County. Fort Fetterman was built in 1867 approximately 20 miles east of Deer Creek and became an important staging point for the army in the Indian Wars of the 1860s and 1870s. Fifteen years after the fort was built it was decommissioned but the site remained as a rowdy civilian frontier outpost where cowboys, trail hands, and former soldiers could spend their money. (McInnis, 2014)

The establishment of Douglas began as three tents, a general store, a restaurant, and a saloon. The establishments drew in customers from the surrounding area, along with the sort of trouble that often came with such establishments. In 1886, the Fremont, Elkhorn, and Missouri Valley Railroad, building west from Chadron, Nebraska reached Douglas. This brought settlers who transformed the tent settlement into a town bringing civilization such as religion, government, finance, and law. It took time for the civilizing influence of the new settlers to overcome the existing culture and twenty-five bars sprang up in Douglas drawing a ready clientele from railroad workers and cowboys. In 1886, Douglas became an official town and two years after Converse County was created from parts of the already existing Albany and Laramie counties. Converse



County was named for Amasa Converse who was a noted pioneer and Cheyenne Banker. (McInnis, 2014)

The first order of business with establishment of the county was to select the county seat. This was important as the county seat would have the economic benefit of government jobs as well as an advantage for future development. There were four areas that wanted the county seat designation: former Fort Fetterman, Douglas, Glenrock, and Lusk (now part of Niobrara County). A popular vote was held to determine the county seat and Douglas was the winner. (McInnis, 2014)

Like most of Wyoming, Converse County has experienced boom and busts in its economy since early times due to the nature of the commodities produced in the area such as beef, oil, gas, coal, and uranium which are subject to swings in demand and price.

In the early 1880s, ranchers brought cattle from Texas to the Converse County area to feed on the area's rich grasslands. However, by 1885 the beef market had weakened, and the land did not appear to be as resilient to grazing. The winter of 1886 was severe with large storms followed by thaws that would freeze over the range making forage unavailable. Thousands of animals perished, and those losses collapsed the area's cattle-dependent economy and many people left the area. The Douglas area suffered significantly and almost three-quarters of the population moved elsewhere. (McInnis, 2014)

In 1905, Converse County hosted the Wyoming State Fair when the Wyoming Legislature awarded the fair to Douglas and appropriated \$10,000 for land, buildings, and other expenses. The fair has been held in Douglas every summer since and has only been cancelled a few times; in 1935-1936 due to the Great Depression, in 1937 for an outbreak of infantile paralysis, and during the war years of 1942-1945 when gasoline and tires were rationed. The fair boasts a Professional Rodeo Cowboys Association rodeo as well as numerous events sponsored by 4-H groups and Future Farmers of America. Attendance runs in the tens of thousands annually, a large increase from the 2,500 visitors the first year. (McInnis, 2014)

In 1995, the discovery of *Triceratops* fossils on a ranch near Glenrock made Converse County famous for its dinosaur fossils and led to the creation of the Paleon Museum in downtown Glenrock.

Today, Converse County survives on the same economic commodities as much of Wyoming and the West: a mix of agriculture, energy, and tourism. Cattle and sheep still graze the grasslands and oil and minerals continue to be uncovered and produced when markets allow. The North Platte River helps sustain people, crops, and livestock. Other energy within the county includes wind energy and the 762-megawatt Dave Johnson coal-fired power plant in Glenrock. I-25 runs through Converse County, which is the highway corridor that runs from Las Cruces, New Mexico through Albuquerque, Colorado Springs, Denver, Fort Collins, Cheyenne, Casper, and ending in Buffalo, Wyoming where it intersects with I-90 making transportation of products readily available.



2.2 CULTURAL, HISTORICAL, & PALEONTOLOGICAL RESOURCES

2.2.1 History, Custom, and Culture

Converse County is home to many historical artifacts ranging from the time of the dinosaurs to the development of the railroad. This provides a rich and deep history that has led to the present-day custom and culture of the area. Many fossilized microscopic organisms, flora, and fauna have been found throughout the county. The Paleon Museum in Glenrock has amazing fossils of dinosaurs both large and small and provides the opportunity for research and digging throughout the area.

Converse County's location along the Platte River Valley led the county to being directly involved in the historical settlement of the Western U.S. This first began with early Indigenous people who followed the river for its resources. Campsites and kill sites have been found throughout the county. Next came the early explorers and trappers who used the route on their way to find furs and other resources. The Emigrant and Indian War occurred in the area around the early 1800s and resources found from this period include the emigrant trails, the Army campsites of Fort Fetterman, and the Fort Fetterman Stage Routes and Stage Stations. In the early 1800s through the early 1900s, the Oregon, California, Mormon, and Bozeman trails came through the area and over time many towns and way stations sprang up along the trails to provide supplies and services to those seeking the adventure out west.

2.2.2 Resource Assessment and Legal Framework

Converse 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 Converse County inhabitants. Historic preservation of property enhances economic values and provides the basis for heritage tourism. The County is concerned with protecting these resources that have intrinsic value based on their age, heritage, or other intangible significance. These resources also highlight the unique character of the local setting and may contribute toward attracting businesses and tourism.

Historic and Archeological Resources

Many historical and cultural resources are sensitive and protected by law. There are two acts that primarily protect these historic and archeological resources. The National Historic Preservation Act (NHPA) was passed in 1966 and authorized the Secretary of Interior to maintain and expand a National Register of Historic Places. 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. The Register of Historic Places is managed by the National Park Service. 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 C.F.R. § 800). (National Preservation Institute, 2020)

For listing in the National Register, 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 National Register 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.)

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, in its opinion, eligible for listing in the National Historic Register (see NHPA Section 101(c).

Perhaps most influential on federal actions, Section 106 of the National Historic Preservation Act (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 consider 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 remain.

Currently Converse County has 21 listed sites in the National Register (Wyoming SHPO, n.d.). The sites are listed in Table 1 and additional information about each site can be found online [here](#)⁹-(all website links can be found in Appendix A and are denoted in the text with a superscript number).

Table 1. National Register Historic Sites located within Converse County.

National Register Historic Site	Location	Site Owner
Antelope Creek Crossing	NA	Federal, Private
Braehead Ranch	Douglas	Private
Christ Episcopal Church and Rectory	Douglas	Private
College Inn Bar	Douglas	Private
Commerce Block	Glenrock	Private, Local
Douglas City Hall	Douglas	Local
Fort Fetterman	Orpha	State
Fremont, Elkhorn & Missouri Valley Railroad Passenger Depot	Douglas	Local
Glenrock Buffalo Jump	Glenrock	State, Private
Holdup Hollow Segment (Bozeman Trail)	NA	Federal, Private
Hotel Higgins	Glenrock	Private
Hotel LaBonte	Douglas	Private
Jenne Block	Douglas	Private
La Prele Work Center	Douglas	Private
Morton Mansion	Douglas	Private
North Douglas Historic District	Douglas	Private, State
Officer’s Club, Douglas Prisoner of War	Douglas	State
Ross Flat Segment (Bozeman Trail)	NA	State, Private
Sage Creek Station	Glenrock	Private
Stinking Water Gulch Segment (Bozeman Trail)	NA	Federal, Private
U.S. Post Office (Douglas Main)	Douglas	Federal

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 Converse County. Formations in the area include the Fox Hills, Cody Formations (quarried near Glenrock), the Morrison Formation, and the White River Formation (quarried near Douglas). (Clearinghouse, n.d.; Paleon Foundation, 2019)



The Paleon, a museum in Glenrock, collects fossils from several established quarries on both private and public land in the surrounding area of 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).

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](#)¹⁰
- [Bureau of Reclamation, fossil resources](#)¹¹
- [U.S. Fish and Wildlife Service, historic preservation](#)¹²
- [Bureau of Land Management, Paleontology](#)¹³
- [National Park Service, Fossils and Paleontology](#)¹⁴

2.2.3 Cultural/Historical/Paleontological Resource Management Objectives:

- A. Existing property rights and uses within Converse County are considered when managing cultural, historical, geological, and paleontological resources.
- B. Converse County is coordinated with concerning the designation and management of all cultural, historical, geological, and paleontological resources.
- C. Cultural, historical, geological, and paleontological resources within Converse County are preserved and protected as appropriate for current and future public education and enjoyment.
- D. Split estate mineral development within Converse County is not impeded by cultural surveys.

2.2.4 Cultural/Historical/Paleontological Priority Statements:

1. Converse County requests to be recognized by federal agencies as a consulting party under Section 106 of the National Historic Preservation Act and subsequent amendment.
2. Converse County expects federal agencies to comply with the timeline for review set forth in Section 106 of the National Historic Preservation Act.
3. All federal agencies should communicate with Converse 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.
4. Federal agencies should recognize that cultural and archeological resources located on private lands are the property of the surface owner and uphold that property ownership in any federal planning action or decision.



5. Converse County should be consulted on any buffer zones implemented for the protection of historical and cultural resources.
6. Converse County supports private property rights as paramount for cultural, historical, geological, and paleontological resources thought to be on private lands.
7. Converse County supports responsible stewardship on cultural sites on federal lands balancing resource protection with current and future multiple uses on those lands that are consistent with the custom and culture of Converse County.
8. 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.
9. Converse County opposes management of roads that have historically been used by the public and were established for public access to be managed as historical trails with restricted access or use.

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CHAPTER 3: LAND USE

3.1 LAND USE

Public lands and the resources on them influence the custom and culture of Converse County. These resources are important for the livelihoods of residents and the attraction of those traveling through. Converse County is the ninth-largest County in Wyoming, spanning 4,254 square miles. Converse County is 14% federally managed, with BLM managing 4.7% (130,048 acres), the USFS managing 9.5% (259,264 acres), and the BOR managing <1% (128 acres). Converse County relies on these federally managed lands for energy development, livestock grazing, wildlife, tourism, and recreation. Figure 2 Shows the land ownership of Converse County.

The relationship between the County and the federal agencies is key to ensuring resources are managed successfully and Converse County's custom and culture of using public lands for multiple uses remains intact. The County and agencies have worked together in the past on resource management concerns and issues and will continue to strengthen and build those relationships to ensure that all stakeholders are at the table when discussing resource management on public lands within Converse County.

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.).

Originally there were three conservation districts formed in Converse County. In 1947 both the LaPrele District and the Glenrock District were formed and later consolidated in 1963. The third district, the Upper Cheyenne River District was formed in 1951. In 1979, the conservation districts merged and became the Converse County Conservation District.

The Converse County Conservation District is a locally led effort overseen by a locally elected board of five. Each supervisor is elected in the general election and serves a four-year term on a voluntary basis. The board meets the third Thursday of each month unless otherwise publicized.

The Converse County Conservation District is a local government and a political subdivision of the State of Wyoming as defined and established by the Wyoming Statutes at Title 11, Chapter 6, et seq., entitled "Wyoming Conservation District Law." Converse County Conservation District is guided by the statute's Legislative Declarations and Policy, which also outlines much of the conservation district's special expertise:

(a) it is hereby declared that the farm and grazing lands of Wyoming are among the basic assets of the state; that improper land use practices cause and contribute to serious



erosion of these lands by wind and water; that among the consequences which would result from such conditions are the deterioration of soil and its fertility and the silting and sedimentation of stream channels, reservoirs, dams and ditches; that to conserve soil, and soil and water resources, and prevent and control soil erosion, it is necessary that land use practices contributing to soil erosion be discouraged and that appropriate soil conserving land use practices be adopted.

(b) it is hereby declared to be the policy of the legislature to provide for the conservation of the soil, and soil and water resources of this state, and for the control and prevention of soil erosion and for flood prevention or the conservation, development, utilization, and disposal of water, and thereby to stabilize ranching and farming operations, to preserve natural resources, protect the tax base, control floods, prevent impairment of dams and reservoirs, preserve wildlife, protect public lands, and protect and promote the health, safety and general welfare of the people of this state.

3.1.2 Bureau of Land Management

History, Custom, and Culture

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 Treasury Department to oversee 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.

Resource Assessment and Legal Framework

The BLM manages approximately 4.7% of the lands in Converse County. BLM administered lands in the County are managed by the Casper Field Office, which is part of the High Plains District Office located in Casper, WY. The Casper Field Office encompasses approximately 32,531 square miles. The [Casper Field Office Resource Management Plan](#)¹⁵ (RMP) was approved in a record of decision (ROD) signed in 2007. The final Converse County Oil and Gas Project Record of Decision was released by the BLM in December 2020. The project allows for development of up to 5,000 new oil and natural gas wells within a 1.5-million-acre project area in Converse County. Further information on this project can be found [here](#)¹⁶.

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

History, Custom, Culture

In 1876, United States forest management was formalized with the creation of the Office of Special Agent within the Department of Agriculture for the purpose of assessing 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 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 USC § 1601(d)).

USFS lands in Converse County are part of the Medicine Bow National Forest and Thunder Basin National Grasslands (TBNG). 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 Thunder Basin Grazing Association based out of Converse County, the Inyan Kara Grazing Association Based out of Weston 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.

Resource Assessment and Legal Framework

The USFS manages approximately 259,264 acres (9.5%) of the total land in Converse County all within the Medicine Bow National Forest and TBNG. The TBNG is headquartered in Laramie, Wyoming with the Douglas, Wyoming Ranger District being the closest ranger district. TBNG spans over 572,000 acres in eastern Wyoming in a mosaic of state, federal, and private lands.

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 modify specific activities in the 2003 Revised



LRMP. These amendments include the Southern Rockies Lynx Management Direction Amendment (2008), Energy Policy Act (EPA) 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](#)¹⁷ 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 an 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 apply 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 this time that this plan was adopted there only other federal agency that manages land within Converse County is the Bureau of Reclamation (BOR). The BOR manages 128 acres for Glendo Reservoir that falls within Converse County. The majority of Glendo Reservoir and Dam lie within Platte County on the North Platte River.



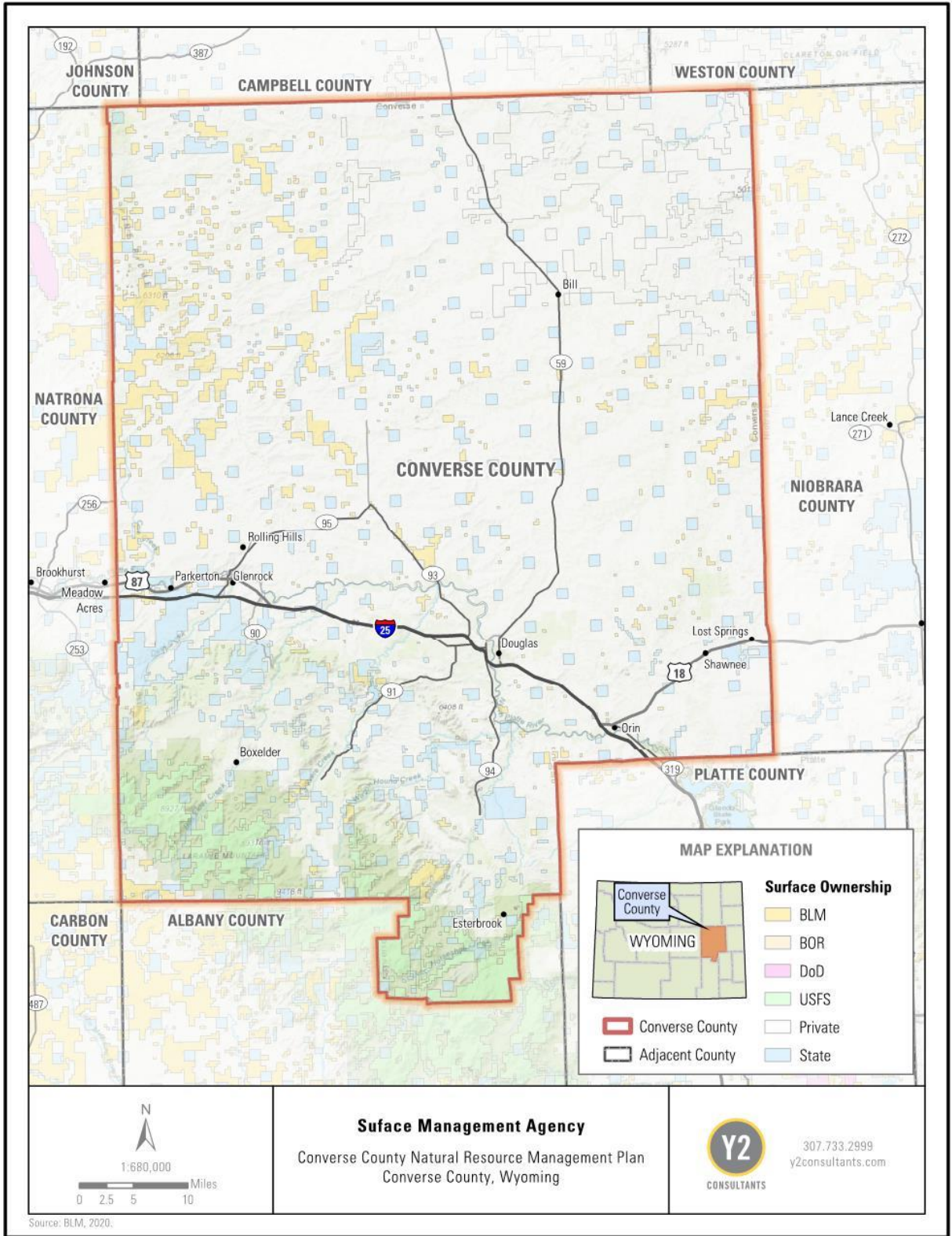


Figure 2. Converse County surface management.



3.1.6 Land Use Resource Management Objective:

- A. The basis for management of all public lands is multiple-use management that considers Converse County's custom and culture and economic wellbeing in coordination with the County.

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 the resources such as, but not limited to, agriculture, air, energy, mineral extraction, range, recreation, socioeconomics, timber, tourism, wildlife, and water within Converse County.
2. Converse 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 wellbeing of Converse 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 Converse 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 Converse 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 Converse County.
8. Converse County does not support the creation of additional federal lands within the County.
9. Government lands should be made available for traditional eminent domain uses, such as pipelines and transmission lines, where logical, recognizing that government land has no greater value than private land.
10. Unless it will impede private property rights and freedom of contract, conservation easements should be entered into by agreement of the landowner and should be held by private entities rather than federal agencies.
11. Ensure there is no net loss of private lands in Converse County. Net loss shall be measured in acreage and fair market value.



3.2 TRANSPORTATION AND LAND ACCESS

3.2.1 History, Custom, and Culture

Public access to routes of travel is essential to the County's transportation and public access systems and to the economic, social, political well-being, custom and culture of the communities and citizens of Converse County. Access, rights-of-way and water rights were critical to the early settlers and remain critical today. Many private landowners need rights-of-way across the state and federal lands to access their property, to use their water rights, and to exercise their grazing rights. Today, access to land, water, and natural resources remains critical to the economic stability and culture of Converse County. Because the County also depends upon the responsible use and development of public land resources, adequate, feasible, and fully protected access is required to utilize and protect these resources. Many land uses in the County depend upon roads and rights-of-way associated with general non-motorized and motorized travel.

Recreation users depend on trails and roads to hunt, camp, and enjoy the land and scenery in Converse County. The use and development of natural resources depends on access across and to federal and state lands. Livestock operators need access to forage on federal land and access to move livestock and construction materials to maintain and build range structures. Landowners need access in the form of rights-of-way to divert water for irrigation purposes and to provide water for livestock, or to use water in relation to other development. It is vital to the sustainability of the livestock industry in Converse County that grazing areas, and the stock trails that connect them, be open and accessible. Livestock "trailed" from one grazing area to another must have access to grazing areas on either end of that process, as well as lands in between.

The County itself relies on access to federal lands to fulfill its statutory mandate to protect the health, safety, and general welfare of the people within its jurisdiction; including but not limited to fire protection, search and rescue, flood control, law enforcement, economic development, and the maintenance of County improvements. Transportation within the County is also vital for recreational use of federal lands and access to oil and gas on federal lands.

3.2.2 Resource Assessment and Legal Framework

There is an extensive network of roads in Converse County. The primary through-routes are either State or Federal highways. Major highways through Converse County include Interstate 25, U.S. Highways 18, 20, 26, 87, and Wyoming Highway 59. The county road network is over 632 miles and is another essential system of roads. For the most part, these roads are not paved and are accommodated on either a 60- or 66-foot road easement and are surveyed. Some of the roads are not built to any design standards for either weight or safety.

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 continue.



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.

Under this mission, the FHWA provides resources to municipalities across the nation and 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, 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 Access Program 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.” .
- 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 National Park Service (NPS), U.S. Fish and Wildlife Service (USFWS), USFS, BLM, U.S. Army Corps of Engineers (USACE), Bureau of Reclamation (BOR), and independent federal agencies with land and natural resource management responsibilities.” .
- 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.” .
- 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.” .



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. Converse 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 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 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)).

Federal Agencies

The BLM and USFS both have specific provisions they must follow when considering the closure of roads and trails. A requirement of these provisions is that such activity be conducted in coordination with the County prior to such action being taken. Road closures in Converse County without prior coordination with the County could cause economic harm and impact citizen and visitor enjoyment of the County’s natural resources.

U.S. Forest Service

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)



Inventoried Roadless Areas

Inventoried Roadless Areas (IRA) are portions of National Forest that were identified in the USFS 2001 Roadless Area Conservation Final EIS as lands without roads that are worthy of protection. Construction and reconstruction of roads is prohibited in roadless areas unless the USFS determines the road is necessary to protect public health and safety or otherwise meets one of the exceptions listed in the rule. These lands are to be periodically evaluated for potential designation as wilderness based on the availability, capability, and need for these areas to be designated as such. Characteristics of roadless areas include things such as natural landscapes, high scenic quality, and traditional cultural properties. To preserve the characteristics of IRAs, logging has been restricted in these areas.

IRAs exist in small areas of the TBNG in the northeastern corner of Converse County. A map of these area can be found [here](#)¹⁸. The IRAs designated within Converse County are IRAs that allow road construction and reconstruction.

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 about resource management and resource use goals and objectives. BLM M-1626 Travel and Transportation Management Manual, 3-1 (09/27/2016). 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 (*Id.* at 4-1). The BLM is required to coordinate "inventory" with the County (43 USC § 1712) . NEPA requires that federal projects and land use decisions, including opening and closing of roads, to go through an environmental review process.

Federal law also authorizes rights-of-way across federal land under the Alaska National Interest Lands Conservation Act (ANILCA) or Title 5 of FLPMA. Under FLPMA, the applicant must pay cost-recovery fees to process the permit and full market value of the easement, unless the applicant is a county. Mineral lessees are entitled to access under the terms of a mineral lease.

Other travel paths outside of roads are also managed by the BLM. The Taylor Grazing Act when established provided for the establishment, maintenance, and use of stock trails within established grazing districts to ensure livestock could get from one area to another while still have forage and water available (43 U.S.C. § 316). The National Trails System Act falls under the purview of the National Park Service and has defined the standards and methods by which additional trails may be added to the trails system including scenic, historic, and recreational



trails. Both the BLM and the Forest Service have land management responsibilities for portions of trails that cross the surface of those respective federal lands.

3.2.3 Transportation and Land Access Resource Management Objectives:

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

3.2.4 Transportation and Land Access Priority Statements:

1. Converse County supports designation of all currently open motorized and nonmotorized trails, rights of way, and roads as open transportation network.
2. No road, trail, or RS 2477 right of way within Converse 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. Converse County requests that any planning process or activity that restricts, eliminates, or increases access to federal or state lands first notify and allow the County to initiate coordination and cooperating agency status to resolve any potential conflicts with the County's objectives, principles, and policies, prior to taking action.
4. Federal agencies should work with Converse County to reserve stock trails as valid access routes for the purpose of trailing livestock between grazing areas.
5. All formally established Bureau of Land Management and U.S. Forest Service public roads and rights of way shall be considered valid unless formally abandoned, even if not presently maintained. Public trails shall be considered "public roads and highways."
6. Converse County considers any long term (greater than 6 months) 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 Converse County. Should the agency believe that a road closure falls under a categorical exemption, the County shall be consulted.
7. Converse County should be notified of any temporary road closures.
8. Converse County supports legal public access to the federal lands for all beneficial uses as long as it does not infringe on private property rights.
9. It is the desire of Converse County to keep all forest roads within the designated 2001 Roadless Area Conservation Rule, so there is no net loss of roads within these designated areas.
10. Ensure that rail crossings meet or exceed the minimum safety requirements (as adopted by the Wyoming State Highway Department and/or Converse County) to provide for any increased activity at rail crossings.
11. Development adjacent to transportation systems should have proper setback and safety requirements to ensure safety of life and property.
12. Transportation systems that have deteriorated due to neglect or other causes should be upgraded to minimize the threat to adjacent life or property.



13. Proposals for increased uses on federal and state managed lands should only be approved when it can be shown that those uses adequate access on dedicated public lands.
14. Federal agencies should continue to work with Converse County to develop a comprehensive inventory of all existing and historic Forest Service and Bureau of Land Management system and non-system roads/trails, and rights-of-way in Converse County.
15. Access to databases and GIS systems should be shared among all local, federal, and state government agencies in the area. Federal agencies should assist in ensuring there is a county road system that is safe and requires a minimum of maintenance to serve those activities and developments in rural areas.
16. Activities and/or developments that increase demand on county roads should be required to enter into a road use agreement with Converse County.
17. Access to and/or across federal, state, or county managed lands within Converse County should not entail encumbrances or restrictions on private property.
18. Unless there are health and safety concerns, federal agencies should give priority to adequately maintaining roads and trails on federally managed lands, rather than using those maintenance funds on other activities such as road or trail decommissioning.
19. Converse County supports potential State efforts to petition the U.S. Forest Service for a Wyoming specific Roadless Rule.
20. Restrictive management of roadless areas is discouraged by Converse County and multiple uses should instead be allowed.
21. Converse County supports construction of temporary roads necessary to service natural resource development.
22. Federal agencies should obtain County approval before decommissioning existing roads on federally managed lands.

3.3 SPECIAL DESIGNATION AND MANAGEMENT AREAS

3.3.1 History, Custom, and Culture

There are no special designation or management areas within Converse County. There are two historic trails. An overview of different special designation and management areas is provided below.

3.3.2 Resource Assessment and Legal Framework

Areas of Critical Environmental Concern (ACEC)

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, 2016a). An ACEC may also be designated to protect human life and safety from natural hazards (BLM, 2016a). 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 are currently no designated ACECs within Converse County.

Historic Trails

There are two historic trails that cross through parts of Converse County: the Oregon Trail and the Bozeman Trail. These trails were major thoroughfares for westward expansion, military campaigns, and the goldfields of California, Idaho, and Montana in the 1800s.

Lands with Wilderness Characteristics

Section 201 of FLPMA requires the BLM to maintain, on a continuing basis, an inventory of all federal lands and their resources and other values, which includes wilderness characteristics. It also provides that the preparation and maintenance of the inventory shall not, of itself, change or prevent change of the management or use of federal lands. It does not address or affect policy related to Congressionally designated Wilderness or existing Wilderness Study Areas.

The BLM uses the land use planning process to determine how to manage lands with wilderness characteristics as part of the BLM's multiple-use mandate. The BLM will analyze the effects of:

- Plan alternatives on lands with wilderness characteristics, and
- Management of lands with wilderness characteristics on other resources and resource uses.

There are no LWCs within Converse County.

Special Recreation and Extensive Recreation Management Areas

The BLM's land use plans may designate Special Recreation Management Areas (SRMAs) or Extensive Recreation Management Areas (ERMAs) to provide specific management for recreation opportunities, such as developing trailhead area 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 enhance, 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. ERMAs are administrative units managed to address recreation use, demand, or existing Recreation and Visitor Services. There are no SRMAs or ERMAs within Converse County.

Visual Resource Management

The BLM is responsible for managing the public lands for multiple uses and ensuring that the scenic values of public lands within their management are considered when providing for various uses. The BLM's Visual Resource Management (VRM) system involves inventorying scenic values and establishing management objectives for those values through the resource management planning process. VRM classifications for Converse County were defined in the Casper Field Office Resource Management Plan and the map can be found [here](#)¹⁹.



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 Converse 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 Study Areas

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, 2016b).

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 impairs 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 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 strives to retain their primeval character and influence, without permanent improvements or human habitation (BLM, 2016b). 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 no Wilderness or Wilderness Study Areas within Converse County.

30 x 30

On January 7, 2021, President Joe Biden signed Executive Order 14008 entitled Tackling the Climate Crisis at Home and Abroad. 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 (U.S. Department of the Interior, 2021). 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 (U.S. Department of the Interior et al., n.d.). 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 approval 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.

3.3.3 Special Designation and Management Area Resource Management Objectives:

- A. Designation and management of special designation or management lands are coordinated with Converse County and adjacent landowners.
- B. No new special designation or management areas are created in Converse County without specific approval from the County.

3.3.4 Special Designation Area Priority Statements:

1. Any proposed special management area designation shall undergo analysis of the impact to Converse County's custom, culture, and economy.
2. If any special designation or management areas are created, federal management of special designation areas shall be coordinated with Converse County and consistent to the maximum extent possible with the Converse County Natural Resource Management Plan.
3. 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.
4. Converse 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 Converse County's economy including a pre-existing condition analysis.



5. Any unsuitable rivers should be removed from Wild and Scenic River consideration at the earliest opportunity.
6. State and federal planning actions that affect the visual resource and Visual Resource Management classifications that affect land uses should be coordinated with Converse County.
7. Converse County should be consulted on any buffer zones implemented for the protection of special designation and management areas.
8. No new historic trail designations will be created or pursued in Converse County without the County's consent.
9. Federal agencies should consult with Converse County when evaluating whether lands and the multiple uses on them qualify as "conserved lands" under 30x30.
10. Protecting private property rights should be the greatest priority when attempting to fulfill the 30x30 goals outlined in Executive Order 14008.
11. 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.
12. Unless lands or waters are given a special management or designation in a respective agency's planning document, all public lands in Converse 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

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. Coal-seam fires have also occurred within Converse County. Wildfires have had catastrophic effects in Converse County, including severely damaging the County watershed, timber, grazing lands, wildlife habitat, and recreational activities that rely on healthy forests and rangelands in addition to endangering human health and safety and lost economic opportunities (Figure 3).

3.4.2 Resource Assessment and Legal Framework

Converse County is vulnerable to unplanned wildland fires in some areas due to its semi-arid climate, available fuels, and rural character. Wildfires generally occur somewhere within the County on an annual basis. Wildland fires within the County have the potential to damage crops and watersheds and contribute to soil erosion and deposition problems.

The County develops an annual operating plan between BLM, Wyoming State Forestry Division, and Converse County that provides details of the Wyoming interagency cooperative agreements by outlining the specific fire zones that Converse County supports, either primarily or as a secondary responder. The Converse County Mountain Community Wildfire Protection Plan (CCMCWPP) was last updated in 2018 and serves to establish community wildfire hazard reduction priorities, make recommendations for reducing wildfire hazards, and develop a plan of action to carry out the recommendations. The CCMCWPP can be found [here](#)²⁰.

Fire suppression policy should be guided by the need to achieve the highest level of protection for human safety and private property. Fire suppression may be necessary in areas where fire would endanger human safety and private property or valuable vegetation that supports and expands multiple uses or threatens habitat of sensitive species. On rangeland and grassland areas, the combination of weather, drought and reduced use can also lead to fuel loading that facilitates larger, more intense wildfires.

Proactive planning for response to a wildland fire event is critical to the protection of Converse County; its citizen's health, safety, welfare, and private property; and forest and rangeland health. A high degree of coordination between federal, state, and local agencies is necessary for maximum prevention and suppression of unplanned wildfire.



Table 2. Fire occurrences over 100 acres in Converse County from 2000 to 2020.

Year of Fire	Fire Name	Acreage
1986	Unknown	745
1996	Ross #1	1277
1996	Boner	9418
1996	Cole Creek	9460
1996	Henry's	9842
1996	Geary Dome 2	15566
1996	Olmstead	44581
1999	Antelope	7482
1999	Walker	10025
2000	Gilbert Lake	152
2000	Finger	694
2000	Ugly	1940
2000	Harshman	2260
2000	Douglas	5206
2000	Ormsby	11539
2001	Kaye Field	4607
2002	Hensel	14649
2003	Cheyenne River	107
2003	Horse	150
2003	Lake Creek	1243
2005	Whack Fire	237
2005	Bixby	2894
2006	Sand Hills	197
2006	Twenty Mile	206
2006	Elk Mountain	1216
2006	Cheyenne River	2262
2006	Walker	2752
2006	Twenty Mile	11531
2006	Sawmill	16516
2010	Rothleutner Uint 3	1041
2010	Geary Dome	2881
2010	Willow Creek	9253
2010	Orpha	25851
2011	Converse 2	141
2011	Riehle Fire	149
2011	Beckwith Fire	185
2011	State 7	216
2011	Steckley Fire	453
2011	CFO 2	769
2011	Converse 7	1184



2011	Converse 12	1853
2011	Converse 8	1964
2011	Manning	2516
2011	Carson	5382
2012	Sand Creek	1045
2012	Russell's Camp	5472
2012	Little Boxelder	6506
2012	Arapaho	98087
2015	Wagon Hound	1011
2016	Ross Road	267
2016	Sand Creek	440
2016	Walker Creek	692
2017	Horse Pasture	249
2017	Wold	314
2017	Sand Creek	364
2018	Bixby	247
2018	Logan Draw	583
2018	West Tillard	3783



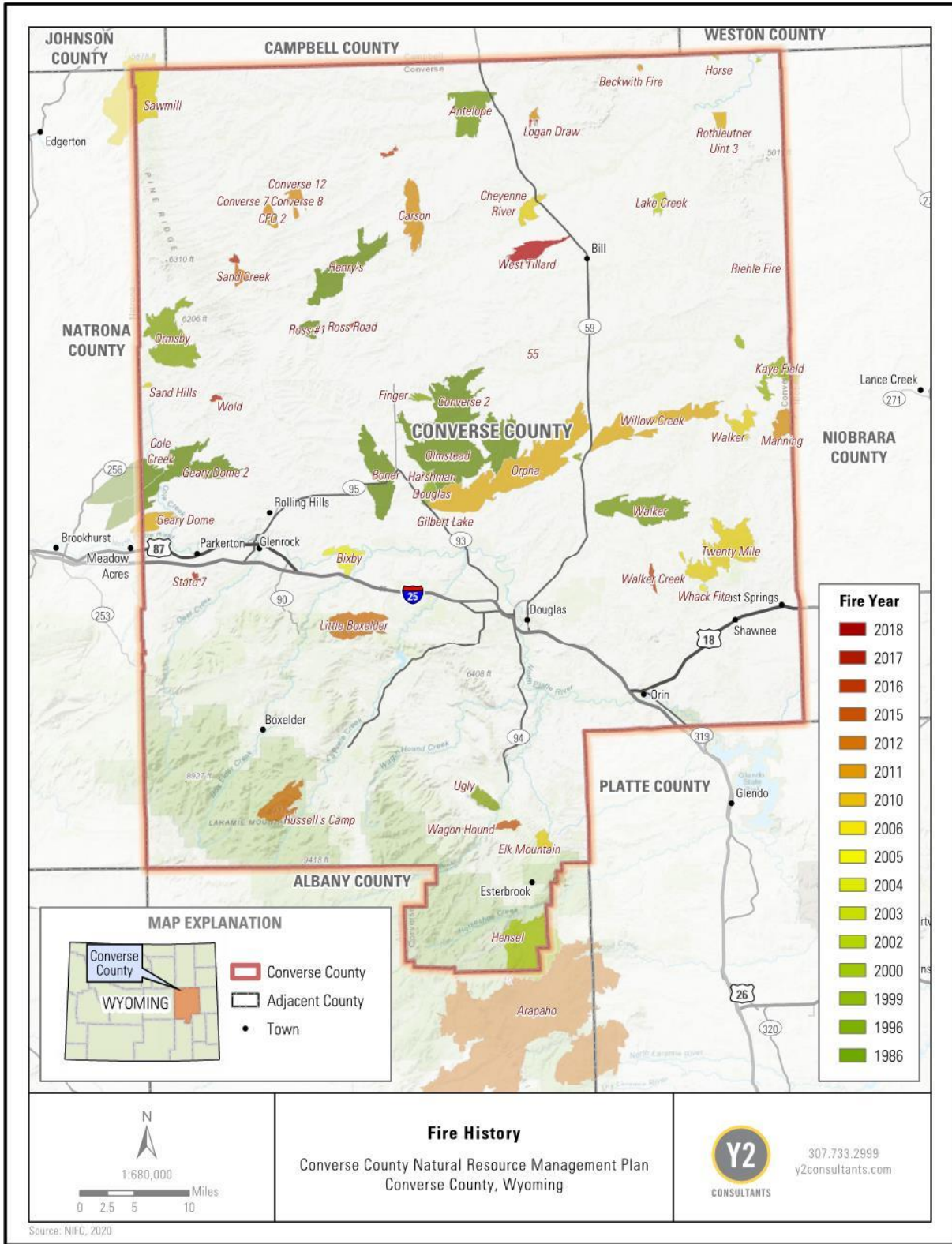


Figure 3. Fire history of Converse County.



3.4.3 Wildfire Management Resource Management Objectives:

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

3.4.4 Wildfire Management Priority Statements:

1. Federal agencies shall coordinate with local fire agencies in Converse County on wildfire planning, management, and suppression.
2. Efforts in fire prevention, control and fire suppression in rural areas of Converse County shall be coordinated among federal, state, and local agencies.
3. In addition to aiding state and local rural fire prevention and control programs, the Secretary 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.
4. Federal agencies shall incorporate local fire association plans and Wyoming State Forestry Plans into their fire suppression and control plans and support efforts of local fire departments in wildfire suppression activities.
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. Converse County encourages the Secretaries of Agriculture and Interior to develop fire management policies that utilize and acknowledge the beneficial effects of planned grazing as a fuels management tool.
8. Federal agencies should consult and coordinate with Converse County on proposed changes and updates to Fire Management Plans on federal lands.
9. Federal agencies should participate in consideration of a 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.
10. Post-fire objectives shall be consistent with site potential as defined in approved Desired Future Conditions or Ecological Site Descriptions. Converse County requires the use of credible data as previously defined in Chapter 1 to make these determinations.
11. 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.
12. Converse 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.



13. Federal agencies should coordinate with State and local agencies to implement fire control tools such as insecticide and herbicide treatments, chemical or mechanical controls, livestock grazing, biomass fuel removal, slash pile burning, prescribed burning, and encouraging knowledgeable and prepared practices to create defensible space around buildings.
14. 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.
15. 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.
16. When planning prescribed burns, where feasible, market timber resources while reserving desirable seed trees, before burning.
17. Fire should not replace timber harvest and other extractive uses as a primary forest management tool.
18. Planned prescribed burns on the Thunder Basin National Grassland must be coordinated with Converse County during the planning process for each burn season and no prescribed burns are to be conducted during periods of high fire danger.
19. 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.



3.5 FOREST, GRASSLAND, AND RANGELAND MANAGEMENT

3.5.1 History, Custom, and Culture

Forest Management

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

Grassland Management

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 was 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 (Eric Olson, United States Department of Agriculture *National Grasslands Management: A Primer*, 4 (Nov. 1997)). Also, the 160-acre 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 in the area. (*Id.* at 5)

Despite these difficulties, many people came to the West seeking the promise of free land. By 1904, nearly 100 million acres of land was 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 million in 1918 (William Fischer, *Homesteading the Thunder Basin: Teckla, Wyoming* 71 ANNALS OF WYOMING 21, 22 (Winter 1999)).

After the end of World War I, demand for commodities plummeted even though supply continued to grow. This fact is shown best in Wyoming where during the years 1919-1921, the commodity prices plummeted despite the highest number of homestead entries in Wyoming. *Id.*

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. *Id.* 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. Eric Olson of the National Forest Service summarized the situation succinctly:



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).

These challenges also manifested into difficulties for local governments who 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 (Wooten, 1965). 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 use beneficial to the people of the United States,” the primary purposes of the LUPs 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 (*Id.* at 6). When assessing how to develop sub-marginal land to 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 (Wooten, 1965).

For the West, the purpose of the land program was to see the semi-arid land originally used for arable farming to transition to grazing (Wooten, 1965). There were several instances in which this purpose of the LUPs in the Western Great Plains states was made clear. The May 1935 Final Plan for ND-2 (later known as the Little Missouri National Grassland) stated, “The purpose of the project is to remove sub-marginal lands from commercial grain production and shift them to a grazing use” (Cunfer, 2001). The General Development Plan for ND-1 also reflected this sentiment stating, “The purpose of the project is to remove low grade crop lands from commercial grain production and shift them to a grazing use for which they are best fitted” (Cunfer, 2001). The Thunder Basin program reflected a similar sentiment, stating 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 is 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).

Congress also acknowledged the Land Utilization Program’s objective. During the conference report for the Bankhead-Jones Farm Tenant Act, Congressman Coffee from Nebraska summarized Title III of the BJFTA:

Under Title III, funds are authorized for the purchase by the Government of sub-marginal land. This would be a continuation of the present program and in many States additional purchases are necessary to lock together the purchases already made. The objective is to retire this sub-marginal land from unprofitable crop production and to turn it back to grass and into grazing and forest areas (H.R. Rep. No. 1198 at 1937 (1937) (emphasis added)).

Another purpose of the LUPs 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. Professor Cunfer broke down this three-step process:

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 LUPs 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 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 used 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. Adding the two purposes together, the goal of the LUPs is best summarized by a statement the U.S. Department of Agriculture’s Economic Research Service:

The highest purpose of the National Grasslands is to serve as demonstration areas to show how lands classified as unsuitable for cultivation may be converted to grass for the benefit of both land and people in the areas (Wooten, 1965).

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 LUPs. The modern BJFTA authorizes the Secretary of Agriculture to create a land conservation and utilization program to be used on National Forest Land 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). The Preamble of the BJFTA states that its purpose is to:

Create the Farmers’ Home Corporation, to promote more secure occupancy of farms and farm homes, to correct the economic instability resulting from some present forms of farm tenancy and for other purposes.

To carry out the program, the BJFTA allows 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 is 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 National Forest Service to administer the Grassland under the BJFTA (36 C.F.R. § 213.1). Under this regulation, the National 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 over, 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 LUPs 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 LUPs. The regulations served to:

- 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)).

Rangeland Management

The rangeland resources in Converse County have also been heavily relied upon for livestock grazing, energy development, recreation, and other uses. In the early 1880s, ranchers began bringing cattle and sheep 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. The rangelands within Converse County have also been important resources for the development of the energy industry within the County which has provided significant economic impacts for many years. These areas also maintain large acreages of important wildlife habitat and open space.

In addition to the TBNG, managed out of the Douglas Ranger District, the Casper BLM Field Office is the main land manager of public rangelands within Converse County and have been since the BLM started in 1946.

3.5.2 Resource Assessment and Legal Framework

Forest Management

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 wildland urban interface areas and to communities at-risk to wildfire. Forest products also increase the economic potential within the County. Harvesting of forest products still occurs within the County and includes firewood, posts and pole, Christmas trees, and commercial harvesting.



Forest Management includes proactive measures to maintain the health of forests, provide enhancement opportunities for forest succession, promote optimum timber species on forested areas identified in the Medicine Bow LRMP for forest products or maintenances and restoration considering the historic range of variability. [Table 2-2](#)²¹ in the Medicine Bow LRMP describes the selected activities that are permitted or restricted according to management area prescriptions. (USFS, 2003)

Grassland Management

A large portion of the TBNG is in Converse County and managed by the USFS. The TBNG is a productive grassland that 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. 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.

Vegetation resources may be managed differently on private land, as compared with land managed by State or federal agencies.

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)).

The clear objective in acquiring lands within the TBNG was to create a sustainable forage cover that would protect the fragile soil, but at the same time keep the communities alive who had been promised use of the land during the homesteading years. The people who remained after the Dust Bowl years worked hard to put the land back to a healthy condition and have relied on the promises given to them that the land would be used for its best use. Congress and officials within the USFS and other agencies involved in the LUPs have historically acknowledged that grazing is the best use for these lands. Thus, when current USFS management principles in the TBNG serve to undermine its primary purpose, those management principles must be revised.

Rangeland Management

Most of the land in Converse County is classified as rangeland with public lands being 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 consist of sagebrush, steppe, grasslands, desert shrublands, and wet meadows. 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](#)²².

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 Converse 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.

3.5.3 Forest, Grassland, and Rangeland Management Resource Management Objective:

- A. Forest lands, grasslands, and rangelands within Converse County are managed under multiple-use that promotes the timber industry, grazing, fuels management, and recreation and benefits the economy, custom, and culture of Converse County.

3.5.4 Forest, Grassland, and Rangeland Management Priority Statements:

1. Forest, rangeland, and grassland management on public lands within Converse County shall adhere to Multiple Use Sustained Yield Act, as well as the National Forest Management Act, National Environmental Policy Act, and the Endangered Species Act.
2. The Thunder Basin National Grassland shall be managed to serve its primary purpose of creating a sustainable forage cover that would protect the fragile soil and promoting grazing.
3. Converse County encourages active management of forest land, rangeland, and grassland resources on public lands to reduce invasion of unwanted species.
4. Federal agencies should support weed management and mitigation on forest land, rangeland, and grassland federal lands within Converse County.
5. Federal agencies should support salvage harvest when necessary due to insect/disease epidemic, blowdown, or post fire situations using appropriate categorical exclusions.
6. Federal agencies within Converse County should use the authority granted under the Healthy Forests Restoration Act, Healthy Forests Initiative and Good Neighbor Authority to expedite cross-boundary/agency planning, collaboration processes and project implementation to treat and protect timber resources economically and efficiently.
7. Federal agencies should notify and coordinate forest land, rangeland, and grassland management projects with Converse County, state and local agencies, and private landowners to improve the scale and scope of each project.



8. Federal agencies should maintain and restore watershed health within Converse County by demonstrating active rangeland, forest, and woodland management.
9. 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 on public lands within Converse County.
10. 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.
11. Federal agencies should support site-specific management decisions based on sound science, compliance with the 1997 Wyoming Standards for Healthy Public Rangelands, and Best Management Practices.
12. 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.
13. 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.
14. Converse County supports the Wyoming Office of State Lands Strategic Plan, with respect to the management of forest resources on private land, to achieve the best long-term return on investment and promote healthy forests.
15. Federal agencies should support and work to identify range management objectives based on site potential, climate, and land uses. Federal agencies should conduct future timber harvest, thinning, and fuel reduction projects on federal and state managed lands as a necessary means to reduce the potential for unnaturally intense wildfires and to restore vibrant and healthy ecosystems to this area.
16. Federal agencies should manage rangelands to maintain and enhance desired plant communities for the benefit of watersheds, wildlife, water quality, recreation, and livestock grazing.
17. Native seed mixes consistent with the appropriate 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.

3.6 LAND EXCHANGES

3.6.1 History, Custom, and Culture

There are some intermingled ownership lands within Converse 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 are 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 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.

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.

Exchanging private land for public is one way that agencies can improve their management of public lands and allow public access to said lands. FLPMA granted the USFS and 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 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 analysis 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 (USFS, 2004).

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 Forest Service usually pays for appraisals. However, the BLM may share in some of these specific expenses if the total costs are apportioned in an equitable manner (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 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 Bankhead-Jones Farm Tenant Act (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).

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. Converse County received \$960,269 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 Exchange Resource Management Objectives:

- A. Land exchanges that are mutually beneficial to private landowners, the federal agencies, and the public within Converse County are completed in a timely and cost-efficient manner.
- B. Any land tenure adjustments by a federal or state government agency within Converse 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 Converse County for the lost property tax revenue.
- C. Private property rights are protected in Converse County.

3.6.4 Land Exchange Priority Statements:

1. Converse County requests consultation and coordination when land tenure adjustments to federal and state land are proposed within the County.
2. Federal agencies should proactively identify potential land exchanges within Converse County and conduct analysis on lands for disposal that will consolidate land ownership type and reduce isolated federal or private 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. 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 Converse County for the lost tax base.
5. Federal agencies should attempt to achieve a no net loss of private lands within the County whenever considering a land exchange or purchase.
6. Federal agencies should support voluntary land exchanges between the federal government and private landowners within Converse County to adjust property lines and improve access and land management.
7. Federal government entities should investigate and attempt to increase local economic development within Converse County and ensure that citizens of the County suffer no adverse aggregate economic impacts from land ownership adjustments.
8. Converse 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.
9. The Bureau of Land Management should accurately identify land eligible for disposal under the Federal Lands Policy and Management Act or for lease or conveyance under



the Recreation and Public Purposes Act and acts promptly to facilitate transfers when requested.

10. Government lands should be made available for traditional eminent domain uses, such as pipelines and transmission lines, where logical, recognizing that government land has no greater value than private land.
11. Federal agencies should not use moneys from the Land and Water Conservation Fund to acquire more federal lands in Converse County without first receiving approval from the County.

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CHAPTER 4: GEOLOGY, SOILS, MINING, ENERGY DEVELOPMENT, AIR, AND CLIMATE

4.1 GEOLOGY OVERVIEW

Converse 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

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recreational

value.

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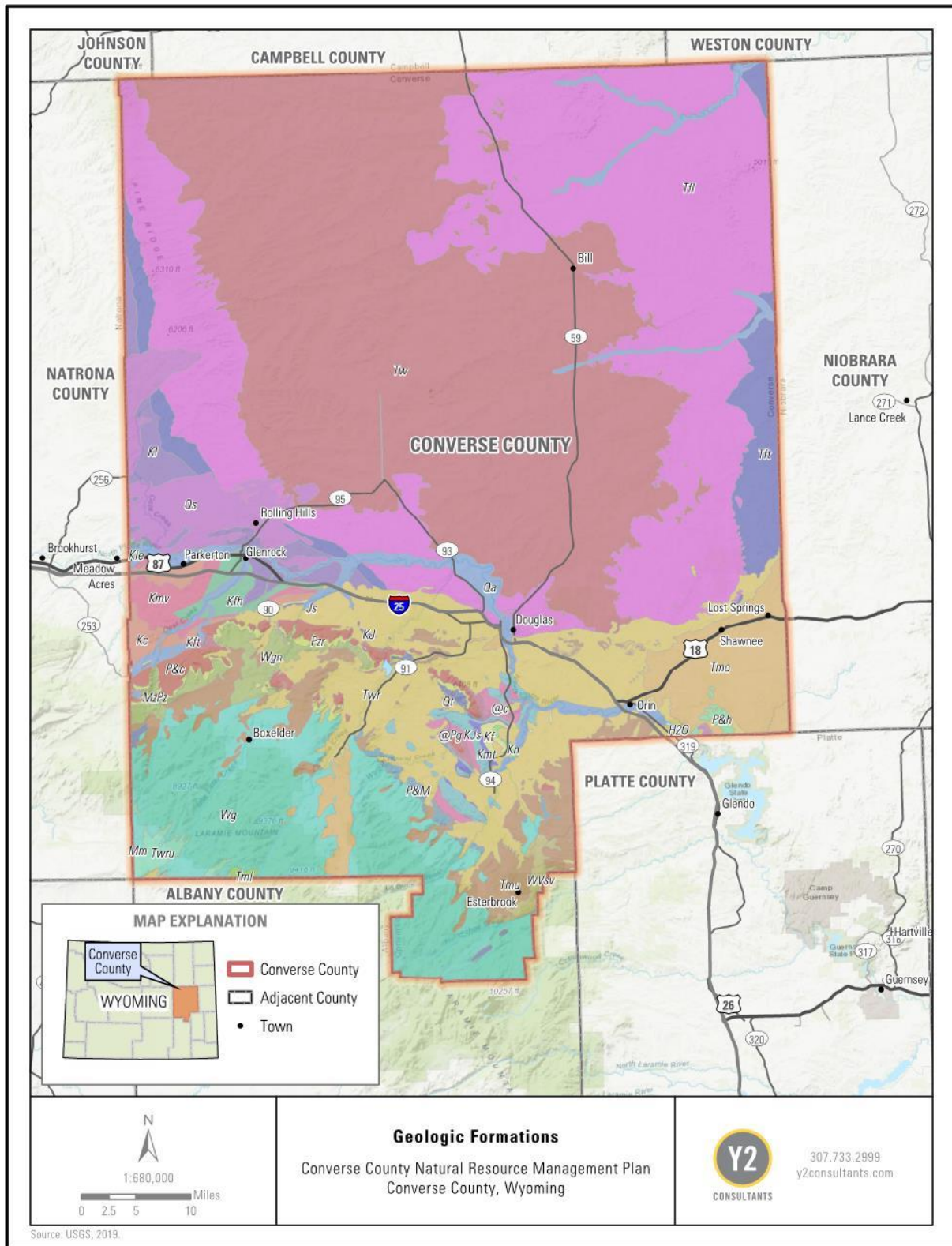


Figure 4 for a map of the surficial geology within Converse County.

Converse County is located within the Powder River Basin. The Powder River basin is a northwest-southeast trending structural basin and was formed in the Laramide Orogeny 50-70 million years ago (MYA). The basin was formed by folding and faulting during the early Tertiary period, followed by the Oligocene White River deposition. Bedrock formations exposed within the basin include the Oligocene White River formation; the Eocene Wasatch formation; and the Paleocene Fort Union formation. The sediments throughout the center of the basin originate from the Bighorn Mountains, the Laramie Mountains, and the Hartville Uplift. (BLM: Casper Field Office, 2004)

The Powder River Basin contains several oil fields as well as onshore natural gas. Uranium deposits are also present in the Powder River Basin in Converse County. The significant uranium deposits are generally found in the Tertiary strata in this area. Converse County is also a major producer of sand, gravel and crushed stone (aggregate). (BLM: Casper Field Office, 2004)

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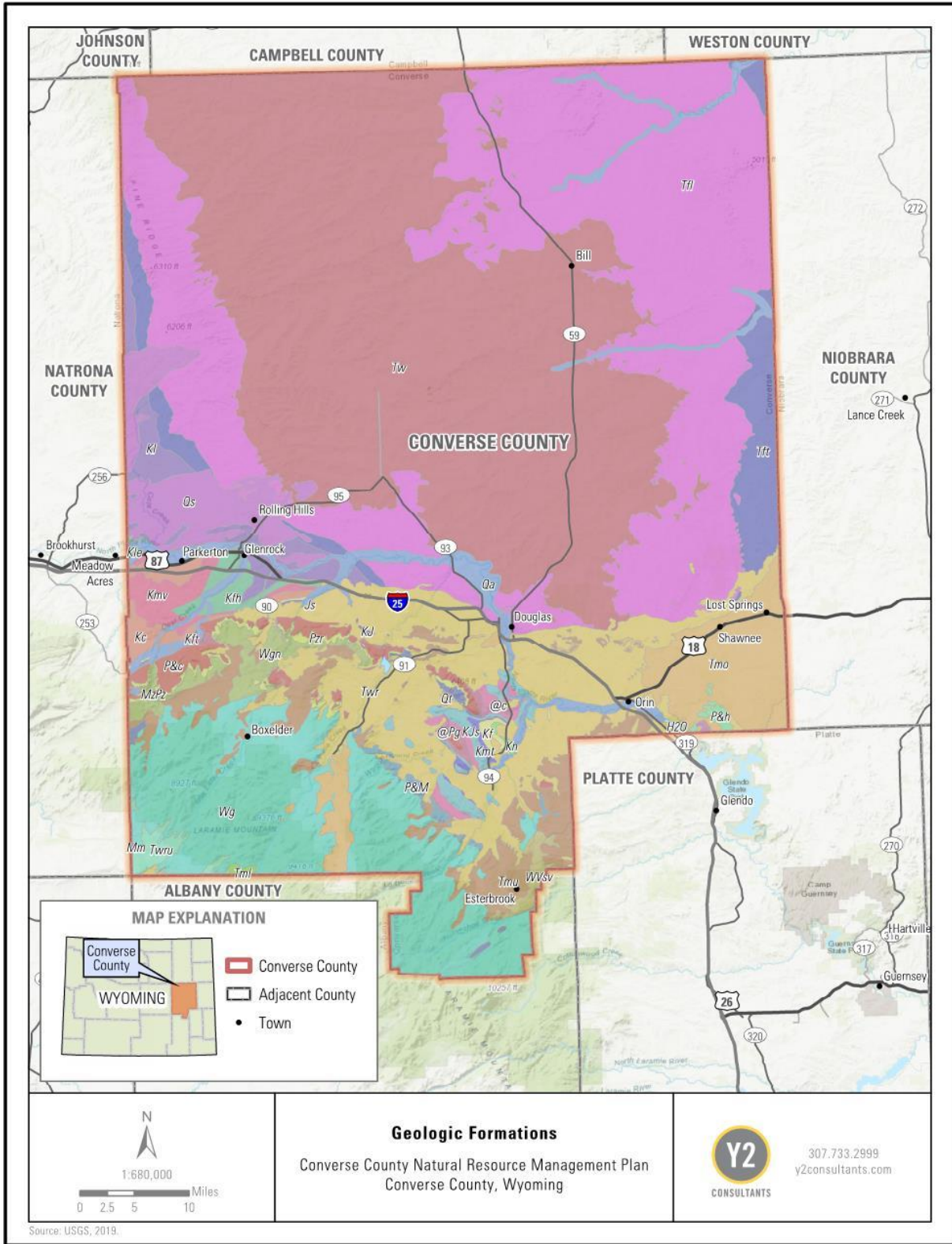


Figure 4. Converse County geologic formations.





Figure 5. Converse County geologic formation legend.



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 Conservation District within Converse County works to promote the conservation of soil and water resources within the districts (See Section 2.1 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 lands 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 Converse County is current and published to Web Soil Survey (NRCS, n.d.-a). The general soil map units for Converse County are depicted in Figure 6.

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. ESDs are still in draft form for areas within Converse County.



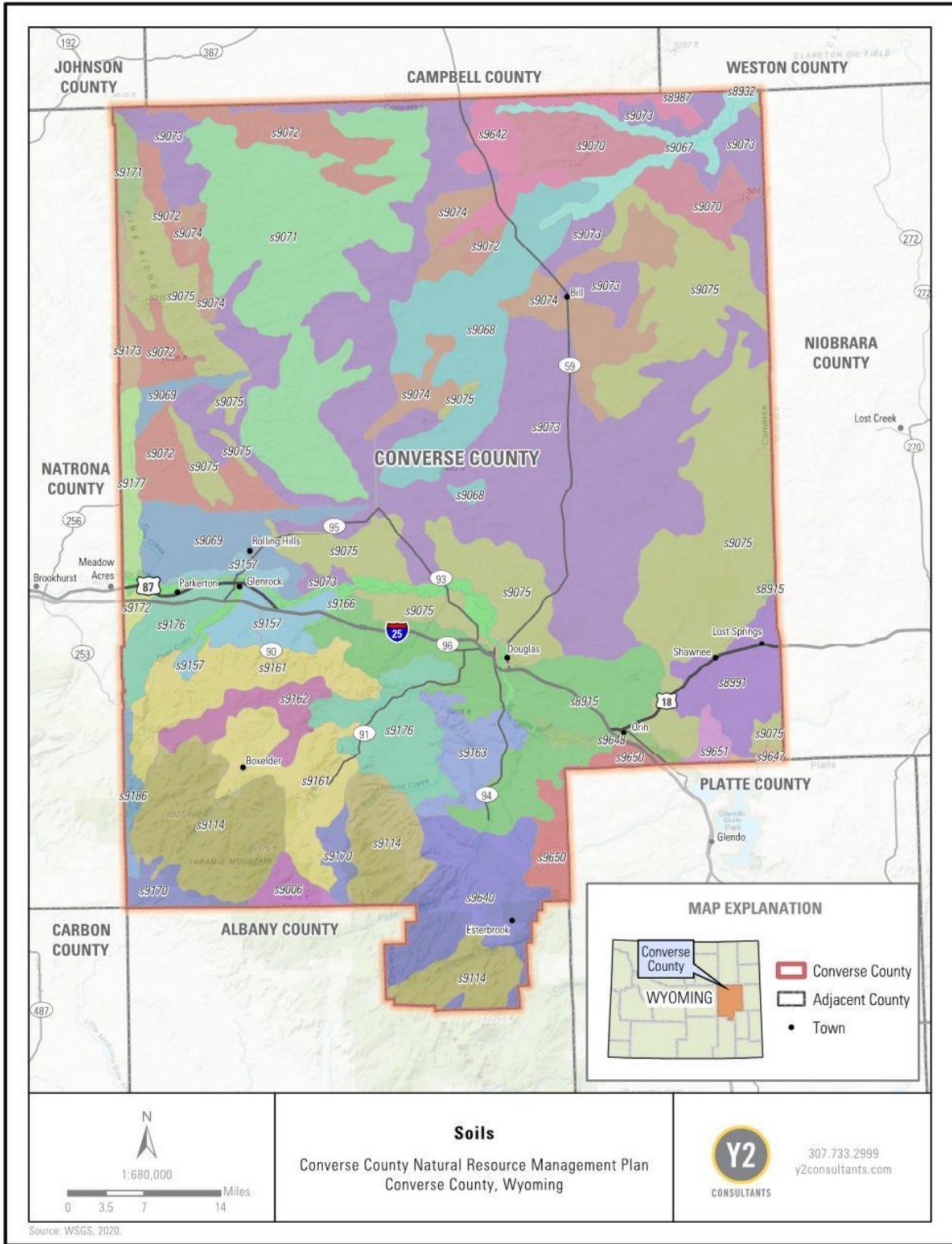


Figure 6. Soils mapped for Converse County (refer to legend below).





Figure 7. Soils map legend for Converse County.



4.2.3 Soil Resource Management Objectives:

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

4.2.4 Soil Priority Statements:

1. Federal agencies should support projects and policies which improve soil quality and ecology throughout Converse 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 implementation of best management practices to manage runoff, preservation and maintenance of topsoil, watershed management, stabilize soils on site and reclamation.
4. Converse 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. Converse County supports and encourages the use of natural processes, including livestock grazing, in site reclamation for soil health and biodiversity.
6. Federal agencies should consult with existing surface users and the appropriate county agencies when developing reseeding and reclamation requirements for permittees conducting soil disturbing or degradation activities.
7. Weed management plans should be developed in consultation with the Converse County Weed and Pest District for soil surface disturbance on public lands.
8. 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 Converse 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. Maintaining such uses is statutorily compatible with multiple use principles. Mineral production is a large corner of industry in Converse County and provides jobs to hundreds of people throughout the region. This industry serves 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 remains a significant portion of Converse County's domestic production. There are 31,288 records of mining claims managed through the BLM and 264 records of mines listed by the USGS. Of the listed claims, 15.32% are active. There are a total of 264 mines listed in Converse County. (The Diggings, 2020b)



The mining commodities present in the County include uranium, coal, copper, iron, gold, zinc, tungsten, silver, molybdenum, lead, nickel, selenium, vanadium, manganese, and sulfur. (The Diggings, 2020a)

4.3.2 Resource Assessment and Legal Framework

Converse 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 government regulatory process has limited development due to 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 (WYDEQ) 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 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 Converse County. Converse 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. 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 development of mineral and energy production countywide.

Split Estate

A unique form of federal land ownership in the west comes from split mineral estates. Converse 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 reserve 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

In the Casper Resource Management Plan Environmental Impact Statement dated July 2006, the BLM notes that “...while the BLM does not have the legal authority in split-estate situations to regulate how a surface owner manages his or her property, the agency does have the statutory authority to take reasonable measures to avoid or minimize adverse environmental impacts that may result from federally authorized mineral lease activity.” (Appendix A, page A-2).

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. 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 of 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)).

Dormant Commerce Clause

One issue arising recently is that of cities across the west coast enacting ordinances banning the export of coal from their ports. In 2016, the City of Oakland enacted such a ban, similar bans have been enacted in the city of Richmond and the state of Washington. Such bans bring up constitutional questions regarding the Dormant Commerce Clause (See *Levin v. City of Richmond*, 107 Fed.R.Serv.3d 1608 (August 27, 2020)). The Dormant Commerce Clause of the Constitution prohibits states or local governments from unjustifiably discriminating against or burdening the flow of interstate commerce (U.S. CONST. art. I, § 8, cl. 3). The general purpose of the Dormant Commerce Clause is to avoid states from engaging in “economic Balkanization” or economic protectionism in which one state’s industry or business is discriminated against in order to benefit the industry of another state (*Hughes v. Oklahoma*, 441 U.S. 322, 325 (1979)).

There are four ways in which a local or state regulation may be a violation of the Dormant Commerce Clause. The first instance is when state or local law that “discriminates” against interstate commerce faces a “virtually per se rule of invalidity” (*Philadelphia v. New Jersey*, 437 U.S. 617, 624 (1978)). Thus, when a law explicitly discriminates or is applied unevenly to an out-of-state business in favor of an in-state business, the law is automatically unconstitutional. The second way a local law or ordinance may violate the Dormant Commerce Clause is when there is a non-discriminatory law that incidentally affects interstate commerce, but the burden on interstate commerce is clearly exceeding the local benefits (*Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970)). In other words, when a law is evenly applied to everyone, but the law creates an immense burden on interstate trade with little benefit to the local community, it is unconstitutional. The third way a law can violate the Dormant Commerce Clause is if it has an impermissible extraterritorial reach (*Healy v. Beer Inst.*, 491 U.S. 324, 336 (1989)). Simply put, if the practical effect of a statute controls the conduct of citizens within the borders of another state, the law is unconstitutional (See *id.* (ruling a law requiring beer and liquor sold in Connecticut to be the same price or less than beer and liquor sold in bordering states



unconstitutional because the law has the practical effect of regulating markets outside of the state of Connecticut)). Finally, a state or local law violates the Dormant Commerce Clause if it interferes with the federal government’s ability to speak with one voice when regulating commerce with foreign nations (*Japan Line, Ltd. v. Los Angeles Cty.*, 441 U.S. 434, 449 (1979)). In turn, if a regulation has the practical effect of preventing Wyoming coal from being exported to other countries and jurisdictions, the Dormant Commerce Clause may very well make such laws illegal because it impermissibly regulates interstate commerce (*See State of Wyoming, Kansas, Montana, Nebraska, South Dakota and Utah’s Motion for Leave to Participate as Amicus Curiae, Lighthouse Resources, Inc. v. Inlsee*, No. 3:18-cv-05005 (W.D. Wash., Motion and Brief Filed May 8, 2018)).

Locatable Minerals

Locatable minerals are a legal term that, on federal lands, defines a mineral or mineral commodity that is acquired or staked through the General Mining Law of 1872, as amended. Examples of locatable minerals include, but are not limited to, gold, silver, platinum, copper, lead, zinc, magnesium, nickel, tungsten, bentonite, barite, feldspar, uranium, and uncommon varieties of sand, gravel, and dimension stone. Converse County has an extensive history of mining locatable minerals, such as uranium and copper. The BLM manages the mining law program on the federal mineral estate including authorizing and permitting mineral exploration, mining, and reclamation actions.

Uranium

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, USDO. 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.



Coal

Coal was discovered in Wyoming in 1843 by the Fremont Expedition. Historically, coal has been one of the largest and most stable sources for Converse County revenues, as production in Converse County has been generally steady for the past twenty years. Two major mines account for the coal production in Converse County; the Antelope Mine, which is located primarily in Converse County, and the North Antelope/Rochelle Mine which has only a small portion within Converse County. The Powder River Basin, which includes the northern part of Converse County, is home to 13 mines, making it the most productive coal mining region in the United States. In recent years, coal production has decreased significantly in these areas.

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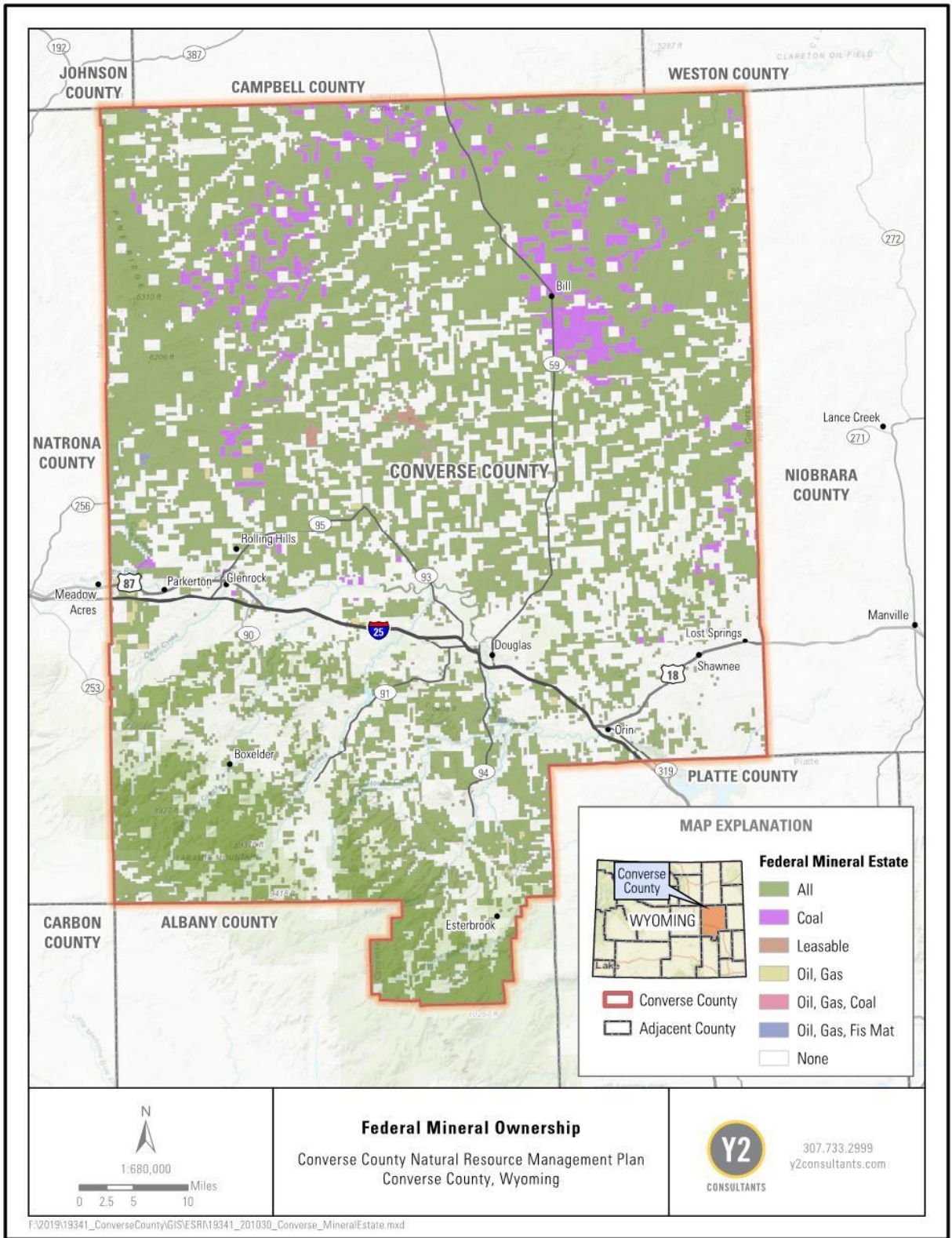


Figure 8. Federal mineral ownership in Converse County.



Salable Minerals

Salable minerals, also known as mineral materials, include common variety materials such as sand, frack sand, gravel, stone (e.g., decorative stone, limestone, and gypsum), clay (e.g., shale and bentonite), limestone aggregate, borrow material, clinker (scoria), and leonardite (weathered coal). Sand and gravel provide raw materials for most construction and paving activities. Many of these materials are used frequently in construction and road improvement projects.

4.3.3 Mining and Mineral Resource Management Objectives:

- A. The extraction of coal, bentonite, uranium, and all other minerals within Converse County is continued in a sustainable and ecologically healthy way.
- B. All mining operations in Converse County reclaim the land as close to its original condition as appropriate.

4.3.4 Mining and Mineral Priority Statements:

1. Converse County supports the open filing of mining claims and exploration for and development of locatable minerals, except for land withdrawn from mineral location.
2. Converse County requests to be notified and allowed to join as a cooperating agency, as early in the process as is allowed by federal law, for any proposed project affecting mining and mineral resources .
3. Converse County requires that public lands be managed in a manner which recognizes the Nation’s need for domestic sources of minerals, food, timber, and fiber from the public lands, including implementation of the Mining and Minerals Policy Act of 1970.
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 Converse County economy.
5. Converse County supports releasing bonds for oil and gas development once bonding requirements and procedures have been met.
6. Converse County encourages simultaneous or sequential mineral development with other resource uses in accordance with multiple use management principles, weighing and balancing established mineral rights with other multiple uses in the development and coordination process.
7. Converse 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.
8. Weed management plans should be developed in consultation with the Converse County Weed and Pest District for mining and reclamation on public lands, which must be beneficial to both livestock and wildlife.
9. Converse County shall be informed of proposed timelines for federal agency proposals and decisions involving minerals.
10. Converse County fully supports the final rule as published on July 16,2020 regarding and update to the Council on Environmental Quality NEPA Implementing Regulations.



11. Converse 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 State and County.
12. Federal agencies should ensure that existing air, water, and land quality be maintained and not substantively diminished because of new mineral development activities.
13. All federal permits should require road use agreements where needed with Converse County. Those agreements should include upgrading of roads to handle anticipated increases in traffic where applicable.
14. All federal agency plans, or management recommendations must include a social and economic impact assessment that addresses the effects and benefits of energy and mining development to Converse County.
15. Any and all lands or minerals subject to a federal withdrawal, either formal or informal, must go through the proper process as required by the Federal Land and Policy Management Act (FLPMA) and Converse County must be notified and given the opportunity to participate in the NEPA process as a cooperating agency in any decision-making process affecting such changes to the designation.
16. Federal agencies should abstain from permitting non-compatible increases in the intensity of the surface use in residential and commercial areas underlain by extractable minerals.
17. Temporary workers’ quarters shall meet minimum state and county health department requirements.
18. Trash and waste disposal from energy mineral extraction and processing shall be handled to meet solid hazardous waste disposal requirements of federal, state, and county governments.

4.4 ENERGY RESOURCES

4.4.1 Oil and Gas

4.4.1.1 History, Custom, and Culture

Oil and gas production have contributed to Converse County’s taxable income for over 100 years. In 2002 oil and gas production contributed to 40% of the property taxes in the County (BLM: Casper Field Office, 2004). In the past decade there have been developments in secondary and tertiary production methods that have made previously depleted 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, natural gas production across the state has declined.

The County has seen relatively stable trends in oil and gas production between 1980 and 2010. Oil and gas production increased after 2010, peaking in 2019 near 30 million BBL (barrels) and 104 million MCF (million cubic feet) respectively. Oil and gas production decreased dramatically in 2020, producing only 7.8 million BBL of oil and 25 million MCF of gas. (Figure 7) (Drilling Edge, 2020) These trends in decline and growth are tied to existing economic conditions at the County, state, and national levels (see Figure 8 and 9). In December of 2020, the Converse County Oil and



Gas Project [Record of Decision \(ROD\)](#) was signed. The ROD approved the development of 5,000 new oil and natural gas wells across 1.5 million surface acres over the course of 10 years. The project estimates 18-28 billion dollars in federal revenue and the creation of up to 8,000 jobs (Enhanced Oil Recovery Institute, 2020).

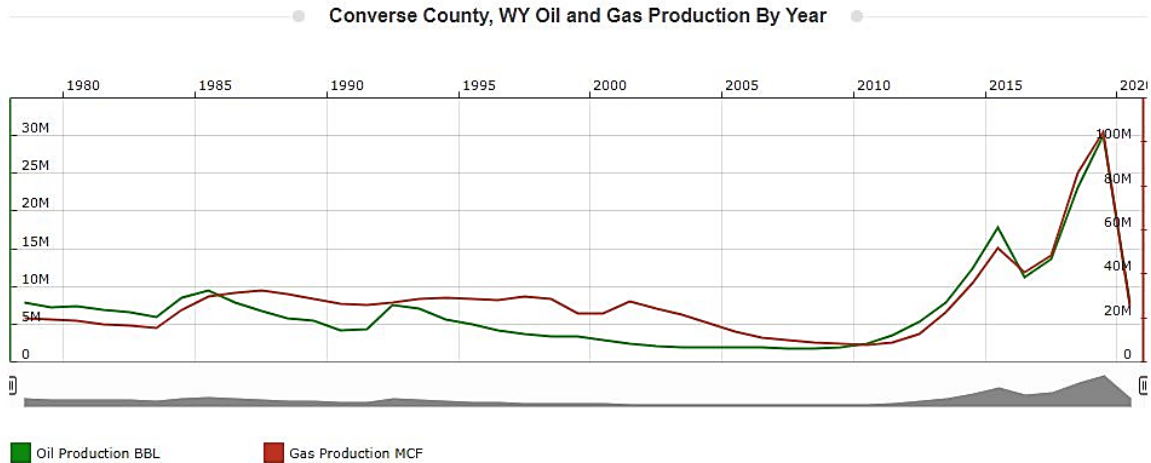


Figure 9. Oil and gas production in Converse County from 1980 to 2020.

Wyoming Oil Production for 1978-2020

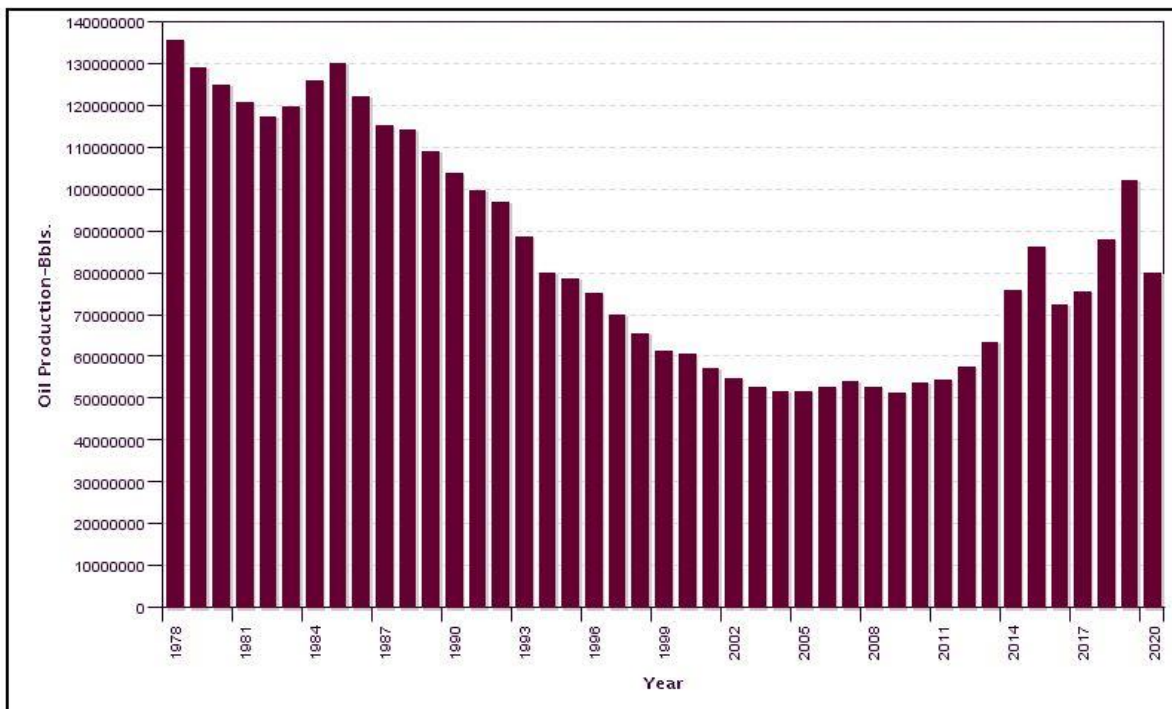


Figure 10: State of Wyoming Oil Production Trends (1978-2020). (WOGCC, n.d.-a)



Wyoming Gas Production for 1978-2020

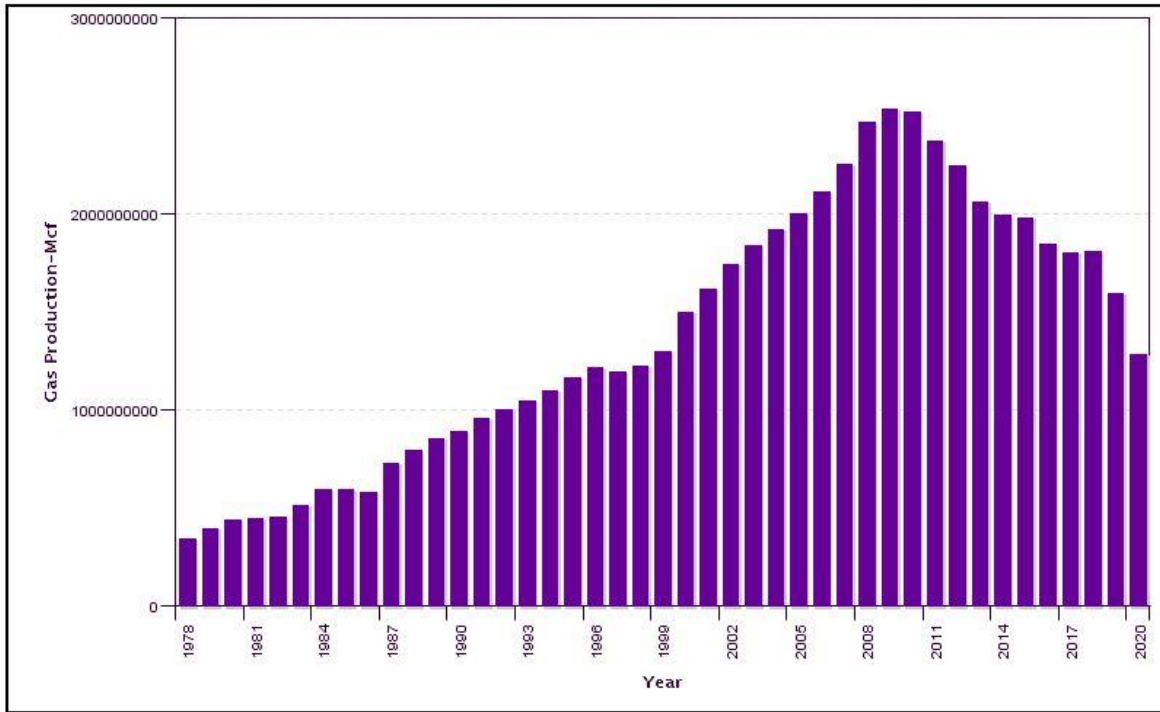


Figure 11: State of Wyoming Gas Production Trends (1978-2020). (WOGCC, n.d.-b)

4.4.1.2 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 like 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 in a manner similar to 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.

BLM Converse County Oil and Gas Project

In December 2020, BLM issued a decision that allows the development of up to 5,000 new oil and natural gas wells within a 1.5-million-acre project area in Converse County. The decision modified the 2007 Casper Field Office Resource Management Plan to allow for year-round drilling while continuing to protect non-eagle raptors in the area and conserve their habitat. The project is expected to generate roughly 8,000 jobs and approximately \$18 to \$28 billion in federal revenues. The decision does not authorize any on-the-ground activity, that will require separate site-specific review and approval. (BLM, 2020)

4.4.1.3 Oil and Gas Resource Management Objective:

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

4.4.1.4 Oil and Gas Priority Statements:

1. Converse 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. Converse County encourages and supports the nomination of more federal and state oil and gas leases for sale.
3. Federal agencies should approve oil and gas leases in a timely manner and should notify Converse County when deferring lease applications.
4. Federal agencies are encouraged to prioritize approval of secondary and enhanced (tertiary) recovery methods where possible (e.g., fluid, gas, and steam injection) to extend the production life of a field, while maintaining air quality and available water for agricultural and domestic use.
5. Converse 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.
6. Converse County requests coordination among federal agencies to facilitate applications for permit to drill in a timely manner, as prescribed in federal law.
7. 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 Converse County.
8. The disposal of oil and gas untreated produced water into surface waters of Converse County is not supported by the County.
9. Alternatives to flaring such as the use of pipelines, storage, etc. should be encouraged.



10. Road use agreements should be made with Converse County for all oil and gas permits within the County.
11. Dust mitigation plans should be made for all roads associated with oil and gas developments within Converse County.
12. 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.
13. 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.
14. Federal agencies, industry, and landowners should be encouraged to seek technical assistance from the Converse County Conservation 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, which is beneficial to both livestock and wildlife.
15. Provide adequate bonding requirements to ensure removal and successful reclamation of abandoned energy and mineral resource projects.
16. Converse County encourages proper mitigation and reclamation practices throughout the County using existing ecological site descriptions to help determine mitigation and reclamation methods in coordination with Converse County Conservation District when possible.
17. Converse 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 Wyoming Statute § 30-5-402.
18. The County encourages negotiation of surface use agreements on split estates and support siting of oil and gas facilities off private land, unless otherwise agreed by surface user.
19. Converse County supports BLM Permanent Instruction Memorandum 2018-014 “Directional Drilling into Federal Mineral Estate from Well Pads on Non-Federal Lands” dated June 12, 2018 specific to its interpretation of surface owner’s rights to allow or deny access to private surface in split estate situations.
20. The BLM should continue holding lease sales and awarding leases for Converse County lands on at least a quarterly basis as is required by the Mineral Leasing Act.
21. Federal agencies should fully support the implementation of the Converse County Oil and Gas Project Record of Decision of 2020.
22. Converse County fully supports the implementation of the Prospective Petroleum Industry Development and Response Reporting Program as supported by the Converse County Oil and Gas Project Record of Decision of 2020.
23. Converse 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 Pipelines and Transmission Lines

4.4.2.1 History, Custom, and Culture

Due to the development of oil and gas within Converse County there has been significant development of oil and gas transmission pipelines throughout the County. There are extensive pipelines along the North Platte River valley and from the valley to the oil and gas field to the north of 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, n.d.)

4.4.2.2 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. It is crucial that these avenues for transmission are allowed to thrive and develop within Converse 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 (LNG) pipelines fall under Section 7 of the Natural Gas Act and are reviewed by the Federal Energy Regulatory Commission (FERC), which also gives pipeline companies their national condemnation authority. However, the Natural Gas Act does not regulate oil or natural gas liquid (NGL).

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 Federal Energy Regulatory Commission “FERC” requires gas pipeline companies to comply with state and local regulations as a condition of their federal certificates. *See NE Hub Partners, L.P. v. CNG Transmission Corp.*, 239 F.3d 333, 339, 346 n. 13 (3d Cir.2001) (concluding that field of natural gas regulation was occupied by federal law, but that FERC required gas company to comply with local regulations through conditions in certificate). 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 “PSA,” 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 PSA 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 (PHSMA). 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) (holding a setback requirement for compressor stations was primarily motivated to preserve “neighborhood visual cohesion, avoiding eyesores or diminished property value”). In order that the regulations are not preempted by the PSA, 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) (“The PSA does not preempt Ohio property or tort law.”). 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 PSA.

Section 368 Energy Corridor

The Energy Policy Act of 2005 Section 368 Energy Corridor document for region 4, 5, and 6, includes Wyoming. Converse County is situated in region 4 on the agencies map and currently there are no existing corridors identified in northeast Wyoming as the majority of the surface is privately owned making it difficult to identify energy corridors where federal permitting could assist in expediting future projects. There is local support for energy development opportunities in northeastern Wyoming, however with the little federal land in this area of the state it is suggested that in future land use planning, the BLM and USFS should engage with all counties that contain federal land in the northeastern portion of the state to assess whether there is interest in and support for a new corridor across federal lands in the area, with the understanding that the corridor would also have to cross private land. A new Section 368 energy corridor in northeastern Wyoming would expand the major interstate energy transmission network and help connect energy resources to demand.

Wyoming Pipeline Corridor Initiative

Converse County supports the Wyoming Pipeline Corridor Initiative (WPCI), which provides incentives for the expansion of pipeline infrastructure for carbon capture, utilization and storage, and enhance oil recovery. Converse County is looking toward the consideration of other products such as LNG and this project could assist in facilitating those opportunities. The “point of delivery” for the purposes of sales tax is critical to participating counties.

4.4.2.3 Pipeline and Transmission Line Resource Management Objective:

- A. Pipeline development is managed responsibly and takes into consideration the health, safety, and welfare of the County’s citizens and natural resources.

4.4.2.4 Pipeline and Transmission Line Priority Statements:

1. Federal agencies should coordinate with the County at the earliest possible time whenever there is a proposal for a pipeline to cross the County.
2. Federal agencies should encourage and assist carbon capture and sequestration projects and development of pipelines to transfer carbon dioxide to markets.
3. Eminent domain on private property for the purpose of acquiring rights-of-way for pipelines should be discouraged.
4. Where possible, pipelines should be used as an alternative to flaring in Converse County.
5. Federal and state decisions regarding pipelines should be streamlined so long as it does not harm pre-existing uses or rights.



6. 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.
7. Federal agencies, industry and landowners should be encouraged to seek technical assistance from the Converse County Conservation 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, which is beneficial to both livestock and wildlife.
8. Converse County encourages proper mitigation and reclamation practices throughout the County using existing ecological site descriptions to help determine mitigation and reclamation methods in coordination with Converse County Conservation District when possible. Federal agencies should coordinate with surface users and the Converse County Conservation District, as appropriate, when determining location and reclamation requirements for pipeline rights-of-way permits.
9. 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.
10. 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 land uses and Converse County economy.
11. Converse County supports the Wyoming Pipeline Corridor Initiative and all opportunities to participate in this effort should be considered and/or pursued within the County to the maximum extent possible.
12. Converse County supports a new Section 368 energy corridor in northeastern Wyoming to help expand the major interstate energy transmission network.
13. All opportunities for exporting products out of the state (e.g., natural gas, oil, CO₂, etc.) should be considered to the maximum extent possible and allowed as a compatible use within the Wyoming Pipeline Corridor Initiative corridors.
14. The sales tax and/or “point of delivery” sales tax for the company laying pipe in the ground should be paid to the County in which the line is being buried in and the county should receive sales tax in proportion to the percentage of pipe buried within the County.
15. Require that transmission lines be routed around potentially irrigatable agriculture lands and be adjacent to existing access routes.

4.4.3 Alternative Energy

4.4.3.1 History, Custom, and Culture

Converse County does not have an extensive history or culture associated with alternative energy prior to 2009. However, as part of the “all of the above” energy strategy of the State, Converse County acknowledges and supports responsible development of energy sources which bring economic opportunity, long term sustainability and grid stability. Converse County recognizes that electrical production is a key ingredient to economic gain and national security and



encourages the development of more electrical generation to support baseload needs and a zero carbon future.

However, the alternative energy industry is growing rapidly in Wyoming and Converse County has proven to be a beneficial location for wind energy development and has the potential for many other alternative energy sources. The County understands that the development of alternative 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 to renewable energy (National Conference of State Legislatures, 2019).

4.4.3.2 Resource Assessment and Legal Framework

Converse County has the potential and interest for a variety of alternative energy resources. The location of the county within the state and near the interstate system makes it a suitable place for many of these alternative energy solutions. Wind energy is already a large market that has been tapped into within the County but other energy sources such as solar, nuclear, hydrogen, and carbon capture are also being explored within the County. 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 great opportunity to expand onto federal lands into the future.

New development of alternative energy in the County needs to be considered on the basis of expanding existing available energy infrastructure. Converse County does currently have standards for development of solar and wind energy and these standards can be found in the Converse County Wind and/or Solar Energy Siting Regulations. (Richardson, 2020)

The BLM authorized 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

The Converse County area averages more than 6.5 m/s wind speeds, making the County ideal for wind energy development (see Figure 12 below). There are currently several wind energy developments within Converse County. The following table lists the current wind developments in the County and the year they became operational. (Renewable Northwest, 2020)



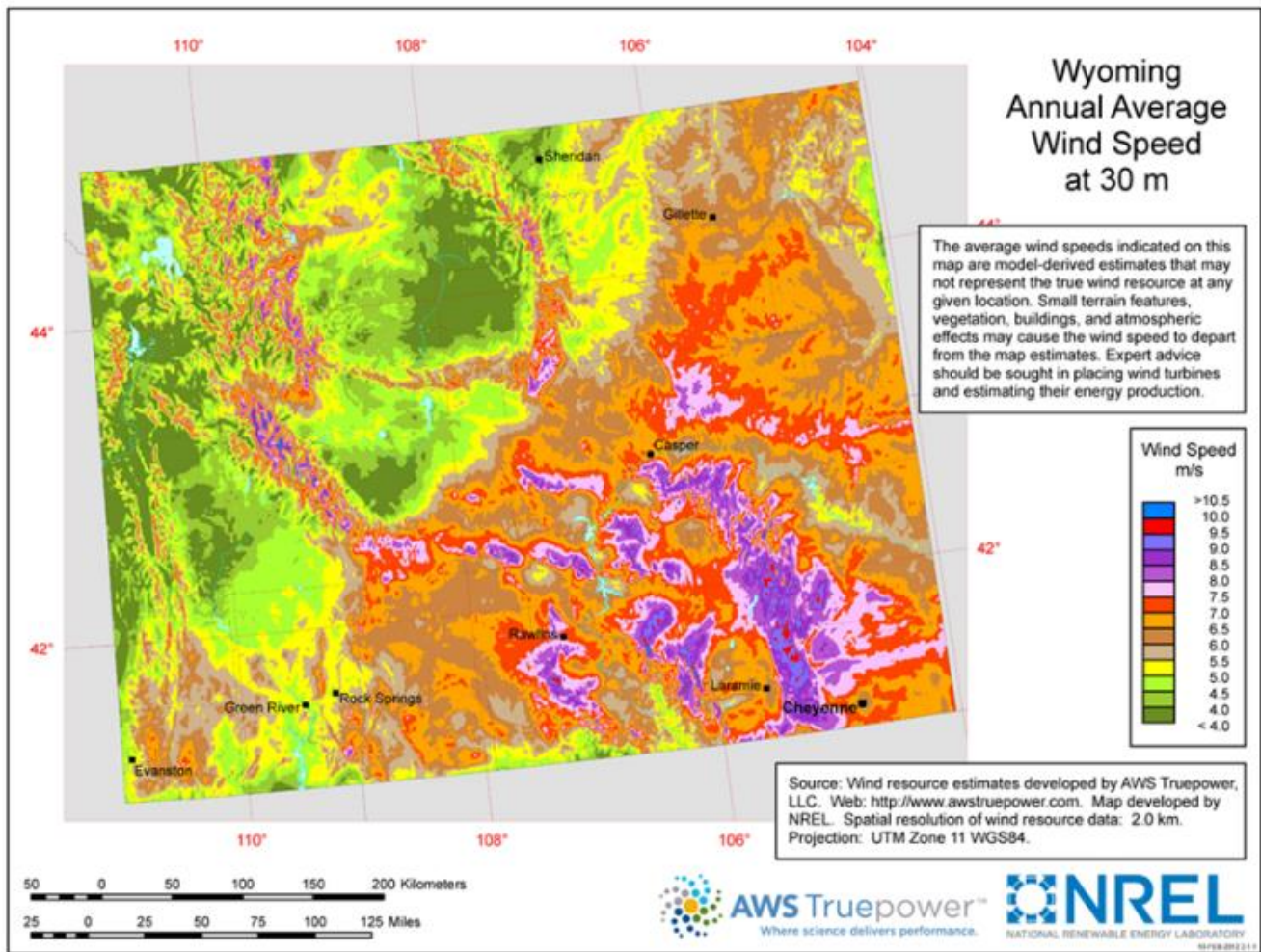


Figure 12: Wind resource map for the State of Wyoming.

Table 3: Wind Energy developments within Converse County.

Project Name	Capacity (MW)	Developers	Partners	Operating Status	Year
Cedar Springs (Phase I, II, and III)	533	NextEra		Operating	2020
Pioneer Wind Park	80	S Power	PacifiCorp	Operating	2016
Top of the World	200.2	Duke Energy	-	Operating	2010
Rolling Hills Wind (Glenrock – phase II)	99	PacifiCorp	enXco	Operating	2009
Campbell Hill Wind	99	Duke Energy		Operating	2009
Glenrock III	39	PacifiCorp	enXco	Operating	2009
Glenrock I	99	PacifiCorp	enXco	Operating	2008

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.

Nuclear Power

Nuclear power has been an untapped energy source within Wyoming. Nuclear generation is a fundamentally sound solution for baseload with zero carbon emissions. Converse County encourages the development of pebble bed reactors for long term nuclear vision and sodium metal cooled reactors for our near-term needs. Converse County recognizes that the existing fleet of high-pressure nuclear reactors is nearing end of life and recommends the next generation of nuclear energy as a positive step in maintaining baseload and grid stability.

Over the last several years, the potential to expand nuclear power into Wyoming has increasingly grown and several areas throughout the state including Converse County have been scoped as areas for nuclear power growth. Natrium, which is a newer technology for nuclear power plants, has been the most discussion type of nuclear reactor within the state. Natrium is a sodium-cooled fast reactor that is paired with a molten salt energy storage system to flexibly operation with renewable power sources. This technology is faster and more affordable to build and its constant high operating temperature can be used to generate carbon-free heat or electricity to drive other energy-intensive manufacturing processes. (Office of Nuclear Energy, 2021)

Converse County has high potential for nuclear power as it is within easy travel corridors both for construction, transport of fuel, and transport of materials for continued operation due to its location on the interstate system. Nuclear energy is definitely an interest for Converse County and Glenrock was on the list for potential places to build the first natrium plant in Wyoming.



Hydrogen Power

Hydrogen is another alternative energy source that provides a lot of opportunity in Wyoming and Converse County. 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 bas combined with technology that captures carbon released I the production process. Extracted hydrogren 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.)

Converse County has the opportunity to expand into the hydrogen power market if it made sense both from an economic and custom and culture standpoint in the county. The natural resources in the County along with the fossil fuels provide opportunity for Converse County to provide both green and blue hydrogen should they wish.

Carbon Capture

Carbon capture is a process that involves capturing, transporting, and storing greenhouse gas emissions from fossil fuel power stations, energy intensive industries, and gas fields by injecting the captured greenhouse gases back into the ground. Carbon capture is not a zero emissions solution, however it does reduce emissions. (Climate Council, n.d.)

New technology for carbon capture has been proposed as a pilot in Wyoming. The desire is that improved carbon capture technologies will make it more likely that Wyoming coal can be an important supply for electricity into the future. As coal has been a Wyoming staple for many years.

4.4.3.3 Alternative Energy Resource Management Objectives:

- A. Development and management of alternative energy are done in a responsible manner that takes into consideration the economic viability of Converse County along with the health, safety, and welfare of the County’s citizens and the health and sustainable of the County’s natural resources.
- B. Alternative energy development is supported on public lands where it is both commercially feasible and does not disproportionately harm the potential multiple uses within Converse County.

4.4.3.4 Alternative Energy Priority Statements:

1. Federal agencies should evaluate alternative energy projects proposed for Converse County based on the same criteria applied to other projects and industries.
2. Federal agencies should coordinate with Converse County regarding regulatory processes for alternative energy that may impact the cultural and economic stability of the County.



3. Federal agencies should consider the development and siting of alternative energy in coordination with the 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 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 Converse County economy.
8. Converse County supports private property rights and encourages the minimization of conflicts with existing uses and the avoidance of eminent domain.
9. 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 Converse County.

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 this County and who visit.

4.5.2 Resource Assessment and Legal Framework

Air quality is important to the health, safety, and welfare of Converse 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 (SIPs) (O. EPA, 2014).

In Wyoming, local enforcement of many air pollutant regulations is delegated to the Wyoming Department of Environmental Quality (DEQ) (R. 08 EPA, 2014). DEQ'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). DEQ 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 Converse 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 and trash
- Emissions from farming and agricultural operations
- Emissions from industrial operations
- Dust from unpaved roadway use
- Energy production

The WDEQ Air Quality Division maintains an air quality monitoring location northwest of Douglas. The monitoring objective of the Converse County Monitoring Station 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). The USFS’s guideline is to minimize effects and impact of smoke for each fire management activity on identified smoke-sensitive areas using “best available control measures” monitoring smoke impacts, and following smoke management requirements established by the WDEQ. (Forest Service: Rocky Mountain Region, 2005)

4.5.3 Air Quality Resource Management Objectives:

- A. Management of federal lands consider clean air practices and limit air pollution within Converse County without expansion of rules and policies that would act as an impediment to economic development.
- B. Converse County is cooperated, coordinated, and consulted with to reduce, eliminate, or mitigate any site-specific degradation of air quality.

4.5.4 Air Quality Priority Statements:

1. Beneficial uses, such as prescribed burning, wood burning for heat, historical agricultural practices, and other established activities within the custom and culture of Converse County that may degrade air quality standards should be allowed to continue.
2. Alternatives to flaring to decrease its impact on air quality within Converse County should be explored and encouraged.
3. 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 Converse County.



4. Federal agencies should implement best management practices and take aggressive forest, range, and grassland management action to decrease the number of summer wildfires to help improve air quality.
5. Federal agencies should ensure there is a balance between good air quality and economic growth within Converse County.
6. Federal agencies should require dust mitigation in all development and reclamation plans to increase air quality standards.
7. Federal agencies should consider the impact a permitted activity may have to private or public unpaved roads and require dust mitigation plans whenever the planned activity will cause dust disturbances.
8. Converse County requests to be notified of any present and future air quality designations within the County.
9. Business, industry, and land management agencies should plant windbreaks, plant living snow fences, or other ideas to reduce or eliminate dust.
10. Converse 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 affecting the County.
11. Converse County supports Wyoming's primacy over air quality standards with the Wyoming Department of Environmental Quality as the primary authority concerning setting and enforcing standards within the State and County.
12. All air quality data considered by federal agencies should be credible data as is specified in each of their agency handbooks and should be legally collected.



4.6 CLIMATE CHANGE

4.6.1 History, Custom, and Culture

Converse County relies heavily upon the agriculture and energy industries to support the local economy. Increased temperatures, reduced precipitation, and changes in airflow have the potential to drastically affect the economy of the County. Converse 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 within Converse County.

4.6.2 Resource Assessment and Legal Framework

The climate of Converse 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 45.9 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.

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 local level that considers immediate harm a potential decision would have on Converse County.

4.6.4 Climate Change Priority Statements:

1. Additional climate change scientific data should be included in all NEPA planning processes that meets the credible data criteria, even if not produced by a federal agency.
2. When climate change analysis is required, such analysis should occur on a regional level, the region should be identified through consultation and coordination with Converse 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 Converse County.
4. Management decisions that are proposed primarily to regulate greenhouse gases through climate change analysis that could harm the local economy are not supported.
5. The costs and benefits of any regulatory changes or management decisions adopted to address climate change should be quantified.

DRAFT



CHAPTER 5: WATER RESOURCES

5.1 OVERVIEW

Water resources are fundamental to the economic future and the quality of life in Converse County. Surface water has been and continues to be a critical water source for agriculture, towns, electrical generation, and recreation. Historically, ground water has been used for domestic, commercial, and agricultural purposes. For the foreseeable future, increased ground and surface water sources will be necessary to meet the demands of new and existing users including municipal, domestic, commercial, industrial, agricultural, fire suppression, and energy development and production. The quality of water resources needs to be protected while providing for increased use.

Converse County is approximately 60 miles wide and 84 miles long at its longest point. The North Platte River bisects the county across the lower third, flowing from west to east. From the flood plains along the river, the land slopes upwards on either side.

Topography to the north is predominately rolling, open plains with several areas of rugged pine ridges. The major drainage in the northern part of the County is the Cheyenne River and associated tributaries: Dry Fork Cheyenne, Antelope Creek, Lightning Creek, and Twenty Mile Creek and smaller tributaries. Most of the streams are ephemeral and run water during snow melt and after storms. Intermittent water flows, natural and/or man-made systems to store surface water, and/or to produce ground water are the water source. There are scattered artesian wells. This area is dependent on rain and snowfall, reservoir and well water, with average annual rainfall below twelve inches.

Topography in the southern portion of the County is dominated by Laramie Peak (10,276'), which is just south of the County line, and is part of the Laramie Range of the Rocky Mountains. The elevation rapidly descends from this mountain range to the foothills to the north, before the land slopes gently towards the river. Scattered throughout this terrain are several flowing streams that feed into the North Platte River. Annual stream run-off occurs primarily from snowmelt and precipitation in the headwater areas during the late spring and early summer. Low flows in the river occur naturally during the winter, with seasonal levels managed predominately by upriver dams.

Recharge to aquifers is greatest from March through June due to stream runoff from accumulated snow in the headwater areas augmented by the twelve inches of average rainfall. The headwater streams, which originate in the Medicine Bow National Forest, are functioning properly. At this time, none of the streams in Converse County have been designated "impaired." However, wildfires over the last several years have created multiple erosion problems, with some sediment reaching stream beds, which could potentially impact that designation in the future. (Converse County, 2015)

Refer below for maps of the watersheds in Converse County and basins in the state (Figure 14 and Figure 15).



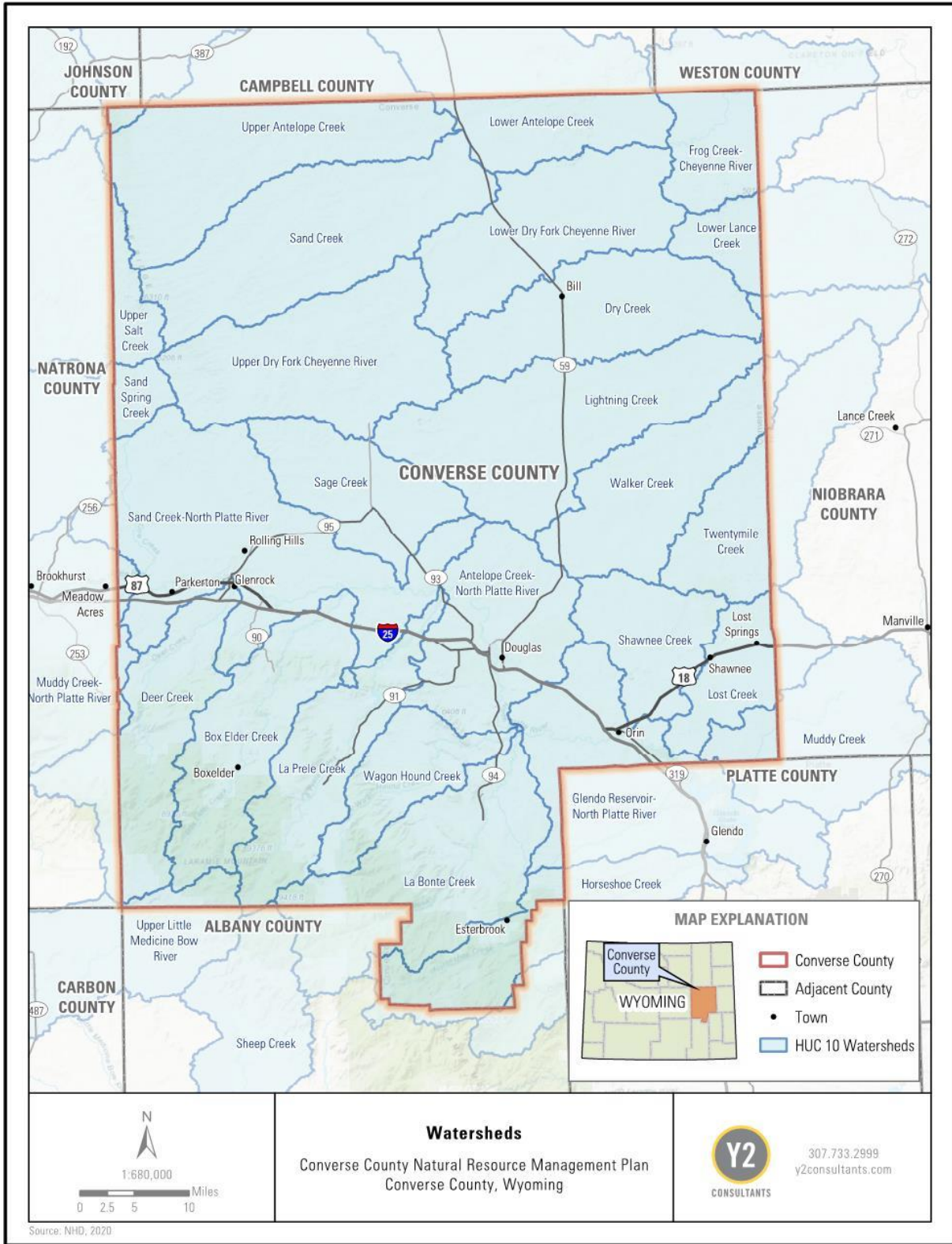


Figure 13. Converse County watersheds.



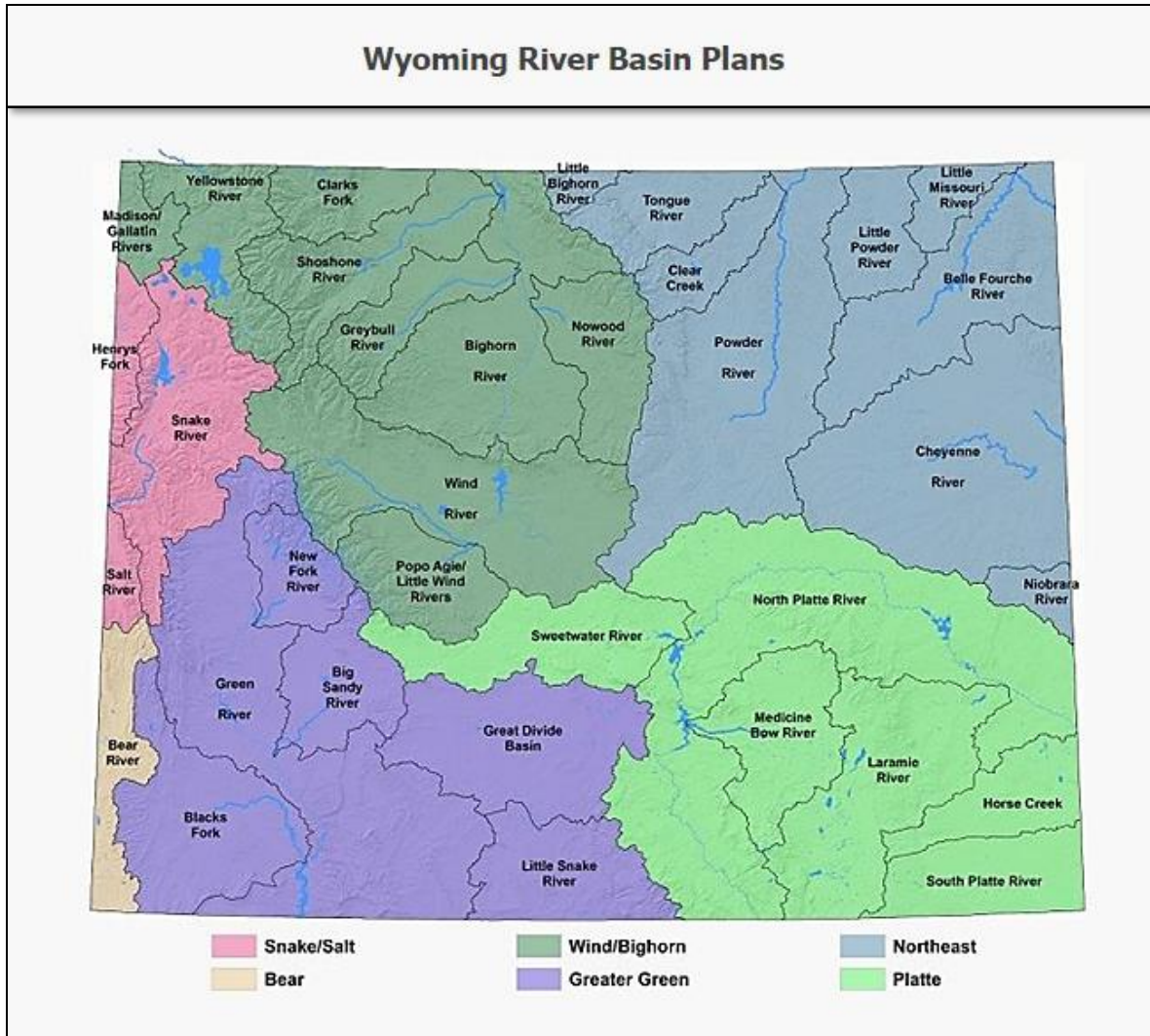


Figure 14. Wyoming State Geologic Survey (WSGS) map of the Wyoming River Basin Plan divisions. (Wyoming State Geologic Survey, 2020)

5.2 IRRIGATION AND RELATED INFRASTRUCTURE

5.2.1 History, Custom, and Culture

Irrigation and agricultural practices contribute to the economic base of Converse County and are integral to the stability of livestock production, wildlife habitat, and farming while maintaining the local custom and culture of the County. Due to the location and additional water, cropland and irrigated fields often provide key habitat for big game and other wildlife throughout all times of the year.

The primary use of irrigated land in Converse County is for forage production. Many ranchers in the area have relied on irrigated forage production for winter feed since the early development of irrigation practices in the County.

5.2.2 Resource Assessment and Legal Framework

The primary use of irrigated land in the river basins spanning Converse County is 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 2006 there were approximately 45,000 acres of irrigated agricultural land within the Pathfinder to Guernsey subbasin region of Converse County. Across the northern half of Converse County, the primary irrigation acres span the Dry Fork of Cheyenne River and Antelope Creek, totaling approximately 3000 acres (HKM Engineering Inc., 2002a; WWDC, 2006). (Additional information on crop production is available in section 8.1 Agricultural Production.)

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 moderate; 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](#)²³.

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. 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). Like 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). 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).

5.2.3 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 the County’s water.
- B. Water rights are protected from exactions and irrigation ditch easements are protected for the current and future viability of irrigation agriculture in Converse County.

5.2.4 Irrigation and Related Infrastructure Priority Statements:

1. Federal agencies should support the update, improvement, and continued use of irrigation infrastructure throughout the County to improve overall watershed health.



2. Federal agencies should work with appropriate partners, agencies, and the Converse County Conservation District to promote the efficient delivery and use of irrigation water.
3. Converse County supports the use of irrigation water for beneficial use.
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, maintenance, 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 Converse 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 Converse County.
12. 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.

5.3 DAMS AND RESERVOIRS

5.3.1 History, Custom, and Culture

Dams and reservoirs are located across Converse 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 (AF) or larger, or the enlargement of currently existing reservoirs (minimum of 1,000 AF increased capacity). Funding is also available to Level I and Level II feasibility studies identifying possible water storage projects. (WWDC, n.d.)

The Platte River Basin Water Plan and the Northeast Wyoming River Basins Plan evaluated all reservoirs considered 'major reservoirs' within the surface water assessment. Major reservoirs are defined as reservoirs with equal to or greater storage capacity than 500-acre feet. There are two reservoirs listed in the plans that are within Converse County, the Betty No. 1 Reservoir and the La Prele Reservoir. Betty No. 1 Reservoir, constructed in 1954, is located on Bear Creek in the northcentral region of the County. The Betty No. 1 Reservoir receives water from Bear and



Lonetree Creeks and holds 1,345 af active capacity (HKM Engineering Inc., 2002b). The La Prele Reservoir is located on La Prele Creek about 12 miles west of Douglas. The La Prele Reservoir has been classified at high risk for failure due to cracking in the buttresses. County Emergency Management and the County Commissioners are regularly updated on the dam status and needs for replacement as there is a potential for loss of life and county infrastructure (Natural Bridge Park) if the dam were to fail. Work is currently being done with the State of Wyoming and federal agencies to secure funding for replacement of the reservoir.

5.3.3 Dams and Reservoirs Resource Management Objective:

- 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.

5.3.4 Dams and Reservoirs Priority Statements:

1. Converse County should be consulted regarding federal land management decisions that may impact 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 and encourage the construction of water storage within Converse County.
3. Federal agencies should provide proper management, maintenance, and improvements of all dams, especially high hazard dams in Converse County.
4. Federal agencies should maintain the primary use of all reservoirs within Converse 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 Converse County 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 within Converse County to increase water storage capacity to meet 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.

5.4 WATER RIGHTS

5.4.1 History, Custom, and Culture

Wyoming water laws and regulations are governed by Title 41. 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.



The Wyoming State Engineer’s Office (WSEO) administers the system of water rights within the state and Wyoming’s water sharing agreements with other states. The WSEO cooperates with local management agencies, which includes water conservation districts, water conservancy districts, ground water management districts, water and sanitation districts, towns and cities, and irrigation districts. These local agencies may contract with the Bureau of Reclamation to build reservoirs and other water storage projects.

“Water being essential to industrial prosperity, of limited amount, and easy of diversion from its natural channels, its control must be in the state, which, in providing for its use, shall equally guard all the various interests involved.” (Wyoming State Constitution)

Early settlers of Converse County relied on the doctrine of prior appropriation to develop economic opportunities for the citizens of the county. Many of those early water rights and uses continue to exist within the county. In turn, much of the county’s custom and culture reflects the expectation that water rights will continue to be protected.

5.4.2 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.” *Id.* Preferred uses have the right of condemnation against all other water uses and those lesser preferred uses. *Id.* 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. *Id.*

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, the measure and limit of the right to always use water. 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 to have a valid water right. Wyo. Stat. § 41-3-101. Wyoming case law also generally holds that water rights are appurtenant to the 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 change 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 belongs 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).

5.4.3 Water Rights Resource Management Objectives:

- A. State water right laws and policies are supported for all waters on public and private lands within Converse County.
- B. Wyoming water law and policy controls all water rights within Converse County and is supreme to any federal policy or regulation.
- C. Federal agencies will never use exactions to acquire water rights.

5.4.4 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 Converse County water in Converse County.
5. Placing water rights in the name of a 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. It is the position of Converse County that in stream flow requirements are exactions.
8. Federal agencies should recognize water rights as a private property right that may be owned separately from federal land when allowed by Wyoming law.
9. Separate federal regulations on Wyoming waters are opposed; Converse County supports Wyoming control of Wyoming waters.
10. The use, sale, or lease by the State of any Wyoming basin water unless the water and storage need of the affected basin(s) have been met is opposed.
11. Federal agencies should support policies and actions that will protect existing water rights and water uses within the County for long-term conservation and enhancement of our natural resources while contributing to the economic stability of the County and its residents.
12. Federal agencies should recognize historic and customary beneficial uses under Wyoming State Law to take precedence over all in-stream flow use designations.



13. 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.
14. Federal agencies should work with Converse County to educate and inform cooperators regarding Wyoming water laws.

5.5 WATER QUALITY

5.5.1 History, Custom, and Culture

Water quality is important to the health and quality of life of Converse 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. Converse County is located in the southeast WDEQ District.

5.5.2 Resource Assessment and Legal Framework

Surface Water Quality

Wyoming surface water quality standards (Water Quality Rules and Regulations, Chapter 1) are developed with the federal Clean Water Act (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.)

Clean Water Act

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." 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 what a "navigable water" or "Water of the United States" has been a creature of controversy in the past several years and there is still some uncertainty as to what bodies of water constitute as Waters of the United States 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 "Waters of the United States" in 2015, the lack of a tangible statutory



definition has generated hundreds of 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).

There have been several changes to the CWA regulations in recent years with the most recent in September 2020. However, with the new administration in 2021 it is likely these regulations could change.

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](#).

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 to 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 Waters of the United States 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.

Under the CWA point source is defined as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.” The CWA does not provide a detailed definition of nonpoint sources but rather they are defined by exclusion – anything not considered a point source. All nonpoint sources of pollution are caused by runoff of precipitation over or through the ground. This includes stormwater associated with industrial activity, construction-related runoff, and discharges from municipal separate storm sewer systems.

Impaired Waters

There are no impaired waters within Converse County. The Wyoming 2020 Integrated 305(b) and 303(d) Report includes the North Platte and Cheyenne River Basins and was completed in 2020. This report includes the 305(b) stream classification/designation list and the 303(d) use and contaminate lists for the North Platte River Basin. (WDEQ & WQD, 2018)

Subdivision Review

The WQD Water & Wastewater Program (W&WP) works to ensure safe and adequate supplies of drinking water and the proper disposal of wastewater. Subdivision reviews are governed by Water Quality Rules and Regulations, Chapter 23 and Wyoming Statutes 18-5-301 to 315. The County reviews subdivisions with one to five lots with the ability to defer review to the DEQ. (WDEQ, n.d.-c)

5.5.3 Water Quality Resource Management Objectives:

- A. Water quality within Converse County is maintained or improved for current and/or future uses using legally obtained credible data.
- B. Watersheds within Converse County are managed and maintained for productivity and water quality.

5.5.4 Water Quality Priority Statements:

- 1. 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 with the same mandate.
- 2. Converse County encourages the development of new technology to use produced water or wastewater from energy extraction for other uses.



3. Federal agencies should require baseline water quality sampling and cataloguing of all collected data for wells (including injection wells) drilled on federal lands consistent with Wyoming Oil Gas Conservation Commission rules.
4. Federal agencies should consult Converse 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, or 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 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 desired plant, animal, and human uses, and to reduce the risk of flash floods.
9. The USFS, BLM, EPA, WDEQ, and other relevant public agencies should coordinate with Converse County to ensure that management of watersheds and aquifers, including municipal watersheds, meets 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 streams channels, floodplains and wetlands for better productivity.
11. Federal agencies should support 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 and county best management practices in coordination with Converse 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 ensure that land use inventory, planning, or management activities affecting point or nonpoint sources and water quality in Converse County, either directly or indirectly, are coordinated with Converse County.
16. Federal agencies should recognize the economic and social benefits of customary land use activities in Converse County and balance against the social and economic value of the sources of pollution.
17. Converse County supports water quality testing and monitoring programs that collect Credible Data according to Wyo. Stat. § 35-11-302 data using a local steering committee according to the Watershed Strategic Plan.



18. All management plans and land use practice modifications proposed by management agencies premised on water quality and quantity issues shall be coordinated through local government and shall be consistent with the protection and preservation of private property rights.
19. Watersheds must be managed for water quality and quantity. Any proposal to modify water quantity and quality in a watershed affecting Converse County must be submitted to the County, in writing, in a timely manner. Socio-economic impacts shall be stated, and the County shall be given the opportunity to comment. Adverse impacts should be mitigated.
20. Federal agencies should coordinate with Converse County regarding point source and nonpoint source definition.

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 Converse County. Flooding is a significant natural hazard within the state of Wyoming and can cause significant damage. From 1905 to 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 Converse County experienced 1 flood event which incurred \$167 in crop damage and \$458,072 in property damage. Converse County is categorized as 'Medium Risk' 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 (FEMA)

At the time this document was written Converse County and the municipalities of Douglas and Glenrock, 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 develops plans to reduce risk (FEMA, n.d.-d). There are currently no active Risk MAP projects within Converse County (FEMA, n.d.-c). For more information on flood hazard mapping within Converse County refer to FEMA's National Flood Hazard Layer (NFHL) viewer, accessible [here](#)²⁵ (FEMA, n.d.-b).

The 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. Flood plain areas are managed to ensure the health, safety, and welfare of all residents within Converse County.
- B. Emergency response regarding flooding is coordinated with the Converse County Emergency Response Coordinator.

5.6.4 Flood Plains Priority Statements:

1. Federal agencies should support projects and encourage policies which manage storm water, run-off, and flooding on public lands within Converse County.
2. Converse County shall be consulted with regarding the development of federal flood plains.
3. Oil and gas facilities should be developed outside of the flood plains in Converse County.
4. Federal agencies should consult and coordinate with Converse 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 Converse County. The County's surface water quality and health are integral to multiple industries, including livestock and crop production, recreation, and tourism. Rivers and streams also provide water for municipal use that is important to the health and standard of living for County residents. In addition to these listed uses, healthy rivers and streams are necessary for functioning ecosystems and fishery and wildlife health. (HKM Engineering Inc. et al., 2002)

The two major towns in Converse County, Douglas and Glenrock, depend on the North Platte River and its tributaries to provide water supply, educational opportunities through schools and Conservation District, and recreational events which attract tourist dollars to the area. In addition, many local water rights are appropriated out of the North Platte River to supply irrigation water for agriculture.

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)).

5.7.2 Resource Assessment and Legal Framework

There are two major river networks that span the majority of Converse County: the Cheyenne River and the North Platte River.

Cheyenne River

The Cheyenne River headwaters are located in northern Converse County. In the northeastern corner of the County, Antelope Creek and Dry Fork Cheyenne River merge into the Cheyenne River before entering South Dakota. From there the river continues northeast to the Missouri



River at Lake Oahe. The Cheyenne River headwaters throughout northern Converse County are an important resource for communities in the County. (HKM Engineering Inc., 2002a)

North Platte River

The North Platte River flows across the southern half of Converse County from west to east. This river flows southeast out of Wyoming and into Nebraska where it forms the Platte River with the South Platte fork. Within Converse County the North Platte River is fed by Muddy, Deer, Box Elder, La Prele, and La Bonte Creeks from the south. This water network is very important to communities and the agriculture industry across southern Converse County. (WWDC, 2006)

Platte River Recovery Implementation Program

In 1997, Colorado, Wyoming, Nebraska, and the Department of the Interior formed a unique partnership with the goal of developing a shared approach to managing the Platte River. The Platte River Recovery Program formed out of this in 2007 and is focused on implementing this shared vision for creating and maintaining habitats on the Platte. The Platte River Recovery program is managed by a governance committee comprised of representative from Colorado, Nebraska, and Wyoming, water users, environmental groups, BOR, and USFWS. The Platte River Recovery Implementation Program utilizes federal, and state provided financial resources, water and scientific monitoring, and research to support and protect four threatened and endangered species (Piping plover, Least tern, Whooping crane, and Pallid sturgeon) that inhabit areas of the Central and Lower Platte rivers in Nebraska while allowing for continued water and hydropower project operations in the Platte River basin. In December 2019, the U.S. Secretary of the Interior signed an amendment to the Platte River Recovery Implementation Program Cooperative Agreement, along with the governors of Colorado, Nebraska, and Wyoming committing resources to extend the program through December 31, 2032. (Department of the Interior, 2019; Platte River Recovery Implementation Program, n.d.)

5.7.3 Rivers and Streams Resource Management Objective:

- A. Rivers and streams within Converse County are managed to maintain water quality and to maintain proper ecologic function needs and managed for municipal use to control flooding and for recreational and industrial use including irrigation.

5.7.4 Rivers and Streams Priority Statements:

1. Federal agencies should support management of rivers and streams to meet water compact requirements.
2. Any new or changed management priorities or policies regarding in-stream flows should be coordinated with Converse County.
3. Federal agencies should ensure any recovery plan, habitat management plan, critical habitat designation or any other plan proposing an “in stream flow” 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 continued use of rivers and streams by all users.
5. Converse County shall be consulted when impacts to rivers and streams are a potential outcome of a federal action or decision.



6. Federal agencies should support projects and policies which improve or maintain the current ecological function of rivers and streams within Converse County for agriculture, recreation, and municipal use.
7. Any new interstate water diversions, transfers, or obligations outside of those originally agreed to are not supported by Converse County.
8. Federal agencies should support the recreational and consumptive use of water to support the local economy.
9. Converse 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 4% of the state, however they support over 80% of Wyoming's wildlife (Bureau of Land Management, 2016b). 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 streams 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 Converse County.

There are multiple anthropogenic processes that 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).

The 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 maintain 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 have 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 EPA and USACE published CWA regulations in 2020 which established that only those wetlands adjacent to non-wetland jurisdictional waters fall under the CWA. 40 C.F.R. § 120.2.

The U.S. Army Corps of Engineers (ACOE) is also responsible for protecting aquatic resources and navigable capacity while allowing economic development through fair and balanced decisions. The ACOE requires a permit process to minimize the environmental impact of construction and development activities in Waters of the United States to ensure protection of these resources. (ACOE, n.d.)

Monitoring and Management

Federal managing agencies monitor riparian-wetland areas using methods such as 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 Objectives:

- A. Wetlands and riparian areas within Converse County are managed to be healthy and function properly while maintaining a balance with other resource uses.
- B. Wetlands issues are based on a cooperative approach that conserves and protects soil and water resources and protects rangeland and agricultural uses within Converse County.

5.8.4 Wetland and Riparian Area Priority Statements:

1. Federal agencies should coordinate any wetland project with Converse County.
2. Federal agencies should support the use of responsible and appropriate grazing and vegetation management tools to maintain and/or improve wetlands and riparian areas.



3. Federal agencies should manage riparian areas damaged by non-native species (i.e., salt cedar and Russian olives) to decrease the impact of these species on the watershed, and to restore the areas to a proper functioning condition.
4. Federal agencies should use credible data for wetland designation.
5. Converse 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.
6. Converse County should be notified of any planned Clean Water Act jurisdictional wetland designations within the County.
7. Converse County does not support treating manmade wetlands the same as natural wetlands and supports the definition from the 2020 Clean Water Act Regulations.
8. Federal agencies should ensure that regulation of wetlands does not impair private property rights.

DRAFT



CHAPTER 6: WILDLIFE AND FISHERIES RESOURCES

6.1 WILDLIFE MANAGEMENT AGENCIES

6.1.1 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 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. (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 to Converse County is in Cheyenne, WY. There are seven National Wildlife Refuges totaling 86,681 acres in Wyoming, as of the 2018 Annual Lands Report (USFWS, 2018a). There are no Wildlife Refuges, Wetland Management Districts, or Waterfowl Production Areas in the County. (USFWS, 2018a).

Wildlife Refuges in Converse County

In 1903, President Theodore Roosevelt designated the first National Wildlife Refuge by Executive Order. It was not until 1966 that the refuges were put into the NWR and administered by the USFWS. The USFWS administers 89.1 million acres of federal land in the U.S., of which 76.6 million are in Alaska (*Federal Land Ownership*, 2018). The mission of the National Wildlife Refuges is to administer these designated lands for the conservation, management, and if appropriate, restoration of fish, wildlife, and plant resources, and their habitats within the U.S. for the benefit of present and future generations. A number of activities take place on Refuges including hunting, fishing, ice fishing, bird-watching, hiking, bicycling, and water recreation (USFWS, 2018c).

There are seven National Wildlife Refuges in Wyoming (USFWS, n.d.-a), however none are found within Converse County.

6.1.2 Wyoming Game and Fish Department

Wildlife in Wyoming are managed by the Wyoming Game and Fish Department (WGFD). 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 until 1929. The WGFD 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, WGFD employees, 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 where 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](#)²⁸ (SWAP), revised in 2017, to provide a strategy for managing various wildlife groups including mammals, birds, reptiles, amphibians, fish, and mussels. This plan is not a legal document, a regulatory document, a recovery plan under the ESA, or 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 government on the development and implementation of the strategy; and
- Involving 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; 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.-c; 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](#)²⁹ (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 Converse County. (WGFD, 2020d)

6.2 WILDLIFE HABITAT MANAGEMENT AGENCIES

6.2.1 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 applicable conservation measures for these species and their habitats as part of their land-use planning process.

6.2.2 U.S. Forest Service

Regulations in 36 C.F.R. § 219.19 and § 219.20 call 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)

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 continued conservation of at-risk species, and support ecological conditions that do not preclude reintroduction of the black-footed ferret. (USFS, n.d.-c)

6.3 WILDLIFE

6.3.1 History, Custom, and Culture

Converse County is nationally recognized for several hunting activities, including the Helluva Hunt for handicapped shooters and the One-Shot Bow Hunt. Numerous other outdoor enthusiasts are attracted to Converse County's hunting and wildlife viewing opportunities. The County is known for its big game hunting and provides good hunting for County citizens, Wyoming residents, and out of state visitors alike.

Hunting big game (including elk, deer, antelope, mountain lion, and black bear), small game animals, predators, waterfowl, upland game birds, and trapping of fur bearing animals has been a traditional part of local history and culture, predating formation of the State. In early days, hunting and trapping of fur-bearing animals was necessary for survival. Today it is still essential for herd population control and continues to provide food and supplemental income for many people living and working in Converse County. Income for County residents is provided by activities such as employment for outfitters and guides, selling supplies and equipment, and providing lodging, meals, and other goods and services to hunters, trappers, and fisherman.

In some areas, there are high levels of anthropogenic disturbance such as intensive oil/gas/wind development that can displace wildlife and cause them to congregate in other areas. Large numbers of wildlife can also occupy private lands and cause concern to those private lands for forage competition with livestock. This most often is due to a function of over objective populations (most common elk numbers) due to a lack of hunting access.

6.3.2 Resource Assessment and Legal Framework

Big Game

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



Elk

Elk (*Cervus canadensis*) are found throughout most of the County in relatively low densities. The largest population of elk is located in southern Converse County along the northern Laramie Range. Elk are primarily grazers, or bulk foragers, though they will occasionally browse on willows and aspen. Most of the elk habitat within the County, 209,785 acres, is listed as spring/summer/fall habitat. Approximately 44,875 acres of the County are designated as crucial winter habitat, and 200,878 acres are designated as winter yearlong habitat. See Figure 15 for mapped habitat designations.

Mule Deer

Mule deer (*Odocoileus hemionus*) are found throughout all of Converse County. Mule deer have readily adapted to the urban environment and have begun to encroach into developing areas within the County. 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. A large portion of the County is designated as yearlong habitat; 1,436,099 acres. There are also large acreages of winter yearlong (682,851 acres) and spring/ summer/ fall (336,157 acres) habitat designated throughout, with a section of crucial winter range along the southern portion of the County. See Figure 16 for mapped habitat designations.

Pronghorn

Pronghorn (*Antilocapra americana*) are common throughout Converse County. Pronghorn prefer the open shrublands that the southern portion of the county provides. They are intermediate foragers, eating grasses, forbs, and shrubs. Most of the habitat is identified as yearlong (1,415,219 acres) with sections of winter and crucial winter habitats designated in southern Converse County as well. See Figure 17 for mapped habitat designations.

White-tailed deer

White-tailed deer (*Odocoileus virginianus*) prefer riparian habitats often associated with irrigated lands. Approximately 141,074 acres of the County provides yearlong habitat. There are also smaller inclusion of spring/ summer /fall and winter habitat in the County. 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. There is some habitat overlap with mule deer. See Figure 18 for mapped habitat designations.

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 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 Converse County. (WGFD, 2020b)

Wildlife Diseases

Chronic Wasting Disease (CWD)

Chronic Wasting Disease (CWD) has been a concern for ungulate populations in Converse County since the early 2000s. A 2016 CWD study in east-central Wyoming discovered that between 2003 and 2010, 32-43% of all harvested deer were positive for CWD. The study also found that from 2003-2010 the whitetail deer populations declined 10% annually as a result of CWD related mortality, potentially leading to the significant loss of local populations within 50 years. The WGFD statewide 2020 CWD Management Plan outlines surveillance, monitoring, and management strategies at the local or herd unit level to better manage the prevalence of CWD in conjunction with current herd and population objectives in each herd unit. (Edmunds et al., 2016; WGFD, 2020e)

For additional information on the monitoring and management of CWD in Wyoming refer to the [CWD Management Plan](#)³⁰.

Black-tailed Prairie Dog

There is a natural conflict between state and federal management of the black-tailed prairie dogs in Converse County. The State of Wyoming consider black-tailed prairie dogs a pest, however, both the BLM and USFS consider conservation of prairie dogs in certain areas a priority.

Each prairie dog can consume up to two pounds of forage per month, reducing 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. (Wyoming Weed and Pest Council, 2019)

Conversely, the USFS classify 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 need to be considered whenever making management decisions affecting the species.

Prairie dogs particularly affect agriculture. Perhaps the greatest harm that the prairie dog infestation has caused local agricultural operations is the destruction of local grassland vegetation. Prairie dogs change a naturally occurring mixed-grass prairie ecosystem into a short grass prairie ecosystem. 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 infestation 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, one AUM is worth \$98.91 annually. David T. Taylor, *Economic Importance of Federal Livestock Grazing in Converse County* 2-3 (May 2011) citing David T. Taylor, *et al*, *The Economic Impact of Federal Grazing on the Economy of Park County, Wyoming* 17-18 (August 2005). Thus, the total lost value for ranchers in that specific portion of the Basin was \$1,442,997.99 in 2016-2017 alone.

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.

One of the leading methods to control prairie dog expansion is through rodenticide. However, the cost for rodenticide treatment is significant when put in the context of annual costs. The Converse County Weed and Pest Department in Wyoming compiled information from twelve landowners with property adjacent to federally managed lands in the TBNG since 2011. In total, over a 7-year timespan, 907,835 prairie dog holes were treated. Letter from Cheryl Schwarzkopf, Supervisor of Converse County Weed and Pest District to Denise Langley (Jul. 14, 2018).

Converse County Weed and Pest has an 80/20 cost share program for the treatment of animals that are a State of Wyoming designated pest. Prairie dogs are included on this list. These products used by the 12 landowners, have cost the landowners \$36,717.31 and the remaining \$92,502.37 has been an economic burden to the Converse County taxpayers. *Id.*

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 between 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).

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 to greater sage grouse habitat areas (79 Fed. Reg. 72464 (proposed December 5, 2014)). . The expansion of prairie dog colonies in the Thunder Basin National Grassland can negatively impact sage grouse in the area. Greater sage grouse rely primarily on a sage-steppe ecosystem with high amounts of sage brush 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)). Prairie dog colonization expansion can impact sage-steppe ecosystems by decreasing sagebrush. Recent studies in the Thunder Basin have shown that maximum vegetation height was reduced by at least 54% on sites colonized by prairie dogs, shrub density was reduced by 71%, and shrub canopy was reduced by 90% (Connell et al., 2018). 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. 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. 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 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 continued conservation of at-risk species, and support ecological conditions that do not preclude reintroduction of the black-footed ferret. Converse County was a cooperating agency for this plan amendment and was highly involved in the development of this plan. (USFS, n.d.-c)

Greater Sage-Grouse

Greater sage-grouse is a state-managed species that is dependent on sagebrush steppe ecosystems. These ecosystems are managed in partnership across the range of the Greater sage-grouse by federal,



state, and local authorities. 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 Greater sage-grouse and its habitats. BLM has broad responsibilities to manage federal lands and resources for the public benefit. Nearly half of Greater sage-grouse habitat is managed by the BLM.

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.

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 for all western states.

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 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](#)³¹.

There are approximately 286,845 acres of designated core habitat for sage-grouse within Converse County (Figure 19).



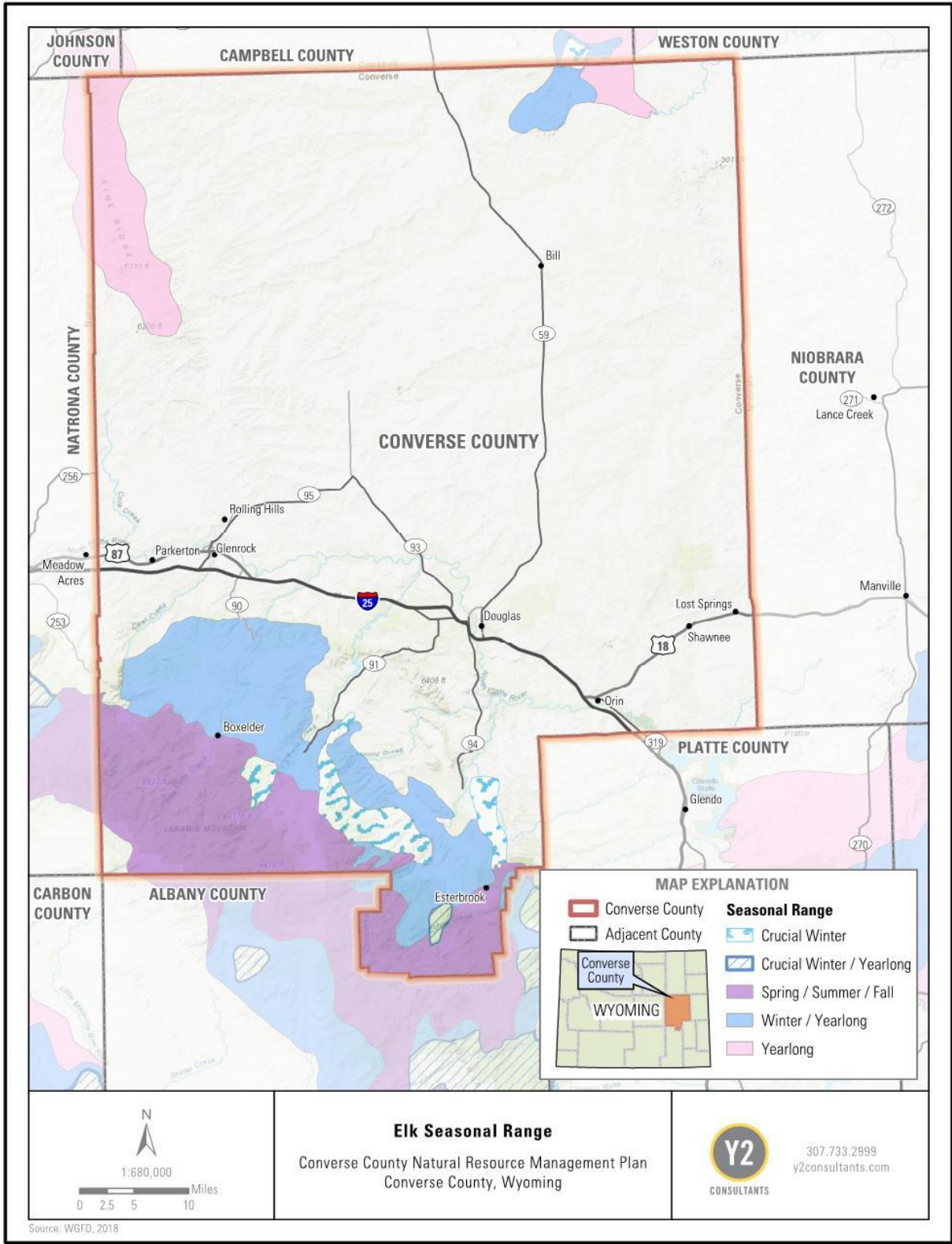


Figure 15. Elk seasonal habitat in Converse County (WGFD, 2018).



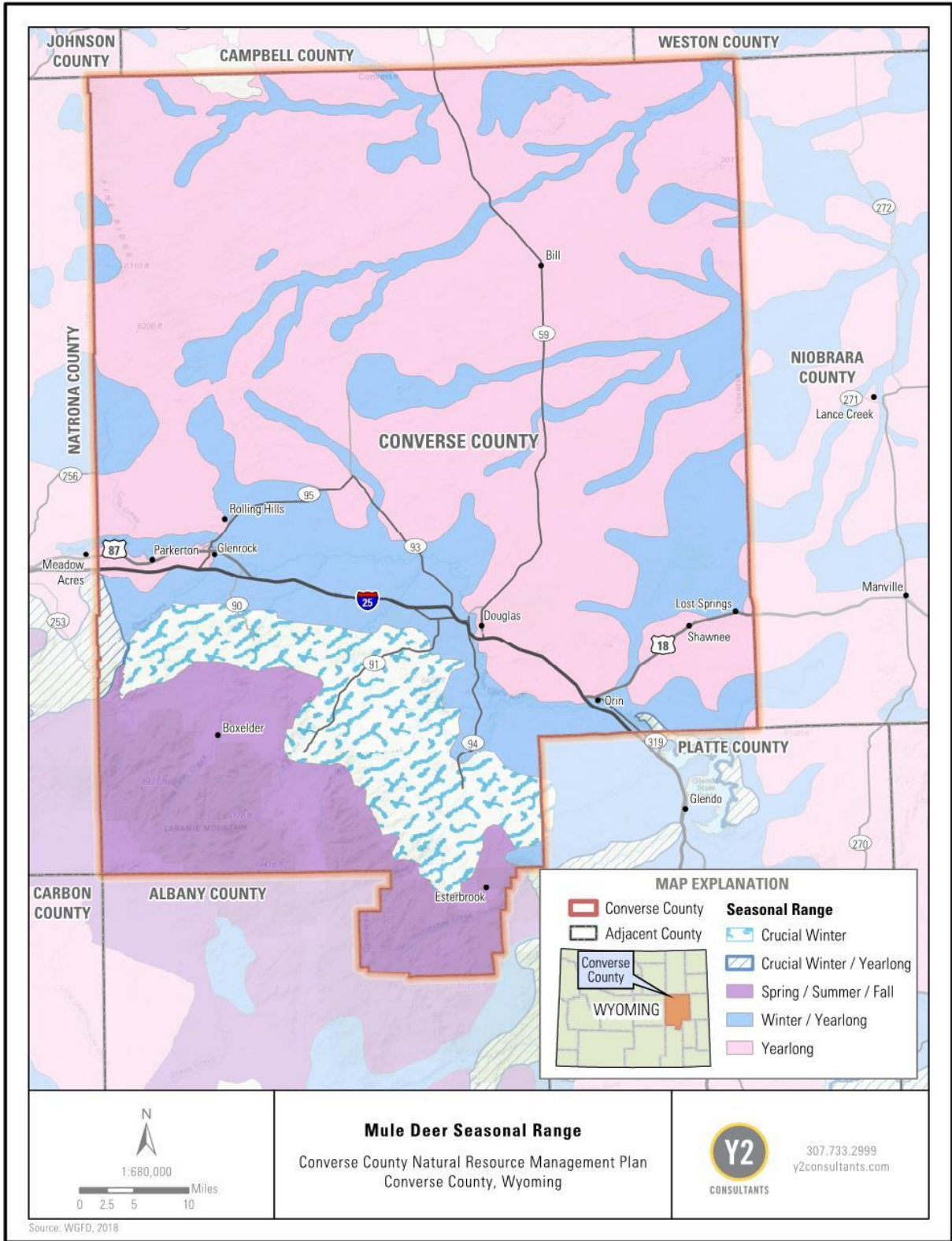


Figure 16. Mule deer seasonal habitat in Converse County (WGFD, 2018).



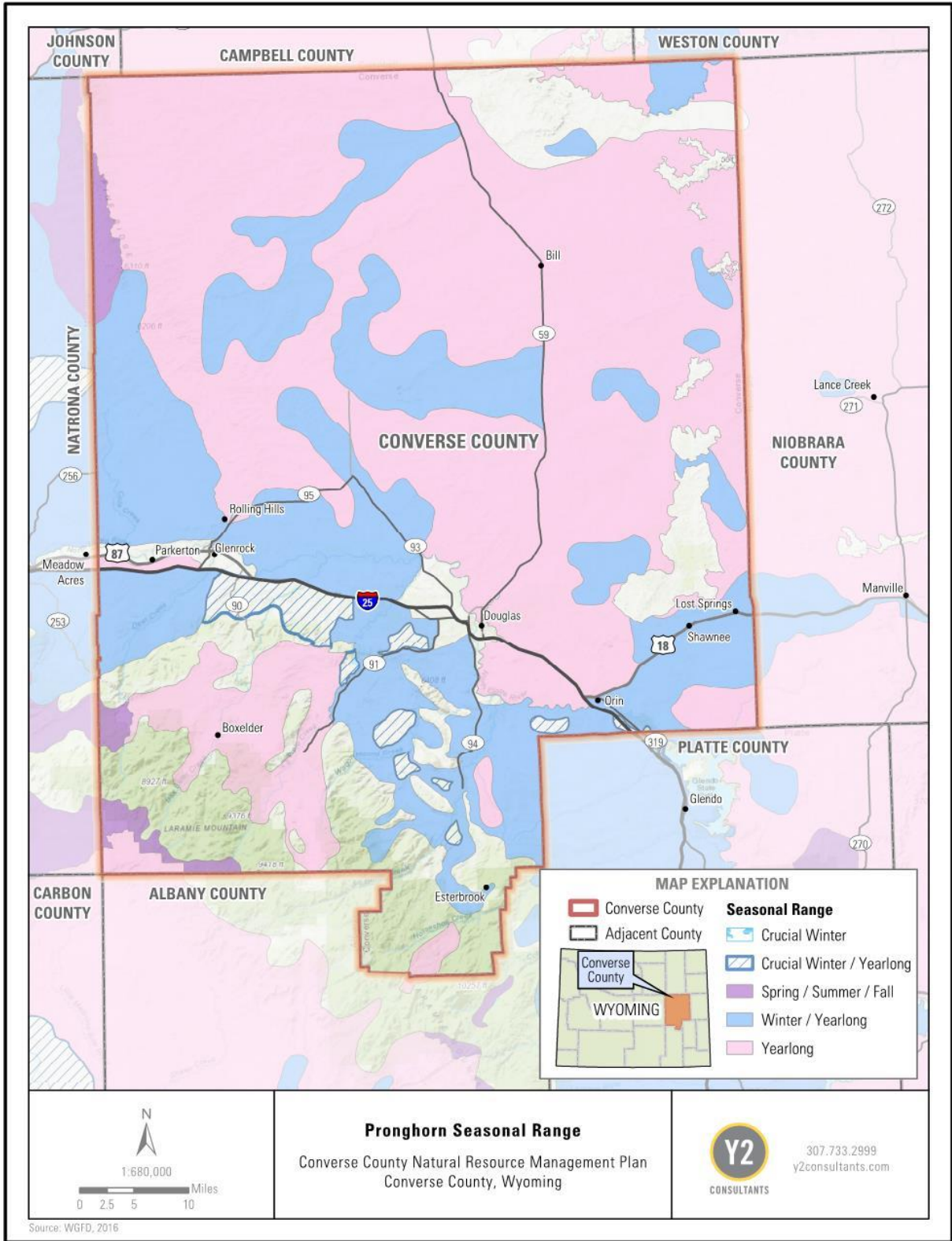


Figure 17. Pronghorn seasonal habitat in Converse County (WGFD, 2016).



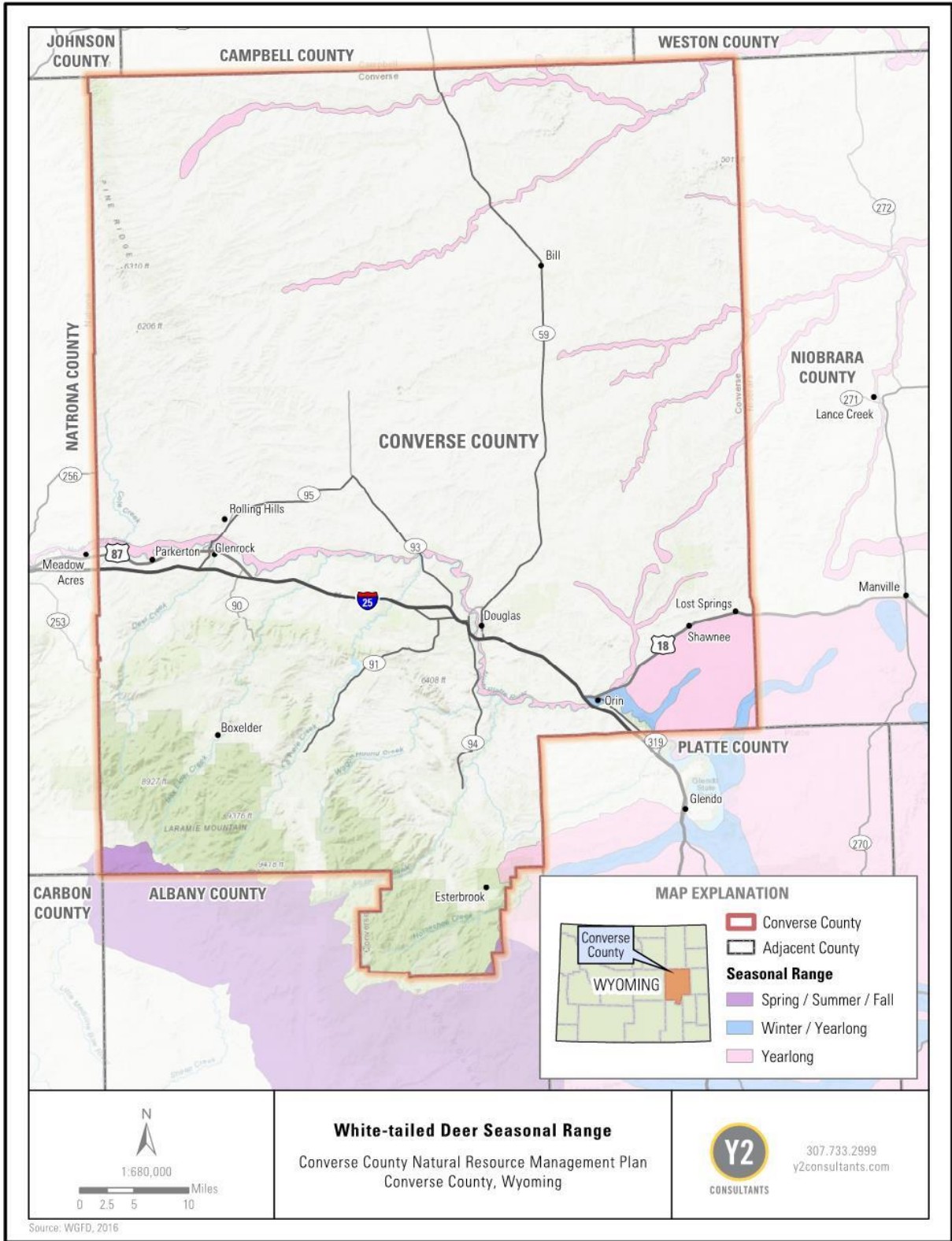


Figure 18. White-tail deer seasonal habitat in Converse County (WGFD, 2016).



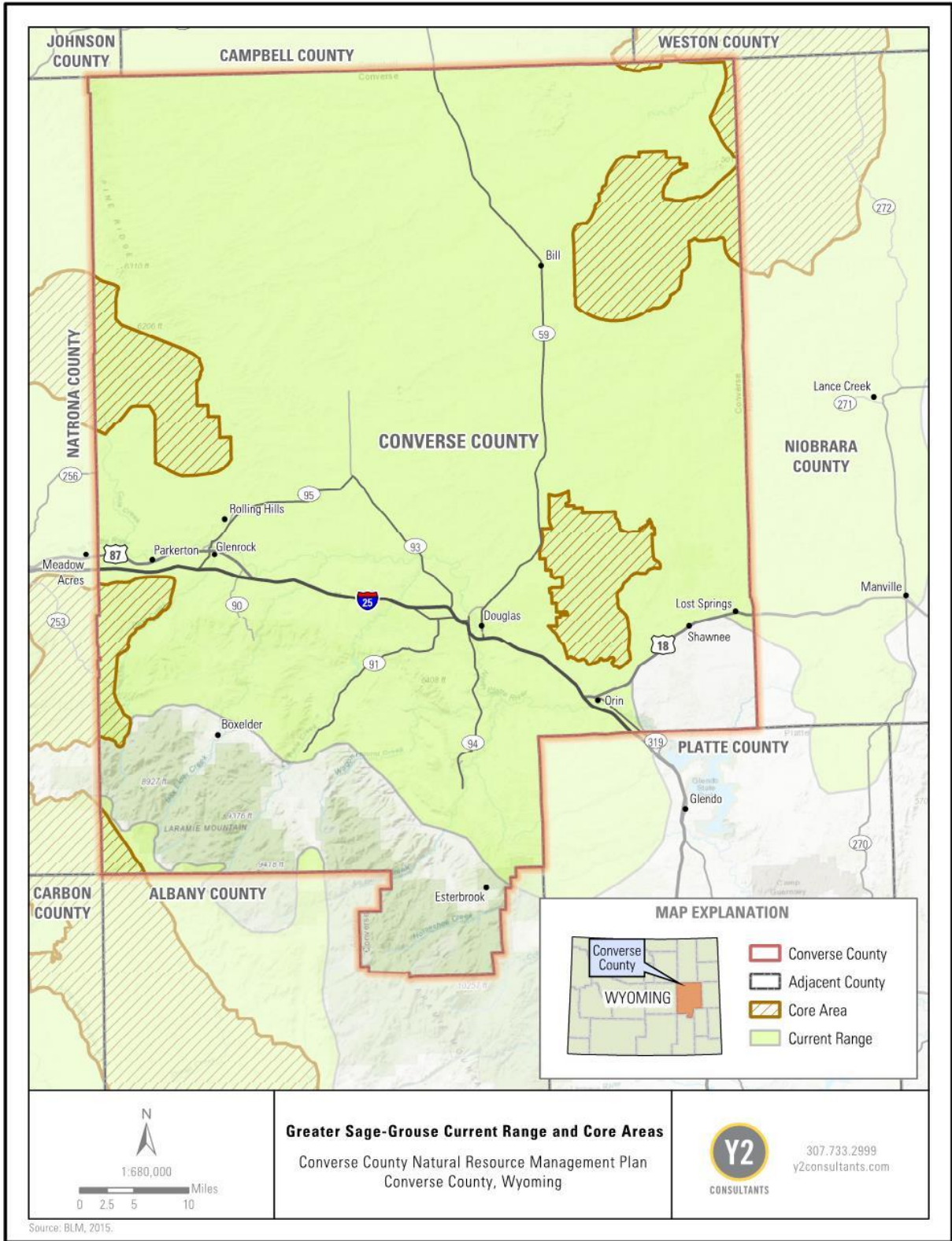


Figure 19. Greater sage-grouse mapped core area within Converse County (BLM, 2015).



6.3.1 Wildlife Resource Management Objectives:

- A. Wildlife resources and their habitats are managed for healthy, sustainable, and biodiverse populations and habitats that support recreation, tourism, and other multiple uses on federal lands within Converse County.
- B. Any plan regarding wildlife within Converse County is developed in coordination with Converse County and other appropriate stakeholders.

6.3.2 Wildlife Priority Statements:

- 1. Converse County supports the State of Wyoming's primacy over wildlife management.
- 2. Federal agencies should support wildlife management objectives and numbers based on what the range conditions and habitat can support.
- 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 to Converse County.
- 4. Federal agencies should research and provide funding opportunities and compensation to landowners for resource enhancement that benefits wildlife.
- 5. Converse 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 and economic viability in the County.
- 6. Federal agencies should support mitigation measures when conflicts between wildlife and livestock occur. If range conditions require reductions in grazing, allocations to wildlife and livestock should be reduced proportionately.
- 7. Closures and restrictions in traditional winter range areas for livestock permittees and oil and gas operators are opposed unless otherwise agreed to Converse County.
- 8. Federal agencies should coordinate with Converse County and Wyoming Game and Fish Department to ensure that all affected landowners, lessees, and permittees are consulted when developing specific Wildlife Management Plans or objectives within the County.
- 9. Converse County encourages cooperation between local, regional, state, and federal governments and private landowners in the management of big game and non-game wildlife species.
- 10. Federal agencies should promote wildlife management practices that sustain wildlife resources and habitat without measurably degrading other multiple use activities or private property rights.
- 11. Federal agencies should not release, through introduction or re-introduction, non-domesticated exotic wildlife species without coordination with Converse County.
- 12. Season-of-use conflicts between livestock and wildlife should continue to be addressed by revisiting the wildlife population objectives and in annual allotment operating plans to provide for maximum flexibility to allow permittees to best utilize forage allocations for livestock.
- 13. Federal agencies should coordinate with Converse County to create a unified (cross-agency) definition for "species of concern."
- 14. Federal agencies should use credible data as a basis for a decision that a species shall be designated a "species of concern" or "sensitive."



15. 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 Converse County.
16. Converse County supports the State of Wyoming’s Sage-Grouse Conservation Strategy.
17. Federal agencies should provide timely responses when requested by Converse County for resource concerns, management plans, and other sensitive, candidate or listed species.
18. Converse County should 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.
19. Converse County should be consulted and coordinated with in the establishment of recovery objectives for species of concern and the development of management actions to delist species of concern.
20. Converse 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. 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.
22. Migration corridors as subject to Executive Order 2020-1 are not supported in Converse County without the express support and/or approval of the County.

6.4 THREATENED/ENDANGERED/SENSITIVE SPECIES

6.4.1 History, Custom, and Culture

Threatened and endangered species have been a part of Converse County since the early days of the ESA. Species such as the Western prairie fringed orchid and piping plover were first listed as threatened in the late 1980s.

Limited access to federal lands and resources and potential fines or enforcement actions as a result of federal species protection actions and regulations have the potential to cause hardships on county residents. The impacts of the ESA can also potentially cause financial peril to those who rely on resource production from federally managed lands.

6.4.2 Resource Assessment and Legal Framework

Endangered Species Act

Protection of endangered species at the federal level began with the enactment of 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 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 Endangered Species Act (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 1978, 1982, and 1988. Funds are annually appropriated for the implementation of the ESA and have been since 1993.

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. In 2020, the definition of critical habitat was defined by the USFWS, through the change in administration this is likely to change.

Critical habitat can only areas that qualify as “habitat.” *Weyerhaeuser Co. v. US Fish and Wildlife Service*, 139 S. Ct. 361, 368 (2018). The ESA does not 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). “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 (50 C.F.R. § 17.90). There are five major items developed in the proposed rule.

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.-b)



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)

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 USFWS published the ‘Regulations Governing Take of Migratory Birds’ on January 7, 2021, further defining the parameters of ‘unlawful take’. The rule defines ‘take’ as ‘to willfully pursue, hunt, shoot, wound, kill, trap, capture, or collect’. ‘Take’ of migratory birds no longer includes the incidental or accidental killing of migratory birds (USFWS, 2021). 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)

Candidate, Threatened, and Endangered Species in Converse County

Currently listed threatened and endangered species can be found on the USFWS [Environmental Conservation Online System](#)³² (ECOS) (U.S. Fish and Wildlife Service, n.d.). At the writing of this report there are four endangered, threatened, candidate, and proposed species and habitats that have been identified for Converse County. Those species are:

- Piping Plover (*Charadrius melodus*)- Threatened
- Preble's meadow jumping mouse (*Zapus hudsonius preblei*)- Threatened
- Ute ladies' tresses (*Spiranthes diluvialis*)- Threatened
- Western prairie fringed Orchid (*Platanthera praeclara*) –Threatened

Sensitive Species

BLM Sensitive Species

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 particular species. State natural heritage programs are typically involved as well, where applicable. Species are usually those that fall in 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;
- A 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 on the Wyoming State BLM [sensitive species page](#)³³.

USFS Sensitive Species

Rocky Mountain Region

The Rocky Mountain Region of the USFS has 173 identified sensitive species. These species are included on the USFS Region 2 sensitive species [webpage](#)³⁴.

Thunder Basin National Grassland

The Thunder Basin National Grassland (TBNG) lies in the northeast corner of Converse 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 colonies have grown significantly and have the ability to cause significant resource damage.

Thunder Basin Grasslands Prairie Ecosystem Association Conservation Agreement (TBGPEA CCAA/CCA/CA)

In 2017 the TBGPEA finalized a conservation agreement (CCAA/CCA/CA) spanning 13.2 million acres of sagebrush and shortgrass prairie. The agreement spans five counties, including Converse 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)

Medicine Bow-Routt National Forest

Management Indicator Species and Threatened, Endangered, Proposed, Candidate and Forest Service Region 2 Sensitive Species can be found [here](#)³⁶.

6.4.3 Threatened and Endangered Species Resource Management Objectives:

- A. Converse 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, under the Endangered Species Act in and adjacent to Converse County.
- B. Critical habitat exclusion analysis is completed for all lands within Converse County during the Endangered Species Act listing process including a local economic and social impacts analysis and critical habitat is only considered in those lands where the endangered species could currently survive.

6.4.4 Threatened and Endangered Species Priority Statements:

1. Converse County and other local governments should be notified of all proposed actions and final decisions 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.
2. Converse County supports the proposed rules for critical habitat exclusion and habitat definition as defined in the December 2, 2020 final regulations.
3. Federal agencies should comply with the applicable state and federal statutes, including preparation of an environmental impact statement when critical habitat is designated.
4. Should any introductions or re-introductions of threatened or endangered species occur in Converse County or on lands adjacent to the County the population should be designated as non-essential experimental populations.
5. Federal agencies should delist a species once population goals set out in recovery plans are achieved, in accordance with the Endangered Species Act.
6. Federal agencies should work with Converse 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.
7. Converse County generally supports the use of candidate conservation agreements with assurances (CCAA) for private land and candidate conservation agreements (CCA) for federal lands as a mechanism to provide habitat for candidate species while allowing current land uses to continue. The County expects federal agencies to uphold promises made in the CCAs and weigh their value in federal actions.
8. Any black-footed ferret management and introductions should not occur unless approved by local governments. Any effort to reintroduce black-footed ferret shall occur in



coordination with the Wyoming Game and Fish Department and the U.S. Fish and Wildlife Service as required in the 2020 Thunder Basin National Grassland Record of Decision.

9. Species should not be introduced or reintroduced within Converse County except when utilizing the 10J rule for experimental populations.
- 10.
11. Federal agencies should conduct a robust and full local economic analysis of all proposed critical habitat designations in Converse County and should the economic analysis indicate economic harm to Converse County the U.S. Fish and Wildlife Service should immediately exclude habitat from critical habitat designation.
12. 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 Converse County supports the development of a recovery plan within 18 months of the adoption of this Natural Resource Management Plan.
13. Recovery efforts for threatened and endangered species should be supported, which consider local interests and impacts and should evaluate, mitigate and support Converse County's custom, culture, economic viability and community stability.
14. Federal agencies should control predators negatively impacting special status, candidate, or listed species before restricting other multiple uses that could be conflicting.
15. 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.
16. Management actions which increase the population of any listed species in Converse County without an approved and specific recovery plan is not supported.
17. Federal agencies should support the continued use of existing valid permits and lease rights on lands with listed species wherever possible.
18. At a minimum, copies of legal descriptions showing the exact boundaries of all designated critical habitat shall be provided to Converse County.
19. For any species on the Endangered Species Act list, Converse County should be apprised, at minimum, annually of the progress of population recovery objectives for each species.

6.5 FISHERIES

6.5.1 History, Custom and Culture

Fishing along the North Platte River and its tributaries has been a traditional activity in Converse County, both for local residents and for visitors. Income for County residents is provided by activities such as selling supplies and equipment, outfit guiding, providing lodging, providing meals, and other services. The North Platte River provides many recreational opportunities in addition to fishing, such as float trips, bird and wildlife viewing, among others. The State Fair Grounds are located next to the North Platte River and the river provides numerous hours of entertainment for groups enjoying activities at the fairgrounds.

Fisheries support the recreation and tourism industries in Converse County. Fishing is an important recreation use of water resources within the basin (HKM Engineering Inc., 2002a). The combination of healthy fisheries and public access throughout the County's reservoirs, lakes, and



rivers provide diverse fishing opportunities that attract recreators. Healthy native fishery populations are also an indicator of watershed health. The Northeast River Basin is composed of four watersheds, Little Missouri River, Belle Fourche River, Cheyenne River, and Niobrara River. Within the Platte River Basin, the 'Pathfinder [Dam] to Guernsey' subbasin spans southern Converse County. These watersheds support a diversity of fisheries, from trout to channel catfish, bass, and walleye. (HKM Engineering Inc., 2002a; WWDC, 2006)

6.5.2 Resource Assessment and Legal Framework

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 user's needs. Refer to the WGFD page [here](#)³⁷ 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 Area for aquatic habitats throughout Wyoming. These areas are managed or protected to maintain viable and healthy populations of wildlife. For more information on Priority Area designations throughout the state refer [here](#)³⁸. (WGFD, 2015, 2020c)

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

Fishery Use

The southern half of Converse County contains more ideal fishery habitat and resources than the northern half of the county where there are no streams or rivers classified. This is indicative of the Northeast Wyoming Basin's flat drainages and common erodible soils not being conducive to fishery habitat. The Platte River Basin Water Plan reported 60,815 angler days/year for the 'Dave Johnston Power Plant to Glendo Dam' reach, which is located mostly within the County. The plan



also recorded 15,947 angler days/ year for the ‘Alcova Dam to Dave Johnston Power Plant’ reach, of which just under half of the river segment is located within Converse County (WWDC, 2006). 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 (spanning the norther portion of Converse County) in records prior to 2002. (HKM Engineering Inc., 2002a)

There is one stretch of blue-ribbon along the North Platte River, multiple red ribbon stretches (Deer Creek, Texas Creek, and LaPrele Creek), and several yellow ribbon stretches classified in the southern half of Converse County. The WGFD Fish Stream Classifications map can be found [here](#)³⁹. (HKM Engineering Inc., 2002a; WGFD, n.d.-d)

6.5.3 Fisheries Resource Management Objectives:

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

6.5.4 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. Converse 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.

6.6 WILD HORSES AND ESTRAY LIVESTOCK

6.6.1 History, Custom, and Culture

Under WFRHBA, BLM is required to maintain wild horse and burro population levels “in a manner that is designed to achieve and maintain a thriving natural ecological balance” and to establish appropriate management levels for the herd, considering the relationships with other uses of the public, and adjacent private lands (16 U.S.C. § 1333(a); 43 C.F.R. § 4710.3-1). The WFRHBA was specifically amended, then, to require “immediate” removal of excess horses. 16 U.S.C. § 1333(b)(2).



Wild horses, as they are now perceived, are not native to America's rangelands; they are feral animals. Their vulnerability to predators is limited and their population growth rate is high. BLM estimates the growth rate of the wild horse population to be 20 percent annually.

Once the inventory occurs and the AML has been set, if an overpopulation of wild horses exists, the BLM "shall immediately remove excess animals from the [public] range so as to achieve appropriate management levels (AMLs)." See 16 U.S.C. § 1333(b) (1) and (2) and 43 C.F.R. § 4720.1 ("Upon examination of current information and a determination by the authorized officer that an excess of wild horses ... exists, the authorized officer shall remove the excess animals immediately..."). "Excess animals" are defined as those that must be removed in order to preserve and maintain a thriving natural ecological balance and to preserve the "multiple use relationships" in an area. See 16 U.S.C. § 1332 (f). As stated in another section of the WFRHBA, "[A]ll excess animals" must be removed by the BLM "so as to restore a thriving ecological balance to the range, and to protect the range from deterioration associated with overpopulation" to preserve and maintain the "multiple use relationship in that area." See 16 U.S.C. § 1333 (b)(2). When a determination is made that there is an "excess," action is immediately required because the "endangered and rapidly deteriorating range cannot wait." *Blake v. Babbitt*, 837 F. Supp. 458, 459 (D. D.C. 1993).

According to the Tenth Circuit, the BLM must make two determinations before the BLM's duty to remove excess animals is triggered. *Wyoming v. United States Department of the Interior*, 839 F.3d 938 (10th Cir. 2016). The first determination is that an overpopulation exists on a given area of the public lands. *Id.* at 944. This is shown when an area exceeds its AMLs as discussed above. The second determination is that "action is necessary to remove excess animals." *Id.* If a determination has not been made by the agency that an action is necessary, then the agency does not have a duty to remove those excess horses. *Id.*

Although there is no federal statute requiring private landowners to allow wild horses to graze on their private lands, private landowners cannot remove the horses; the BLM must be notified of any trespass horses. The WFRHBA mandates that the BLM, once notified, must "immediately" remove trespass wild horses from state and private land.

Wild horses have been problematic for federal land grazing permittees since the passage of the WFRHBA. In recent years, the BLM has been unsuccessful in completing gathers to reduce the numbers of wild horses on rangelands. Many HMAs are significantly over AML, causing harm to rangelands. HMAs are not fenced, allowing horses to cause degradation on private and state lands.

6.6.2 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 Converse 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 Converse 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).

6.6.3 Wild Horse and Estray Livestock Resource Management Objectives:

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

6.6.4 Wild Horses and Estray Livestock Priority Statements:

1. Converse 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 Converse 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

Tourism and recreation on public lands in Converse County are a contributor to the custom, culture, and economy of the area. The County is unique in the recreational opportunities offered due to the diverse topography found across the county. From the plains to the north, to the mountains to the south, and with the North Platte River bisecting the center, many opportunities abound for the outdoor enthusiast. Traditionally, many residents and visitors prefer to recreate, camp, and picnic in the developed recreation areas. However, as popularity increases, dispersed camping on the national forest and grasslands is growing in frequency.

The tourism recreation has remained centered around outdoor activities but has changed some in the County. Some agricultural operations have diversified to include recreation and tourism including outfitting. The use of motorized vehicles like off-highway vehicles (OHVs) for recreational use has significantly increased over the last several decades both for use as transportation to get to other recreational activities and as a recreational activity itself. Hunting and fishing opportunities within the area bring people both from other parts of Wyoming and the world to the County and is an important resource for tourism.

One of the largest tourist attractions to Converse County is the Wyoming State Fair. The Wyoming State Fair was officially started in 1905 and has always been an event that showcases the culture and heritage of Wyoming. It is a celebration of all things Wyoming and showcases pride in Wyoming heritage, agriculture, industry, youth, entrepreneurs, artists, and many others. (Wyoming State Fair, 2021)

7.1.2 Resource Assessment and Legal Framework

Converse County has a wide array of recreational and tourism opportunities for residents and visitors. Visitors to these areas have a direct impact by drawing on county-provided infrastructure such as law enforcement, emergency medical, and waste disposal services and have a major impact on the area economy and tax base. Store owners, restaurants, hotels and motels, outfitters, and many more interests depend on seasonal recreation and tourism for their livelihoods. Activities that traditionally define recreation and tourism in the County, include, but are not limited to big game hunting, trapping, fishing, off-road vehicle use, winter sports such as snow machining and cross-country skiing, mountain biking, hiking, camping, bird and wildlife watching. These activities are done on BLM and USFS lands within the county. The North Platte River flows through the County and into the nearby Glendo Reservoir providing water sport opportunities including rafting, fishing, and water skiing. There are three museums within Converse County that house artifacts from the Oregon Trail era. The Paleontological Museum in Glenrock has an extensive collection of Jurassic-age dinosaur bones and offers opportunities for dinosaur digs.

The Ayres Natural Bridge Park is in Converse County and is one of only three natural bridges in the U.S. with water beneath. Ayres Natural Bridge was one of Wyoming's first tourist attractions



and is now a park that offers beautiful scenery, a picnic area, hiking paths, a sand volleyball court, fishing areas, and horseshoe pits. There is some limited camping available to recreational vehicles. (Converse County, 2014)

Another tourist location within the County is Camp Douglas which was an internment camp for prisoners of war during World War II. The only remaining building of the camp is the officer's hall which is listed on the National Historic Register. There are large murals, painted by Italian prisoners of war, that cover the walls of the building. (Converse County, 2014)

Other recreational sites in Converse County include:

- County Park (Boxelder Canyon)
- Converse County Shooting Range
- Deer Creek Stage Station
- Esterbrook Recreation Area
- Glenrock Buffalo Jump
- Medicine Bow National Forest
- North Platte River
- Paleo Museum – Glenrock
- Rock in the Glen
- Thunder Basin National Grassland
- Wyoming State Fairgrounds – Wyoming State Fair
- Wyoming State Pioneer Museum

7.1.3 Tourism and Recreation Resource Management Objective:

- A. Recreational and tourism resources are managed to promote access and availability to the public for both tourism and local recreational uses, while maintaining benefits to Converse County's economy across important industries including agriculture, mineral development, and tourism.

7.1.4 Tourism and Recreation Priority Statements:

1. Federal agencies should coordinate with Converse 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.
2. Coordination efforts should rely heavily on National Visitor Use Monitoring data when development forest and grassland plans, policies, and projects.
3. Encourage wide dispersion of recreational activities in the forest and on the grasslands to avoid over-use crowding.
4. Converse County should 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 recreation and tourism opportunities on public lands in Converse County.
5. Federal agencies should support access to recreational opportunities on public lands within Converse County.



6. Federal agencies are encouraged to promote responsible tourism through educational outreach that explains the historical significance of areas, sites, and roads.
7. 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 Converse County while supporting other approved uses and associated private property rights.
8. Federal agencies should coordinate with Converse 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.
9. Federal agencies should coordinate and consult with Converse County to manage tourist and recreational activities based on the ability of natural resources to sustainably handle the level of impact.
10. Federal agencies should coordinate with Converse County when new special recreation permits are requested.
11. Federal agencies should encourage recreational activities on the lands in Converse County that increase the capacity for federal and state land resources to provide more economic return to the County.
12. Unless otherwise approved by Converse County, federal agencies should not favor one type of recreation to the exclusion of others.
13. Converse County supports the Wyoming State Fair staying within Converse County.

7.2 LAW ENFORCEMENT AND EMERGENCY MANAGEMENT

7.2.1 History, Custom, and Culture

Law enforcement is critically important to the citizens of Converse County. The Wyoming Livestock Board partners with the Converse 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 Converse County. Law enforcement in Converse County includes actions on both public and private lands. Public lands within Converse 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 Converse 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 Converse 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 Converse 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 State 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 States Constitution Article IV, Section 3, Clause 2. The Assimilative Crimes Act allows federal law enforcement agencies who lacks 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.-a)

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.-b)

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 specialist.
- They can conduct case work across county lines.
- They collaborate with other states livestock investigators.
- They partner with county Sheriff Departments on cases
- They provide training for other state law enforcement agencies.

Converse County has an agreement with the Medicine Bow National Forest on law enforcement within the County.



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, and 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 2 (Converse, Natrona, and Niobrara counties) [Hazard Mitigation Plan](#)⁴⁰ 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 Converse County is discussed in Section 3.4 Wildfire Management. Converse County has a county fire warden and there are two fire departments throughout the County.

- Douglas Fire Department
- Glenrock Fire Department

Communication and Technology

Communications and associated technology are essential to the long-term viability of Converse 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 Converse County for health and safety of its citizens, economic development, business development and equal education opportunities.



In January of 2019, [Executive Order 13821](#)⁴¹ was signed which ordered 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 Resource Management Objectives:

- A. Law enforcement and emergency services have unfettered access to public lands to protect the health, safety, and welfare of the residents and visitors of Converse County.
- B. Communication infrastructure is developed on public lands to ensure emergency communication services exist throughout Converse County and citizens and visitors to the County can seek emergency assistance throughout the entire County.

7.2.4 Law Enforcement Priority Statements:

1. Converse County Sheriff's Office should be notified of all federal law enforcement actions within Converse County.
2. Converse County has traditionally had an agreement with the Forest Service for law enforcement.
3. Converse County requires that federal agencies allow safe and unrestricted access to federal land for law enforcement and emergency services.
4. Federal agencies should work and coordinate with Converse County and other surrounding counties and agencies within the region to ensure that 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 and surrounding areas.
5. 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 Converse County.
6. Federal agencies should encourage the introduction of the newest technology for accessibility from all areas within Converse County. Including siting of communication towers on public ground.

7.3 ECONOMIC AND SOCIOECONOMIC CONSIDERATIONS

7.3.1 History, Custom, and Culture

Natural resource products have always been at the heart of the economics in Converse County. In its early settlement, people came to Converse County to utilize its rich grassland and rangeland resources for livestock grazing. Later exploration of minerals and oil and gas led to a boom in the energy sector of the County. The railroad industry also had an economic impact on the county as it provided a means to export resources out of the state and boost supply and demand of natural resource products such as livestock, coal, and other materials.

In the late 1800's, the Elkhorn, Fremont, and Missouri Valley Railroad made its way across the County. The railroad provided two essential elements to the County's early economic



development: transportation for livestock and need for fuel. Railroads provided an efficient means of transporting cattle and sheep to eastern markets, thus making ranching a more viable business venture. With the railroads and the Homestead Statutes, the County soon became a thriving agricultural center. Agriculture continues to play an essential part in the economic diversity of the County. Most of the County's land mass is still occupied by family owned and operated ranches. These ranches are comprised of both deeded and leased lands (state and federal grazing leases) to form an efficient operating unit. These integrated ranches have been an economic staple of the County for over 100 years.

The second element essential to the County's economic development was the necessity of coal, used by early railroads to fuel their locomotives. This need for coal was the beginning of the County's long history of mineral exploration and development. From these early coal mines to the oil and gas discoveries of the 1920's, 50's, and 60's, the uranium development in the 70's and 90's, and the massive coal mines of today, mineral exploration on both public and private lands has played a paramount role in providing jobs and a healthy tax base.

The development and success of the County's economy has long depended on the hard work and the pioneering spirit of its citizens in cooperation with the local, state, and federal government entities.

7.3.2 Resource Assessment and Legal Framework

Converse County is 14% federally owned land with 124,736 acres of land under federal management. The population in the county is approximately 14,312 people. The largest employment industries in the county are mining and local government. However, the livestock and agricultural industries account for a substantial portion of Converse County's income, the oldest continuing industries in the county, and are still the single largest users of public lands within the County. The service industry continues to grow in Converse County and contributes to the area's culture. Some cattle and sheep ranchers use grazing leases on federal lands to maintain healthy and productive land and stock. In June 2018, Converse County, the University of Wyoming Extension, the Wyoming County Commissioner's Association, and the Wyoming Department of Administration & Information developed a socioeconomic profile of Converse County. This document and all updated socioeconomic profiles for Converse County can be found [here](#)⁴².

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). In 2020, a new final rule was issued with reforms to NEPA, with the change in administration this is likely to change.



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.” The new regulations clearly demarcate that only actions that include major federal involvement and are major in scale are those actions that require NEPA. This means that those projects that the government has a minor role in are not included. This also means that minor actions (such as allowing certain range improvements on a grazing allotment) are not included. See 85 F.R. 43304 (July 16, 2020). As of the finalization of this plan the rule is being challenged by several states and organizations.

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.” *Id.* at (b). 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. *Id.* at (c).



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, policies, 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)

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.

7.3.3 Economic and Socioeconomic Resource Management Objectives:

- A. The socioeconomic and economic viability of Converse County is prioritized, protected, and enhanced in all federal actions or decisions.

7.3.4 Economic and Socioeconomic Priority Statements:

1. Converse 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 Converse County.
3. Converse County supports “no net loss” in the County economic base due to federal agency decisions.
4. Federal agencies should include Converse 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 Converse 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. Converse 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. Converse County supports the achievement of a sustainable balance between economic, recreational, and conservation use of lands for economic growth and quality of life.
9. Converse County supports federal Payments in Lieu of Taxes, severance taxes from oil and gas development, and grazing fees through the Bankhead Jones Farm Tenant Act.
10. Federal agencies should discourage the use of informal policies or unofficial classifications by federal agencies to withhold high energy potential areas from leasing or development.



11. A full analysis should be required by the federal agencies on the impact each proposed decision or federal action will have on the local Converse County economy.

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CHAPTER 8: AGRICULTURE 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.

Public land grazing is essential to maintaining the agricultural industry in Converse County. Public lands provide livestock forage during the summer months which allows private lands to grow hay that is used as forage in the winter months. Without this hay production ranchers would have to purchase winter feed which can be expensive and may not be economically feasible for the operator. Agricultural land also provides open space that is valuable for wildlife habitat, aesthetics, and in some area's recreational opportunities.

8.1.2 Resource Assessment and Legal Framework

Agriculture is an important industry in Converse County. In 2017, 95% of the land in Converse County was devoted to agriculture. Most of the agricultural land is pasture/rangeland, while only 4% of the County was designated cropland. The 2017 Converse County Census of Agriculture Profile ranks the County as seventh in the state for livestock products and tenth for crop production. Converse County ranks second in the state for sheep, goats, and wool; fifth in the state for horses, ponies, mules, burros, and donkeys; and eighth in the state for milk from cows. The 2017 total market value for livestock products was \$49,444,000 and for crop products was \$6,902,000. Agriculture, particularly livestock, is a major source of revenue and employment for Converse 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, Converse County had 65,241 acres of irrigated land in 2017. This makes the retention and proper management of water rights a priority for the citizens of Converse 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” (Wyo. Stat § 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 Converse County.
- B. Federal actions affecting agricultural production are made in consultation with Converse County.

8.1.4 Agricultural Production Priority Statements:

1. Federal agencies should support agriculture production and the responsible use of natural resources to sustain agricultural enterprises.
2. 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 encouraging innovative techniques that improve the efficiency of crop and livestock production.
3. 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.
4. Right to Farm laws should be considered when coordinating on federal and state land use decisions in Converse County.
5. Federal agency actions should be consistent with Right to Farm laws, to the extent applicable.
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 Converse 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, U.S. 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 Converse County and promote their sustainability.
12. In conjunction with ranch owners/managers, local, state and federal planning partners should develop economically sustainable strategies to maintain working ranches.
13. 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.

8.2 LIVESTOCK GRAZING

8.2.1 History, Custom, and Culture

The vegetation in Converse 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. 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 public lands is a critical piece of livestock operations in Converse County. While limited but critical the intermingled BLM, USFS, and private lands allow ranching to continue in the County.

Livestock grazing has been an important industry in Converse 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

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 makes 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 Converse County.

There are some areas in the County that are in intermingled land ownership. 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.

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 management of the resources, and can be used to mitigate invasive species impacts, wildfire impact, and can improve rangeland health.

Livestock grazing, irrigated farming and other intensive agricultural practices 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.

The Taylor Grazing Act 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 the intent of FLPMA was 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 Taylor Grazing Act 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 Taylor Grazing Act 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.

There are 141 BLM grazing allotments in Converse County with approximately 25,244 AUMs on 129,947 acres.

BLM Range Improvements

All range improvements on BLM lands must be authorized by the agency. There are two options for authorization: (1) a Cooperative Range Improvement Agreement or (2) 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 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 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.

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 OBGAs 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.

Livestock grazing within the Medicine Bow National Forest and Thunder Basin National Grassland was historically important to settlers within Converse County. Within Converse County there are 73 USFS grazing allotments. There are approximately 41,398 AUMs on 259,284 acres in Converse County. Of this approximately 35,910 AUMs are on 173,375 acres of the Thunder Basin National Grassland in northern Converse County and the remaining 5,488 AUMs are on 76,330 acres of the Medicine Bow National Forest in the southern part of the county.

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.

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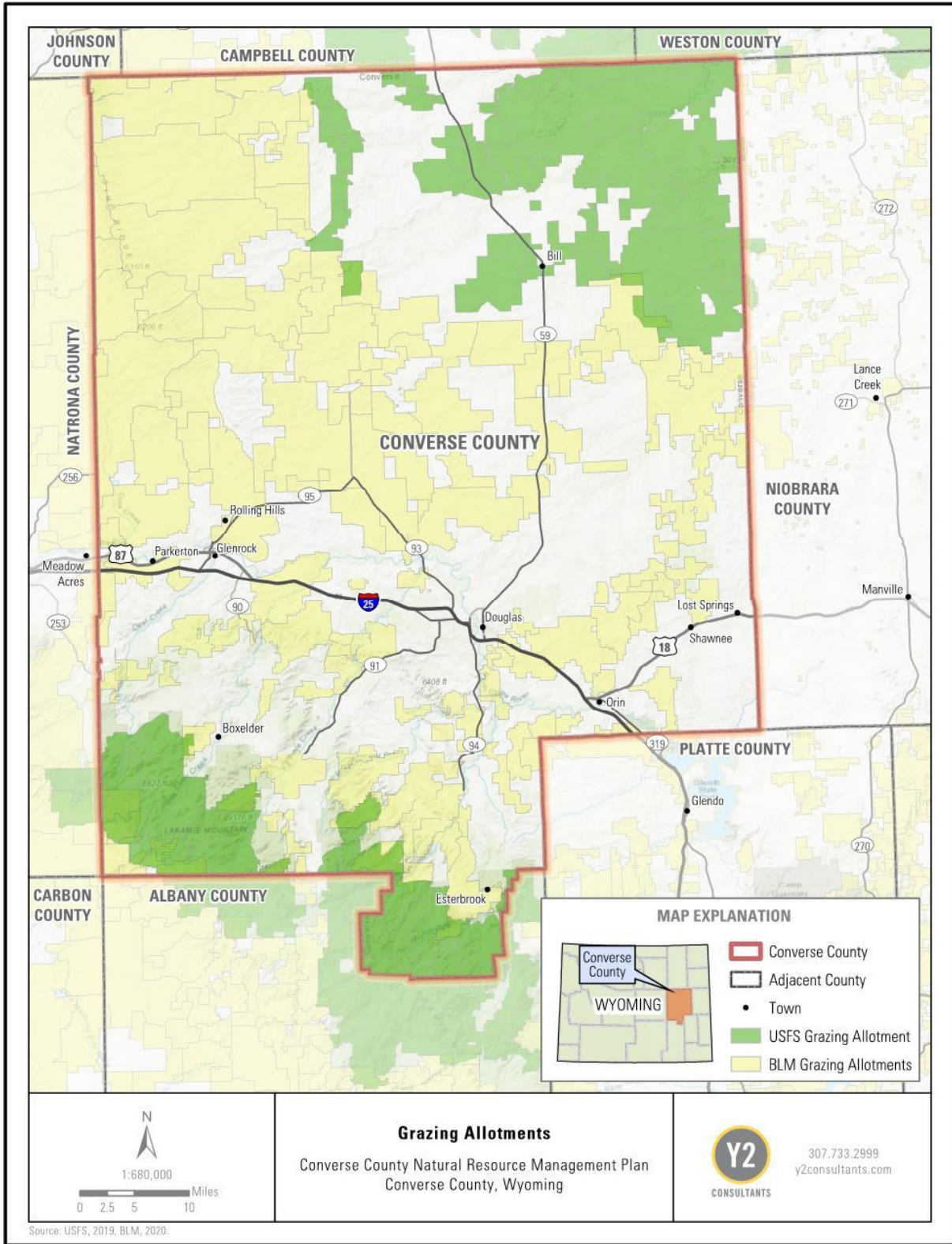


Figure 20. Converse County grazing allotments on USFS and BLM lands.



8.2.3 Livestock Grazing Resource Management Objectives:

- A. Livestock grazing is maintained as a viable major component of the economy, custom, and culture of Converse County.
- B. Converse County is consulted early in the scoping process whenever a proposed decision will impact grazing, local agriculture producers, and/or the economy.
- C. Federal decisions affecting grazing use best available scientific information and localized baseline and monitoring data are given heavier weight than regional, state, or national data.

8.2.4 Livestock Grazing Priority Statements:

- 1. Federal agencies should utilize rangeland standards and guidelines that are scientifically proven and peer reviewed specifically for Converse County.
- 2. Federal agencies should work in coordination with local grazing associations to ensure that all allotments that are not officially closed are being appropriately managed and that allotment retirements do not occur.
- 3. Federal agencies should support range livestock production that is environmentally and economically viable.
- 4. Federal agencies should coordinate with the Wyoming Game and Fish Department to ensure that wildlife and big game numbers do not outstrip habitat and to reduce conflicts between rangeland resources for livestock grazing, wildlife forage, and habitat needs.
- 5. 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.
- 6. 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.
- 7. Federal agencies should facilitate range improvement projects and enhancement of habitat to benefit rangeland, soil, water, livestock, and wildlife.
- 8. Federal agencies should make range improvement management decisions on an allotment basis.
- 9. Federal agencies should not restrict the development of livestock water or other rangeland improvements.
- 10. Federal agencies should work cooperatively with the local ranchers and other interested parties to address resource concerns on a site-specific basis.
- 11. Federal agencies should work with producers to increase productivity of rangeland in order to ensure animal unit months are set at maximum sustainable levels on rangelands in Converse County.
- 12. Federal agencies should use mechanisms to allow flexibility for grazing allotments or grazing lease agreements.
- 13. National Environmental Policy Act documents addressing the impacts from field development should also provide for mitigation to the affected ranchers for loss of grazing and disruption.
- 14. Livestock grazing management decisions shall be made based on the best available scientific information that is applicable to the rangeland resources in Converse County.



15. Site-specific reviews conducted with the permittee shall be used to determine the appropriate grazing suspension period post-fire.
16. Full site-specific economic and resource analysis of suspending grazing for allotment closures must be completed within one-year of closure.
17. 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.
18. The reduction of domestic livestock grazing animal unit months to provide additional forage for another species or strictly for conservation purposes is not supported.
19. 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.
20. The Bureau of Land Management and U.S. Forest Service should make timely processing of all term grazing permit renewals a priority in Converse County.
21. 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.
22. 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.
23. 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.
24. Federal agencies should consult and coordinate with Converse County and each permittee to ensure that overall rangeland health is being maintained through monitoring and implementation of well-designed livestock grazing management plans on all public land allotments.
25. Converse County opposes the conversion of livestock animal unit months (AUMs) to wildlife AUMs.

8.3 PREDATOR CONTROL

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 livestock, 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 stockgrowers 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.

8.3.2 Resource Assessment and Legal Framework

The Animal and Plant Health Inspection Service (APHIS) is located within the 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 have 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 Converse County Predator Management District. Converse County also maintains an appointed Predator Management Board. Within the County, the Converse County Predator Control Board directly administers the predator control 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. An example of this is the gray wolf, which is managed as a predator except for the populations designated as game animals. For more information on wolf management across the state refer to WFGD's [Wyoming Gray Wolf Management Plan](#)⁴³.

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 Converse County and the surrounding area include mountain lion and black bear (game animals), bobcat (furbearer), and 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 Converse 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 protecting the health and welfare of citizens of Converse County.



- B. Federal agencies coordinate with Converse County in the determination of any impact of management of predator species.
- C. Control of predatory animals is supported 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 protect private lands bordering federal and state lands from predatory animals.
2. Federal agencies should retain and expand animal damage control plans for the protection of livestock and crops through the Converse County predator board and the control of disease-carrying animals.
3. 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.
4. Federal agencies should support management of predator populations at their appropriate levels.
5. Predatory animals and predacious birds, which are disease-bearing vectors that are recognized as threats to public health should be controlled.
6. 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 Converse County.
7. 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.
8. Predator control measures are supported on all lands within Converse County.
9. 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.
10. When addressing a decline in sensitive species, predator control shall be employed prior to placing any restrictions on resource-based industries like livestock grazing. Federal agencies should coordinate with Converse 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 Converse County.
11. Wildlife management agencies should dedicate financial and personnel resources to predator management.
12. Federal agencies should support funding for predator control.



8.4 NOXIOUS WEEDS, INVASIVE SPECIES, 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 control, etc.);
- Mechanical & 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 (commercial applicator training and certification, etc.);
- Rodent control (minimize disease threats and control losses);
- Board of County Commissioners actions (emergency declarations, budgeting, public meetings, etc.) (Wyoming Weed and Pest Council, n.d.).

Converse 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 Converse 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).

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.

The current federal noxious weeds list is maintained on the USDA Plants Database (NRCS, 2019). The declared Converse County noxious weeds are listed in the Wyoming *Weed and Pest Declared List by County* (Wyoming Weed and Pest Council, 2019).

The County recognizes Weed and Pest’s efforts in helping coordinate efforts with State and Federal Agencies for cheatgrass control due to its threat to grassland and sagebrush ecosystems, wildlife and livestock grazing and health. 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. A number of 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. White pine blister rust (*Cronartium ribicola*), pine borers (*Dendroctonus* spp.), and spruce budworms (*Choristoneura* spp.) can also be problem invaders in the forested regions of the County.



U.S. Forest Service

The USFS has a [National Strategic Framework for Invasive Species Management](#)⁴⁴ 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 has a ROD for [a Final Programmatic EIS for National Vegetation Treatments using Aminopyralid, Fluroxypyr, and Rimsulfuron on BLM lands](#)⁴⁵ in 2016 and tiers to the [2007 Final Programmatic EIS for Vegetation Treatments Using Herbicides on BLM Lands in 17 Western States](#)⁴⁶. The BLM keep the National Invasive Species Information Management System (NISIMS) database which provides a comprehensive tool for managers to use to standardize collection of invasive species and treatment data. The database can be found [here](#)⁴⁷.

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 provides a 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 Weeds, Invasive Species, and Pests Resource Management Objectives:

- A. Noxious weeds, invasive species, and pests (plants and animals) are managed to maintain healthy ecological levels using best management practices.
- B. Federal agency projects include actions for the prevention, early identification, detection, and aggressive treatments for noxious and invasive species and pests throughout Converse County.
- C. Federal agencies coordinate and communicate all invasive, noxious, pest, or weed management actions and plans with the Converse County Weed and Pest.

8.4.4 Noxious Weeds, Invasive Species, and Pests Priority Statements:

- 1. Converse County encourages the cooperation of local, state, and federal governments for procurement of additional funding for Converse County Weed and Pest for the control of weeds on all lands in the County.
- 2. Federal agencies should support Converse 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 support cooperative agreements to assure the protection of all lands from noxious weed invasion or occupation.
- 4. Federal agencies should communicate, coordinate, and consult with local and state governments on education about the control of potential invasive species.



5. Federal agencies should recognize the State of Wyoming Noxious Weed Act (Wyo. Stat. §11-5-102(a)(xii)) and assist Converse County Weed and Pest in monitoring efforts of invasive plant species and noxious weed infestations throughout the County.
6. Converse County encourages protection of private property bordering federal and state lands from noxious weeds, invasive species, and pests, including the use of preventative management and controls, such as quarter mile buffer zones along borders on federal and state lands.
7. Converse 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.
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. Federal agencies should allow Converse 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 consider bio-agents for invasives species control specific to the targeted weed.
13. Federal agencies should elevate the awareness and priority of controlling any new or existing infestations of Cheatgrass, Ventenata, and/or Medusahead rye in Converse County.
14. Converse County supports habitat enhancement projects that have a defined and funded weed control and monitoring plan over the anticipated life of the enhancement.
15. Converse County supports the use of pesticides.
16. Federal agency processes should consider adaptive or new control techniques and pesticides.
17. Federal agencies should implement weed control practices that include mapping as an integrated management tool.
18. 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 Converse County.
19. Converse 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.
20. Federal agencies should use aerial equipment such as drones, helicopters, or fixed wing as a critical use for weed monitoring and control.
21. Federal agencies should support ongoing research and experimental options for the management of invasive, noxious species, and pests.
22. Converse County supports use of rodenticide such as Rozol for prairie dog control.



23. 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.
24. Federal and state land management agencies should control prairie dogs on federal lands to prevent range degradation, reduction of available forage to lessees, and expansion of prairie dogs from federal lands to state and private lands.
25. 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. Converse County opposes any translocation and/or introduction of prairie dogs within 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

CAA- 1970 Clean Air Act

CCA – Candidate Conservation Agreements

CCAA – Candidate Conservation Agreements with Assurances

CDC – Center for Disease Control

CEQ- Council on Environmental Quality

CLG – Certified Local Government

CRP – Conservation Reserve Program

CWA – Clean Water Act

DEQ- Department of Environmental Quality

DOD- Department of Defense

EA- Environmental Assessment

EIS- Environmental Impact Statement

ENSO- El Niño-Southern Oscillation

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

FUDs – Formerly Used Defense Sites

GHG- Greenhouse Gas

GLO - General Lands Office

GPC—Groundwater Pollution Control

IMR – Intermountain Range

IPCC- International Governmental Panel on Climate Change

LUP- Land Use Plan

LWCF- Land and Water Conservation Fund Act of 1964

MOA - Memorandum of Agreement

MOU - Memorandum of Understanding

MUSY- 1960 Multiple Use Sustained Yield Act

NAAQS – National Ambient Air Quality Standards

NAO- North Atlantic Oscillation

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

NNDSS - National Notifiable Diseases Surveillance 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

PDO -Pacific Decadal Oscillation

PFC—Proper Functioning Condition

PILT- Payments In Lieu of Taxes

RTP – Recreational Trails Program

SWAP – State Wildlife Action Plan

UNEP- United Nations Environment Programme

USACE – US Army Corps of Engineers

USFS- United States Forest Service

USFWS – US Fish and Wildlife Service

USGS- United States Geological Survey

USRS- United States Reclamation Service

WDEQ – Wyoming Department of Environmental Quality

WEQA – Wyoming Environmental Quality Act



WGFD – Wyoming Game and Fish Department
WMO- World Meteorological Organization
WOGCC – Wyoming Oil and Gas Conservation Commission
WQD—Wyoming Quality Division
WSA – Wilderness Study Area
WSFR – Wildlife and Sport-Fish Restoration
WWDC – Wyoming Water Development Commission
WWDO – Wyoming Water Development Office
WYDEQ- Wyoming Department of Environmental Quality
WY G&F- Wyoming Game and Fish Department
WYDOT- Wyoming Department of Transportation

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APPENDIX A: WEBSITE LINKS

1. <https://conversecounty.org/>
2. https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blpolicymanual1283.pdf
3. <https://www.usbr.gov/main/goj/>
4. <https://www.epa.gov/quality/about-epas-quality-program>
5. https://www.publications.usace.army.mil/Portals/76/Publications/EngineerRegulations/ER_25-1-110.pdf
6. https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5409879.pdf
7. <https://www.fws.gov/stand/>
8. <https://deq.wyoming.gov/>
9. <https://wyoshpo.wyo.gov/index.php/nr-by-county-test/9-carbon-county?limitstart=0>
10. <https://www.fs.usda.gov/science-technology/geology/paleontology>
11. <https://www.usbr.gov/cultural/>
12. <https://www.fws.gov/historicPreservation/crp/index.html>
13. <https://www.blm.gov/paleontology>
14. <https://www.nps.gov/subjects/fossils/fossil-protection.htm>
15. https://eplanning.blm.gov/public_projects/63199/200115978/20036679/250042876/Casper%20RMP-ROD%20Updated%202020.pdf
16. <https://eplanning.blm.gov/eplanning-ui/project/66551/570>
17. <https://www.fs.usda.gov/detail/mbr/landmanagement/?cid=stelprd3802740>
18. https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fsmrs_072450.pdf
19. https://eplanning.blm.gov/public_projects/lup/63199/77982/87335/map10-VisualResourceManagement.pdf
20. https://drive.google.com/drive/folders/1GK_h21NliqzaA3lhKWRyriHkk8cqMQiM
21. https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5163440.pdf
22. https://www.blm.gov/sites/blm.gov/files/documents/files/PublicRoom_Wyoming_StandardsandGuidelinesforHealthyRangelands1997.pdf
23. <https://wwdc.state.wy.us/irrsys/2019/raterept.html>
24. <https://deq.wyoming.gov/>
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/Habitat/Habitat-Plans/Wyoming-State-Wildlife-Action-Plan>
29. <https://wgfd.wyo.gov/WGFD/media/content/PDF/Habitat/SWAP/Wyoming-SGCN.pdf>
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APPENDIX B: STEERING COMMITTEE MEMBERS

Member	Affiliation
Jim Willox	County Commissioner
Rick Grant	County Commissioner
Mike Colling	County Commissioner
Robert Short	County Commissioner
Tony Lehner	County Commissioner
Michelle Huntington	Converse County Conservation District

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APPENDIX C: CONVERSE COUNTY 2018 SOCIOECONOMIC STUDY

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