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Presidential Documents

Title 3—

The President

Executive Order 13781 of March 13, 2017

Comprehensive Plan for Reorganizing the Executive Branch

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Purpose*. This order is intended to improve the efficiency, effectiveness, and accountability of the executive branch by directing the Director of the Office of Management and Budget (Director) to propose a plan to reorganize governmental functions and eliminate unnecessary agencies (as defined in section 551(1) of title 5, United States Code), components of agencies, and agency programs.

Sec. 2. *Proposed Plan to Improve the Efficiency, Effectiveness, and Accountability of Federal Agencies, Including, as Appropriate, to Eliminate or Reorganize Unnecessary or Redundant Federal Agencies*. (a) Within 180 days of the date of this order, the head of each agency shall submit to the Director a proposed plan to reorganize the agency, if appropriate, in order to improve the efficiency, effectiveness, and accountability of that agency.

(b) The Director shall publish a notice in the *Federal Register* inviting the public to suggest improvements in the organization and functioning of the executive branch and shall consider the suggestions when formulating the proposed plan described in subsection (c) of this section.

(c) Within 180 days after the closing date for the submission of suggestions pursuant to subsection (b) of this section, the Director shall submit to the President a proposed plan to reorganize the executive branch in order to improve the efficiency, effectiveness, and accountability of agencies. The proposed plan shall include, as appropriate, recommendations to eliminate unnecessary agencies, components of agencies, and agency programs, and to merge functions. The proposed plan shall include recommendations for any legislation or administrative measures necessary to achieve the proposed reorganization.

(d) In developing the proposed plan described in subsection (c) of this section, the Director shall consider, in addition to any other relevant factors:

(i) whether some or all of the functions of an agency, a component, or a program are appropriate for the Federal Government or would be better left to State or local governments or to the private sector through free enterprise;

(ii) whether some or all of the functions of an agency, a component, or a program are redundant, including with those of another agency, component, or program;

(iii) whether certain administrative capabilities necessary for operating an agency, a component, or a program are redundant with those of another agency, component, or program;

(iv) whether the costs of continuing to operate an agency, a component, or a program are justified by the public benefits it provides; and

(v) the costs of shutting down or merging agencies, components, or programs, including the costs of addressing the equities of affected agency staff.

(e) In developing the proposed plan described in subsection (c) of this section, the Director shall consult with the head of each agency and, consistent with applicable law, with persons or entities outside the Federal

Government with relevant expertise in organizational structure and management.

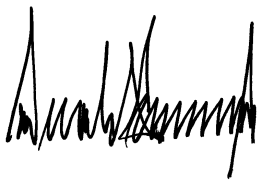
Sec. 3. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
March 13, 2017.

[FR Doc. 2017–05399
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The Kansas Natural Resource Coalition

A Response of Local Government to:

OMB's Comprehensive Plan for Reforming Federal Government and Reducing the Federal Civilian Workforce

And Executive Orders 13781, 13790 - Executive Branch Reorganization Program

Title	Department / Agency	Issue Description	Authorities / References	History	Proposal
Delegation; Agency Litigatory Defense, and Judicial Deference	All	Woodrow Wilson believed Americans would best be served by an administrative government that was beyond the influence of partisan politics, and that independence from the populace would lead to science-based decision-making and better government. Wilsons progressive philosophy was adopted and accelerated by FD Roosevelt, when Federal agencies were added and the executive branch was significantly expanded. The exponential rise of administrative government brought litigation on the question of whether Congress could legitimately delegate its authority to the executive branch. Early Supreme court case law was definitive in determining Congress **could not legitimately delegate its prerogatives;** however, courts have stopped short in strike downs, rewrites, remands and other punitive actions, and the Roosevelt, Johnson, Carter, Clinton, Obama and other administrations have unliterally persisted with expansion of the executive branch of government. Over time, neutralization of the non-delegation doctrine combined with a passive judiciary has allowed Federal agencies unbridled preeminence to create law through regulations, policies, directives, and other administrative actions. The current legal landscape, case law, and deference afforded federal agencies could not be more problematic for plaintiffs who challenge federal policies. When litigation is brought against an agency, from the *onset*, the judiciary defers to the agency in interpreting its own rules, decisions or the imposition of penalties. There are three forms of judicial deference to the agencies that should be addressed: 1. *Chevron* deference - Where the court defers to the agency's own interpretation of the statutes it is charged to administer or which are the subject of litigation;	*Field v. Clark* 143 U.S. 649, 692 (1892) *Buttfield v. Stranahan* 192 U.S.470 (1904) *Panama Refining Co. v. Ryan* 293 U.S. 388 (1935) *Carter v. Carter Coal Co.* 298 U.S. 238 (1936) *Bowles v. Seminole Rock & Sand Co.* 325 U.S. 410 (1945) *Baltimore Gas & Electric Co. v. Natural Resources Defense Council, Inc.* 462 U.S. 87 (1983) *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.* 467 U.S. 837 (1984) *Auer v. Robbins*, 519 U.S. 452 (1997) America's Administrative State: The origins and Consequences of Judicial Deference to Federal Agencies, Richard O. Faulk, George Mason University (2016).	The nation's founders distrusted centralized power in government, and in response created a check-and-balance system that distributes and allocates power between the Executive, Judicial, and Legislative branches of government. While the Administrative Procedures Act (APA) mandates that courts are the only authority for interpreting congressional intent and adjudicating issues, the judiciary unnecessarily and inappropriately continues to defer to executive agencies during procedural, litigative processes. One example of congressional intent, taken form the House Committee Report during promulgation of the APA, illuminates the importance of an independent judiciary: "*. . . requires courts to determine independently all relevant questions of law, including interpretation of constitutional or statutory provisions.*" Nothing in the Constitution, the APA, or any other controlling authority requires the judiciary to prefer federal agencies in litigation. In fact, the Constitution's independent judgement mandate and the structural language of APA mandate the opposite.	The President of the United States has great latitude to restructure how executive agencies defend their rules and actions during litigation. We recommend the issuance of a directives or executive orders to effect the following: 1. **Consistency and Delegation Review** - All executive agencies should be directed to review, report, and demonstrate that their rules, regulations, directives and internal policies are clearly and fully consistent with the organic statutory authorities upon which those rules are based. 2. Any agency rule, mandate, policy or directive for which no congressional authority can traced should be rescinded through the appropriate rulemaking processes. 3. For all proposed rules, require agencies to **demonstrate** consistency with congressional intent and authorities. 4. During litigation, constrain executive agencies from interpretation of their own rules, appropriately deferring to council or the courts. 5. Consider legislation that regulates and structures the process executive agencies use when interpreting their own rules.

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		2. *Auer* deference – Court deference to agency interpretations of their own rules, regulations, or policies - even if they are vague or ambiguous. 3. *Baltimore Gas* deference - Where courts grant "extreme" or "super" deference to the agency in making **scientific conclusions** during rulemakings or decisions.			
Statutory Consistency, Hierarchy, and Executive Wide Policy Manual Review	All	Federal employees rely almost entirely upon departmental manuals, agency guidance, memos, secretarial directives, and similar documents for their day-to-day decision-making - often to the exclusion of statutory mandates, executive orders or legitimately codified rules. In terms of hierarchy, federal employees typically do not distinguish between a statute mandated by Congress or a verbal directive from a supervisor; because all directives carry the same level of authority, when conflicts do arise, they themselves can decide policy. Written policies at the agency, departmental, or local-office levels are often incomplete, aged, or contain an expansion of controlling laws and mandates. As policies are rewritten or with each successive generation, errors are compounded and accentuated, drifting further from Congressional intent.	U.S. House Committee on Natural Resources Subcommittee on Oversight and Investigations, Hearing Examining Impacts of Federal Natural Resources Laws Gone Astray, May 24, 2017.		1. Establish baseline criteria for each executive agency based upon congressional mandates that direct, pertain to, or are to implemented by that agency. 2. Conduct an executive-branch wide inventory of policies, memorandums, directives, manuals, handbooks, guides and other documents. 3. Assess each policy, memorandum, directive, manual, handbook, guide or against organic statutes, codified rules, executive orders and memoranda. 4. Publish, on the internet and in hardcopy, a notification of each discrepancy, along with formal withdrawal or remedial action. 5. Provide employee training for all policy changes resulting from this process, and ensure employee compliance.
***In Pari Materia*; Interpretation of like-kind Statutes**	All	The doctrine of *in pari materia* requires statutes on similar subject matter to be interpreted as one, unitary body of law. *Black's Law Dictionary* defines *in pari materia* [Latin "in the same manner"] as: **1.** *Adj.* On the same subject; relating to the same matter. • *It is a canon of construction that statutes that are in pari materia may be construed together, so that inconsistencies in one may be resolved by looking at another statute on the same subject.* and, "*The doctrine that states that statutes in pari materia are to be interpreted together, as though they were one law.*" The *in pari materia* canon of interpretation apples directly to the statutory responsibilities of federal agencies, and is not limited to the federal body of law. It also provides a logical pathway for government responsibilities to be assessed,	*Black's Law Dictionary*, 10th Edition - Thompson Reuters, Bryan A. Garner, Editor in Chief	Many agency employees are resistant to the *in pari materia* application of law, particularly when linked with the related-statutory law. Resistance grows when state or local ordinances and resolutions are interpreted and applied *in pari materia* with federal statutes and regulations.	KNRC has encountered stiff resistance in getting agencies to accept clear, *in pari materia* presentation of statutes that agency employees are unfamiliar with. The following activities are recommended for consideration: 1. Executive branch agency personnel who have rulemaking responsibilities or make determinations must be trained in the concepts of interpreting statutes *in pari materia* and the requirements of the related-statutes canon. 2. When working in a government-to-government role, agency employees must be prepared to work with other federal, state, and local government entities interpreting

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		measured, or transferred from the federal level to state and local governments.			statutes *in pari materia* under the related-statutes canon.
Government-to-Government Coordination	All	While there are many forms of collaboration and cooperation with state and local governments and tribes, the formal **government-to-government** "coordination" process is the only one where federal, state, and local governments have parity as equals during major agency actions. In all other forms of federal/state and local collaborative processes, federal officials lead and control the discussions. Coordination is a process that works through proposed federal actions in specific and shared jurisdictions. Upon receiving notification, federal agencies are **required** to provide early notice, engage in meaningful discussions, and **attempt consistency with state and local land use plans and policies.** Federal agencies typically avoid involvement in formal government-to-government coordination processes where they are required to participate as equals with other governments. This is particularly true at the county level. The U.S. Forest Service and Fish, for example, often takes the position that coordination "is a BLM requirement," and that they don't have to engage in it. In contrast, FSH 1902.12, *Land Management Planning Handbook Chapter 40* does not agree with this: "*The responsible official shall coordinate land management planning with the equivalent and related planning efforts of federally recognized Indian Tribes, Alaska Native Corporations, and other Federal agencies, and State and local governments.*"	43 USC 1712(c)(9) 43 USC §§ 1701-1787 42 USC §§ 4321-4370m-12 40 CFR Parts 1500-1508 43 CFR Part 46 43 CFR 1600 BLM *Desk Guide to Cooperating Agency Relationships and Coordination with Intergovernmental Partners* BLM *National Environmental Policy Act Handbook H-1790-1* USFS *FSH 1909.12 Land Management Planning Handbook*	The formal government-to-government coordination process is mandated in the *Federal Land Policy and Management Act* (FLPMA), and is a required process in the National Environmental Policy Act (NEPA) as well. Coordination with other governments is mandated in numerous other statutes, rules, executive orders, and other governmental policies throughout the executive branch. Coordination is a **practical** form of federalism derived from the Tenth Amendment's **reservation of powers principle**. It is intended to ensure full consideration of local government interests and balancing between the needs of the human environment and the natural environment. The coordination process was designed to ensure that proposed federal actions are responsive to local conditions, issues, needs, customs, cultures and economies. Where inconsistencies exist between proposed federal actions and existing local plans, laws, ordinances, and other policies, the federal agency is **obligated to work with the coordinate government and attempt consistency with local plans and polices**. Coordination ensures that state and local governments have the opportunity for meaningful participation and consideration of their interests and concerns. Because of the sensitive nature of the issues in many cases of coordination, public comment is not taken during coordination meetings, although the public may attend as observers.	Because federal agencies and officials can be resistant to government-to-government coordination, particularly when a local government invokes the doctrine by resolution, we recommend that the President direct by executive order or memorandum that: 1. All Departments, their agencies, and other offices of the executive branch be placed on notice that formal government-to-government coordination is a preferred form of intergovernmental collaboration. 2. All federal agencies intending to initiate rulemaking, NEPA processes, or other processes leading to determinations must provide early notice to state and local government elected officials, and invite those elected officials to engage in coordination. 3. For any proposed federal action or implementation of such action where a state or local government requests or invokes coordination, the responsible federal agency will engage in meaningful coordination in good faith, including participating in meetings with that government at times and places of that government's choosing.
Tenth Amendment	All	The United States Constitution provides for a federal government that has only those powers specifically delegated to it by that constitution, as amended. The regulated community finds that the various federal agencies promulgate regulatory frameworks derived from powers that the federal government has not specifically, through acts of Congress, reserved to itself. There is significant replication of programs between the federal and state governments, resulting in a confusing patchwork array of statutes, rules, and regulations at all levels, many of which conflict with one another. We have an overall governance structure wherein no single person or business can be fully compliant with the demands of government.	United States Constitution, Tenth Amendment — *The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.*		Submit all programs to a Tenth Amendment test, with the responsible agency at a minimum articulating in writing its: 1. Constitutionally delegated **power** upon which the program is based. 2. Legislatively delegated **authority** to administratively govern the people of the United States using that power. 3. Legitimate **role** in developing and implementing federal administrative control over the activities of the people of the United States. For any program for which the responsible agency cannot demonstrate legitimacy,

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					terminate the program at the federal level through a process that transitions the power, authority, and role (**PAR**) at the state level, contract with the states to conduct those programmatic aspects not already being conducted at the state level, and provide funding to the states for a period allowing for a smooth transition to the states' funding capacities. The federal government should simultaneously retire funding for the termination of programs and reduce downstream taxes and fees accordingly.
Preparation of Lower Governments for Federal Program Dissemination		President Trump has stated his intent to decentralize the executive branch of government, restoring decision-making to state, county and local governments. This goal implicitly assumes lower governments will be receptive, possess the technical understanding, and will be able to secure the resources to assume downstream responsibilities. State and local governments - and indeed the American people - have been conditioned to believe in the necessity for and the inevitability of federal involvement in their lives. This conditioning will naturally lead to reluctance when downward transitions of power and regulatory responsibility are felt at the local level. This will particularly by case at the county level, as commissioners have grown accustomed to imposition of unfunded mandates. To respond to transition-related realities, the administration should perform a comprehensive forecast of state and local capacities necessary to receive, manage - or dismantle - federal programs. Transitional issues and funding gaps identified during the analysis would be used to augment funding at the local level for devolving programs.	OMB's Comprehensive Plan of Reforming Federal Government and Reducing the Federal Civilian Workforce. Office of the Director; OMB Directive M-17-22. April 12, 2017.		1. Establish an interagency task force in March, 2018 to analyze findings derived from EOs 13790, 13791 and OMB Directive M-17-22; 2. Commission the task force to identify difficulties, gaps, issues, difficulties or conflicts with state and local governmental entities receiving federal programs; 3. To ensure permanence of current federal reforms against resurgence in future administrations, the national government must constrict opportunities for taxation concurrent with transfer of federal programs. 4. Where capacity gaps exist, establish build and monitor transitional contract programs directly with state and local governments.
Master Table of Authorities	All	With the advent of an administration whose stated policy is to return power to state and local governments, it becomes increasingly important that agency policy becomes transparent to those governments and the public. Many people are aware of the statutes, executive orders, and regulations that stem from them. Far fewer understand the significance and influence departmental manuals, handbooks, secretarial orders, and other agency-level policies have on their daily lives. As state and local governments work more closely with the federal agencies, it is important they have access to agency policies that drive federal actions. Because every department and agency has its own system of policy documentation, there is an acute need for a central repository of all executive agency policy documents.		As the federal government increased in complexity, and as the non-delegation doctrine fell into disuse, the various departments and agencies of the executive branch moved into the vacuum and increasingly became law-making bodies in their own interest, they came to see their internal policies as having as much, if not more, importance than the statutes that authorized them. As the administrative state grew, each agency developed its own culture, its own way of doing things, and its own "brand" of policy documentation. As technology improved, each agency's policy library developed to reflect the agency's distinct culture. Today, there is no consistency in policy documentation between the agencies, and no common access for the public.	1. Using the statutes as a starting point, establish **an online master table of authorities**, by hyperlinking each policy to its parent statute(s), and each statute to every policy that relies upon it for the policy's authority. Develop an interim, common-access navigation system concurrently with the "*Compliance with Statutes, Administrative Laws, and Lawful Orders*" recommendation. 2. Make this master table of authorities accessible from the menu on the home page of each department and agency of the executive branch. 3. Concurrent with the development of the master table of authorities,

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				We are now at a time when we have the information tools that we can use to develop a common policy document hierarchy, and a common method of accessing those documents. Our recommendation for the newly-created repository is to utilize an existing, independent arm of the government such as archives or library of congress.	commission an interagency task force to **develop a common hierarchy for executive branch policy documentation** to be adopted by executive branch offices. 4. Amend departmental and agency policy documentation to comply with the new common hierarchy. 5. Develop version 2.0 of the master table of authorities using the new common hierarchy.
Wilderness Study Areas	Department of Interior Bureau of Land Management Fish and Wildlife Service Department of Agriculture Forest Service	Land withdrawals under review as Wilderness Study Areas (WSA) often are not actually designated as Wilderness Areas by the Congress, but instead remain in public lands inventories as WSAs for years - even decades – beyond the fifteen-year period allowed for by the FMLPA. Long term WSA withdrawal segregates working lands from the public, sequestering lands that may be utilized for other purposes under the FLPMA, multiple use doctrine. WSAs are typically ideologically driven, subjective, and remain legal fiction absent a concrete legal definition.	43 USC §§ 1701-1787 16 USC §§ 1131-1136 FSH 1902.12FSH 1902.12 Chapter 70 BLM Policy Manual 6310 BLM Policy Manual 6320 BLM Policy Manual 6330	In the *Federal Land Policy and Management Act*, Congress allocated fifteen years for lands identified with wilderness characteristics to be permanently withdrawn as wilderness areas under Wilderness Act statutes.	The administration should consider and promote legislation that would: 1. Allow federal public lands to be available for WSA set-asides for only an additional five years from the date of withdrawal, barring WSA set-asides after that date. 2. All federal public lands not declared Wilderness Areas by Congress ten years from the date of study should be released from the WSA inventory. 3. Terminate constant inventory of land with wilderness characteristics. 4. Clearly define the term "wilderness" in FLPMA such that it has legal meaning - similar to the definitions of "*timber*" or "*water*." 5. Because there is a surplus of WSAs, those existing within the boundaries of existing grazing allotments should be returned to full multiple use designation as expeditiously as possible.
EPA Tribal Treatment as States (TAS) Policy	Environmental Protection Agency	The constitution of native American tribal governments constrain their authority to federal Indian trust lands and enrolled tribal members. Tribal governments have no jurisdiction, duty or accountability to non-tribal persons or lands, including tax remitting inholdings within the boundaries reservations over which native governments have jurisdiction. (*Montana v. United States* (1981)) Article IV, Section 3 of the United States Constitution provides that "*no new State shall be formed or erected within the Jurisdiction of any other State.*"	7 USC §§ 135 – 136y 33 USC § 1342 33 USC §§ 1251 - 1388 42 USC §§ 7401 – 7671q Tribal Assumption of Federal Laws – Treatment as a State (TAS)	State environmental programs must maintain compliance with federal environmental statutes, including Indian lands, as state jurisdiction does not end at reservation boundaries. (*Nevada v. Hicks* (2001) As example, Washington (State) has ten (10) state regional air quality agencies, inclusive of 31 Indian reservations, and the state maintains ongoing compliance with federal environmental statutes and other EPA mandates. EPA-TAS policies and programs are costly redundancies creating jurisdictional confusion and dual governance requirements for businesses on Indian reservations. Similarly, municipal and county	1. As part of EPA's philosophical shift under the new administration, timing is appropriate for several actions. The president should direct the EPA Administrator to: 2. Initiate a comprehensive audit of the American Indian Environmental Office (AIEO), with specific focus on the EPA-TAS program - including evaluation of costs and jurisdictional conflicts arising from the TAS program.

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		Under an EPA program, called Treatment as States, (TAS) EPA has "delegated" jurisdictional authority for environmental compliance regulation of non-tribal businesses, lands and even US citizens within tribal lands. The TAS program negatively and illegitimately impacts the business community, preempts state authority over its own environmental programs, and subjects citizens to duplicative regulatory frameworks – programs which often exceed state mandates.		governments are realizing revenue and land use planning impacts from TAS. Conflicts occur when tribal governments attempt to regulate county or municipal wastewater and stormwater infrastructure. Tribal employees confronting Midwestern farmers with Federal Insecticide Act (FIFRA) guidance pose serious conflict and potential confrontation risk on private farms.	3. Retire the EPA-TAS program. 4. Transition tribal governments to a system of collaborative compliance with state environmental agencies, eliminating the need for direct involvement by EPA. 5. Provide narrow exceptions for large reservations where the predominant population is enrolled tribal members.
Inequitable Campaign Financial Determination	Department of Interior Bureau of Indian Affairs Federal Election Commission	Financing of political campaigns by public entities is highly restricted. An administrative memo, FEC AO 2000-05, creates law by setting tribal governments apart for purposes of campaign contributions. This inappropriate condition allows unrestricted financial participation by tribal governments in election campaigns without oversight, reporting, or other forms of accountability.	FEC AO 2000-05	On page 2 of the FEC AO, that administrative body found that "*Although the Nation is a person under the Act, it is not an individual and is therefore not subject to the $25,000 limit on its annual total of contributions*."	The executive branch should review the determination by the Federal Elections Commission to ensure fiscal participation by tribal governments in election campaigns has the same constraints as other government entities.
Affirmatively Furthering Fair Housing Rule	Department of Agriculture Housing and Urban Development	The Affirmatively Furthering Fair Housing Rule requires applicants and agencies that apply for grants to perform an Assessment of Fair Housing (AFH) demographic analyses. The AFH analysis process imposes government planning criteria and quotas at the state and local levels to correct segregation "imbalances" in public housing, living patterns and disparate access to community assets, such as quality schools, transportation hubs, parks and jobs.	24 C.F.R. Parts 5, 91, 92, et al., and 24 C.F.R. § 5.150, et seq. 24 C.F.R. § 5.154(b)(1) Affirmatively Furthering Fair Housing Home Page AFFH Fact Sheet As stated within 24 C.F.R. § 5.154(b)(1)	AFH imposes enforceable, social planning and engineering objectives upon state and local communities through economic grants and incentives. Through a forced "*regional tax-base sharing*" mandate, the AFH rule is designed to eliminate suburbs and marginalize rural areas through a redistribution of tax revenues from affluent suburbs to poorer, inner city areas. The philosophy embodied by AFH is that if suburban dwellers are forced into cities, and urbanites are transitioned to suburbs, wealth will be more equitably redistributed to the marginalized poor. AFFH obligates any jurisdiction receiving HUD funds to conduct an analysis of housing occupancy by race, ethnicity, national origin, English proficiency, and income.	1. Defund this rule 2. Rescind this rule. 3. Prohibit HUD from promoting programs that lead to economic control or constriction of state or local governments.
Equal Access to Justice Act	All Executive Agencies	The Equal Access to Justice Act (EAJA) was codified by Congress to reimburse legal expenses of Social Security recipients, small businesses, local governments and citizens disenfranchised by federal action. During subsequent amendments, veterans were also added to the eligibility list. In an ongoing and repetitive cycle, Environmental Nongovernmental Organizations (ENGO) and favorable courts have corroborated to corrupt the legal-fee recovery provisions of EAJA, distorting the intent, generating incalculable wealth, and leveraging governmental assets against the very entities EAJA was enacted to protect. For their part, ENGOs have been effective at perverting the Administrative Procedures Act (APA) and the National Environmental Policy Act (NEPA) so as to recover fees - contrary to the intent of those acts.	28 USC § 2412 12 USC §§ 1140-1141j	The ecological problems of the 1950s and early 1960s yielded a generation of conservationists who were legitimately aghast at prolific disregard for the environment. In the late 1960s and early1970s, at the same time the Congress was enacting environmental statutes, these conservation organizations were being transformed into contemporary environmental groups. In the post 1970 era, a third generation of hardened activists emerged and matured. These contemporary environmentalists now blend a biocentric philosophy of deep ecology, Marxist statism, and the activism of progressive politics into a social agenda. Entrenched in administrative government, the judicial system, and "public interest", law firms, ENGOs	1. Rescind EAJA's net worth qualification, and replace with a maximum net income policy 2. Revise reimbursement criteria so litigation expenses for a given year may be awarded provided if an applicant's average net income for the previous three years is below a set, statutory, threshold amount. 3. Legal expenses for long-term cases should be requalified at three-year intervals using average net income. 4. Not for profit corporations should be subject to the same qualifications as all other applicants.

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		It is not an overstatement that errant fiscal and settlement use of EAJA has rendered *entire* programs of Federal agencies ineffective, the *Endanger Species Act* being a keystone example. In fact, the inspector general of the Department of Interior has even gone on record as stating litigation has effectively **taken over the listing determination process** within Fish and Wildlife Service. The **501(c)(3) exemption** in EAJA and deep resources of ENGOs enables them to overwhelm the resources of small businesses, local governments and others, severely limiting the ability, capacity and wherewithal to participate in litigation. This impaired capacity, combined with the fact that settlement processes shut out affected entities, is an astonishing perversion of EAJA - and justice in general. The statutory threshold to qualify for EAJA is a **net worth** of less than $2 M for individuals or $7M for unincorporated businesses, partnerships, corporation, associations, local government, or organization of less than 500 employees. Not for profits defined in § 501(c)(3) IRS code and cooperative associations in the *Agricultural Marketing Act* (12 USC § 1141j(a)) **are exempt**. Many individuals and businesses easily qualify for the net worth threshold, and the eligibility qualifications need to be carefully redefined so the program cannot be accessed for unintended or unscrupulous gain.		tactically and effectively mobilize EAJA to gain wealth and as a vehicle for their ideologies. In 1976, the Administrative Procedures Act (APA) was amended to clarify that **sovereign immunity was waived for all judicial reviews seeking relief other than monetary damages.** This meant that the APA would protect Americans from the actions of overzealous agencies. The Equal Access to Justice Act was enacted in 1980 and reauthorized in 1985, and the Administrative Conference and Administrative Offices of the United States courts used to submit annual reports to Congress that tracked litigation reimbursements and recipients. Enactment of the *Federal Reports and Elimination and Sunset Act*, suspended reporting requirements, and so no the awards under EAJA are not trackable with any assurance of accuracy.	5. Individual applicants must be U.S. citizens; 6. For profit and not for profit businesses must have U.S. charters. 7. Execute an Executive Order that prohibits Federal agencies from settling lawsuits. 8. Require agencies to defend their actions, including those of previous administrations. 9. Revise EAJA to exclude legal fee recovery for cases that are prematurely settled and do not proceed to trial.
Public Lands; Range Management and Grazing Allotments	Department of Interior Bureau of Land Management Department of Agriculture Forest Service Department of Defense	Grazing allotments are regulated through multiple federal agencies and departments, resulting in disparate and varied management, compliance and reporting polices within the jurisdictions where the grazing allotments are located. Most public land that exists in split-estate ownership was withdrawn under the *Pickett Act* of 1910, and all National Forests, National Grasslands, and Grazing Districts were withdrawn under Executive Orders that originate from Congressional authorities delegated under the *Pickett Act*. The definition of "public land" originates in the *Federal Power Act of 1920*, and was changed in the *Federal Land, Policy and Management Act* of 1976 to be "**land and interest in land.**" This change reflected adoption and recognition by the Congress of the longstanding "split-estate" doctrine, long understood and operative in disposition western public lands. Grazing allotments are property and surface-access rights to land that overlay retained, subsurface federal mineral estates and intermingled, federally-managed, surface timber prerogatives. Federal agencies and personnel at local at the national levels do not understand or acknowledge the historical nature and split estate background of the national forests, grasslands and grazing districts for which they bear	Mining Act of 1866 Sections 8-11 as amended 1870 (14 Stat 253 & 16 Stat 218) Act for Compensation of Improvements 1874 (18 Stat 50) Grazing Act 1875 (18 Stat 481) Atherton v. Fowler 96 US 513 (1877) Grant of Grazing Rights on Abandoned Military Reservations 1884 (23 Stat 103) Griffith v. Godey 113 US 89 (1885) Fencing of Range Rights Act 1885 (23 Stat 321) Shaw v. Kellogg, 170 US 312 (1898) Tarpey v. Madsen, 178 US 215 (1900) Bacon v. Walker, 204 US 311 (1907) St. Paul, Minneapolis & Manitoba RR Co v. Donohue, 210 US 21 (1908) 43 U.S.C. §§ 141-158 Curtin v. Benson, 222 US 78 (1911) Jones v. St. Louis Land & Cattle Co, 232 US 355 (1914)	The Acts of 1866/1870 granted water rights, rights of possession, right-of-ways and rights to construct ditches, canals, reservoirs, for agricultural entry to lands determined to be without minerals. The Act of 1874 recognized right of compensation for improvements on public lands, and acquisition of possessory property rights for stock raising has been authorized since that year. In 1877, the Supreme Court recognized possessory property rights as sufficient to prevent the Land Department (then DOI) from giving land to any subsequent settler (Atherton v. Fowler). The Act of 1880 opened *all* land in the West to settlement, recognizing settlement constituted "entry" that **would remove the land from "public land" classification**. Range rights have been recognized as property rights since 1885 (Griffith v. Godey). In 1884, Congress provided legislation "granting" grazing rights to settlers on abandoned military reservations; the *General Allotment Act* of 1887 enacted a statutory procedure for Grazing Allotments on military, Indian and other reservations. **In 1891, Congress delegated authority to the President to establish Forest**	1. Consolidate all federal range allotment programs into one program. 2. Reorganize and restructure Timber and firefighting programs, and place under a Forestry division within the Bureau of Land Management (BLM). 3. Combine and consolidate all federal mineral leasing and mining regulation programs under a single Minerals division within BLM. 4. Reorganize and consolidate all grazing allotment program functions from Forest Service, Bureau of Land Management, and National Park Service and reallocate functions to Natural Resources Conservation Service (NRCS) within the Department of Agriculture. 5. Combine wildlife biologists and ESA programs into Parks and Wildlife Refuge system, and eliminate those functions from BLM and Forest Service.

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		responsibility. Thus, agencies inappropriately and illegitimately have been managing lands and rights that should remain under the auspices of private or local control. This situation has, over time, resulted in a wholesale reduction in grazing-right allotments across the west. Federal agencies need to be reorganized and range programs consolidated to distinguish, demarcate, and restore historical split estate nature of public lands. This approach would limit federal control to only retained minerals and timber management.	Agricultural Entry Mineral Lands Act of 1914 (38 Stat 509) State Reclamation District Land Act 1916 (39 Stat 506) National Park Service Act 1916 (39 Stat 535) 43 U.S.C. §§ 291-302 30 U.S.C. §§ 181-287 Stockraising Settler's Relief Act 1923 (42 Stat 1445) Kinney Coastal Oil Co v. Kieffer, 277 US 488 (1928) 43 U.S.C. §§ 315-316o 7 U.S.C. §§ 1000-1040 Stockraising Homestead Act Amendment 1949 (63 Stat 214) 16 U.S.C. § 572 42 U.S.C. §§ 1701-1787 16 U.S.C. §§ 1600-1614 United States v. New Mexico, 438 US 696 (1978) Watt v. Western Nuclear, 462 US 36 (1983) 43 U.S.C. § 299	**Reservations, and thereafter grazing allotments were allocated to settlers already owning water rights and range rights under state/territorial law.** The *Curtis Act* of 1898 amended the *General Allotment Act*, creating split-estate grazing allotments on reservations in the West. When disposition of mineral split estate was opposed by some government officials, Congress settled the dispute with enactment of the *Pickett Act of 1910*. The Pickett policy was so successful on "reservations" **that it was extended to all the "public lands" outside of reservations by passage of several split-estate Acts**, including the *Agricultural Entry Act 1914*, the *Stockraising Homestead Act* 1916, *Mineral Leasing Act* of 1920, the *Stockraising Settlers Relief Act* 1923, the *Taylor Grazing Act* of 1934, and the *Bankhead-Jones Farm Tenant Act* of 1937. With promulgation of the *National Park Service Act* of 1916, the Congress stated that in-place stock raisers **within National Parks would retain all pre-existing rights**. This issue was adjudicated by the Supreme Court in Curtin v. Benson, where the court held that the government could not use a "*grazing permit*" to take a rancher's use of his deeded land, easements, and range rights solely because his ranch was an inholding within the boundaries of a newly created National Park (Yosemite). Adoption of the surface, limited-fee-title split-estate policy for allotment owners was reviewed by the supreme court in *Watt v. Western Nuclear*. Congress had created a split estate property relationship through several Acts, and in doing so recognized various rights and entitlements. The solution to the entire situation was to grant surface fee title to the stock raising settlers as an "allotment," with the government retaining the minerals and commercial timber for separate disposal. In *Kinney Coastal Oil v Kieffer*, and *Watt v. Western Nuclear*, the question of a permit was reviewed by the Supreme court. The purpose of the "permit" was to solely regulate the rancher's use of his surface estate allotment **to ensure he did not interfere with the government's retained mineral and timber interests.**	6. Inventory (in FLPMA) all grazing allotments, and recognize them as limited fee-title, surface private property under private care and ownership. 7. Remove all hydrology programs from Forest Service and BLM, and consolidate under Reclamation Service. 8. Eliminate Forest Service. 9. Identify redundant personnel and reassign to civil support positions in the newly formed, federal range management grazing system. 10. Transfer all range related personnel from BLM, National Park Service, DOD, BIA and Forest Service to Natural Resources Conservation Service (NRCS) as needed. 11. Close, sell, auction or give to state and local governments unused Forest Service assets.
National Forests; National Forest Management	Department of Interior Bureau of Land Management Department of Agriculture	Management of national forests is being implemented by multiple federal agencies and departments, resulting in disaggregated, duplicative, often conflicting, and expensive management policies that have departed from the original congressional intent for federal forest management.	United States v New Mexico, 438 US 696 (1978) Timber and Stone Act 1878 (20 Stat 88) 43 U.S.C. §§ 141-158 Stockraising Settler's Relief Act 1923 (42 Stat 1445)	As early as 1878, Congress granted western settlers, miners, and residents rights to produce timber for personal use; in 1891/1897 the Congress delegated authority to the President for withdrawal of forest reserves.	1. Consolidate multiple regulatory frameworks into one program under the multiple use and sustained yield mandate. 2. Emphasize forest management to facilitate responsible timber

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	Forest Service Department of Defense	Contractors who harvest timber or perform forest management activities face redundant, rapidly-changing and bureaucratic compliance, performance, and reporting standards that vary from agency to agency, resulting in vast uncertainty, expense and administrative complications. At the state and local level, disaggregated and unaccountable federal policies have resulted in prolific, local take of private lands through access encumbrances, permit restrictions, refused federal road maintenance, and unauthorized closures by local federal agents. **National Forests and Grazing Districts were established for economic purposes, consumptive use, and sustained yield**, and are distinguished from National Parks, whose Congressional intent is for public recreation, wildlife and fish conservation and similar environmental purposes.	Klarke-McNary Act amended 1924 (43 Stat 653 & 43 Stat 1127) 43 U.S.C. §§ 315-316o Forest Sustained Yield Management Act 1944 (58 Stat 132) 16 U.S.C. §§ 583-583i 42 U.S.C. §§ 1701-1787 16 U.S.C. §§ 1600-1614	In 1898, with enactment of the *Curtis Act*, Congress established a *split-estate* land management and disposal policy. This policy allocated the surface estate of public land as grazing allotments, while retaining the mineral and timber resources and rights. The *Pickett Act* of 1910 furthered the split estate policy in National Forests *and* National Parks, providing for withdrawal of split-estate lands for grazing interests and furthering the doctrine of *sustained yield* for production of livestock forage, timber, water-yield, and minerals. The *Multiple Use Sustained Yield Act* of 1960 and the *Federal Land Policy and Management Act* of 1976 FLPMA/NFMA added additional, subordinate resource values for which forests, grasslands and grazing districts could be managed - but those Acts did not supplant or replace original, split-estate mandates codified in original Congressional actions. (US v New Mexico). Numerous pre-1960 statutes mandate the sustained yield production philosophy across the National Forest system, and while MUSY, FLPMA, and NFMA did add *subordinate* values, the sustained yield doctrine maximizing timber production and ensuring grazing are to be the "principal" uses of all Pickett Act, public lands.	production, and local and state economic needs - consistent with original congressional acts; 3. Eliminate USFS from USDA. 4. Place forest management and firefighting responsibilities under the Department of Interior, Division of Forestry. 5. Transfer all grazing programs that are the responsibility of USDA Forest Service to USDA NRCS. 6. Identify overlapping or redundant personnel, and reallocate to Department of Interior, USDA/NRCS or field offices to facilitate civil-serving sustained yield programs. 7. Realign or close forest management offices nationwide. 8. Reorganize BLM to focus on minerals permitting, minerals and grazing allotment inventorying, and timber production. 9. Consistent with FLPMA, offer law enforcement contracts to local sheriff's departments or counties.
Wild and Free-Roaming Horse Burro Program	Department of Interior Bureau of Land Management	The Wild Horse and Burro Program (WHBP) has a troubled history, is expensive and has led to overpopulation and overgrazing of public lands. This has resulted in competition, overgrazing, malnourishment and starvation of animals - the antithesis of what the WHBP was designed to accomplish. Because National Forests, Grasslands and Grazing Districts are split-estate lands upon which ranchers hold limited fee-title grazing allotments, conflicts posed by WHBP illegitimately and illegally impact agricultural and ranching operations. A grazing allotment together with a homestead constitutes a farm/ranch "unit," which is the amount of land sufficient to support a family. Conflicts have arisen because locally-based Federal agents have disregarded limited title grazing allotments that are a legitimate allocation of public surface lands and waters outside the jurisdiction of the Wild Horse program. These conflicts can be managed by federal recognition of grazing allotments to the exclusion of the wild horse management areas.	16 USC §§ 1331-1340 Interior 633 DM 1 BLM MS-4700 BLM MS-4710 BLM MS-4720 BLM MS-4730 BLM MS-4740 Kleppe v. New Mexico, 426 US 529 (1976) Fallini v Hodel, 725 F. Supp 1113 (D. Nev 1989) affm. 963 F.2d 275 (9thCir 1992) *Wild Horses and Burros: Issues and Proposals* *Congressional Review Service* *Using Science to Improve the Wild Horse and Burro Program.* National Academies Press BLM Organizational Chart America's Wild Horses and Burros — Research to Support Management	The **Wild and Free-Roaming Horse and Burro Act (WHBP) of 1971** was not passed until the west was settled and grazing allotments were adjudicated. When the WHBP was passed, it applied only to *unoccupied* public land. WHBP contains provisions that **require federal agencies remove wild horses from private property,** and it was the implicit intent of the Congress that grazing allotments not be impacted by competition from the WHBP program. In Kleppe, rancher Stephenson did not claim ownership to the surface estate or the water. He only claimed that he could graze and water his cattle at Taylor Well by authorization of a permit that gave him permission to use the public land. The US Supreme Court ruled that the State of New Mexico had no jurisdiction to interfere with the wild burros on the public lands. In Fallini, rancher Fallini claimed that through his grazing allotment he owned the stock water rights, corrals and the appurtenant stock water location (limited title easement) and therefore **he had the right**	1. Reorganize federal agencies as provided in the "*Range Management*" section; 2. Wild horse management programs should be turned over state parks or livestock and brand boards, and be tailored to harmonize with state "estray" and brand laws. 3. If the federal government retains WHBP, it should be managed under National Parks and Wildlife Refuge program and the animals confined to Horse Management areas. 4. Where grazing allotments have been identified or adjudicated, allotment owners should be compensated for forage, water rights takes imposed or encroached by WHBP programs. 5. Provisions should be made for free-market based, beneficial use of

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				to exclude wild horses from accessing his water rights. Fallini prevailed in this case.	WHBP animals and animal-based products.
Conservation Easements	Internal Revenue Service Department of Interior Bureau of Land Management Fish and Wildlife Service Department of Agriculture Forest Service Department of Defense Army Corps of Engineers Environmental Protection Agency Bureau of Reclamation Others	Qualified Conservation Easements (CEs) are permanent, land-title encumbrances designed to protect lands of **unique** value. CEs, also termed "conservation servitude" (*Black's Law Dictionary)* cede specific, enforceable rights from landowners to third parties through unregulated land trusts, creating a **shared land interest** between land owners, land trusts or the federal government. CEs impose **enforceable** title restrictions on structures, road improvements, vehicular use, road maintenance, agricultural and many other activities, **permanently** sequestering working lands. Typical CEs eliminate oil, gas and mineral exploration in any form, permanently withdrawing those values from access of future generations. Many CEs require "buffer zones" to be created around springs, streams or ponds to inhibit livestock access, and when CEs are imposed on public lands, land takes - in the form of imposed buffer set asides - are required of neighboring land holders. By design and their very nature, CEs reduce the value of encumbered *and* neighboring lands, create split-estate ownership issues, erode the state and local tax bases, and provide a mechanism for unwanted plants or animals to be introduced into a region against the wishes of neighbors or others. CEs are a federal intrusion into state and local land use and tax policy, violate common law principals, and the "voluntary" argument put forth by proponents glaringly ignores impacts to adjacent property owners and the community at large. Because CEs are in-perpetuity in nature, they diminish taxable land values, and inhibit county governments' ability for free exercise of home rule. Changes are needed to the 'In perpetuity" language in the IRS Rule, and in elimination of federal funding through farm and other federal grant programs.	*Uniform Conservation Easement Act*. An Act for Uniform State Laws. August, 1981 26 U.S.C. 170(h) Pub. L. 96-541 *Internal Revenue Code, Section 170(h)*, QUALIFIED CONSERVATION CONTRIBUTIONS, AS AMENDED *Finding of Fact and Conclusions of Law*. The Kansas Natural Resource Coalition. January 29, 2014 *Conservation Easements and Adaptive Management*. Jesse J. Richardson, Jr. *Beyond Fairness: What Really Works to Protect Farmland?* Drake Journal of Agricultural Law. Jesse J. Richardson, Jr. *Performance Audit, Conservation Easement Tax Credit Program, After Changes in 2014*. Colorado Office of the State Auditor. November, 2016 *Agricultural Conservation Easement Program*. USDA. March, 2014 *Five Easy Steps to Assistance from NRCS*. USDA, NRCS		1. Revise the IRS 171(h) Rule from '*in-perpetuity*' to "*life of owner*," consistent with common law. 2. Require a **consistency review** with local land use plans and policies for any proposed CE. 3. Set minimum public and landholder **notification** standards and timeframes before CEs can take effect or be transferred between land trusts or the government. 4. Develop and codify **standards** for land trusts, including financial assurance requirements in the event of insolvency. 5. Prohibit use of federal funding for purchase or financing of CEs or land trusts. 6. Permanently eliminate all CE-related funding from USDA and NRCS farm and related programs. 7. Establish **national standards** for third party enforcement of CEs. 8. Require DOD to purchase properties for conservation purposes.
Land and Water Conservation Act of 1965, as amended	Department of Interior National Park Service Department of Agriculture Forest Service Bureau of Reclamation	Section 6(f)(3) of the LWCA requires **all land acquired or developed with LWCF funding assistance to be maintained perpetually in public outdoor recreation use.** The program presses adjacent landholders into conservation easements, creates peripheral property buffers, illegitimately seeks acquisition of state water resources, and represents a permanent encumbrance on local land and water resources. Conversion or adjacent land uses are subject to permitting programs and permitting and any encumbrance(s) must be transferred to land parcels of equal value (not size). Since land generally increases in value, the acreage of land that bears the encumbrance often increases significantly in value, leading to a loss of local control and lands over time.	16 U.S.C. §§ 460l-4, et seq. 54 U.S.C. § 200305 36 CFR 59.3 https://www.nps.gov/ncrc/programs/lwcf/history.html https://www.nps.gov/ncrc/programs/lwcf/protect.html https://www.fs.fed.us/land/staff/LWCF/about.shtml https://fas.org/sgp/crs/misc/RL33531.pdf	The LWCF program was administered by Bureau of Outdoor Recreation (BOR) from 1965 to 1978 when the Heritage Conservation and Recreation Service (HCRS) was created. HCRS administered the program until 1981, when the LWCF was transferred to the National Park Service. The LWCF program has been perverted over time, offering grants to states which impose encumbrances on land, water and other resources. This has had the long-term the effect of imposing federal control through regulatory burdens, typically carried out by state-employed personnel.	1. Amend LWCA to require State legislative approval for each and all parcels within its boundaries before payments may be made; 2. Amend LWCA to require consistency with local land use plans, programs and policies; 3. Codify in LWCA statute or by Executive Order a 20-year sunset reversionary interest for all encumbrances to expire, returning lands and resources to state ownership.

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				In effect and over time, state personnel unknowingly adopt and implement Federal philosophies, to the detriment of states and local governments. See: *The Respective Powers of the Federal and Local Governments Within Lands Owned or Occupied by the United States*. Peter S. Twitty. 1944. *Jurisdiction Over Federal Areas Within the States. Report of the Interdepartmental Committee For The Study of Jurisdiction Over Federal Areas Within the States*. June, 1957.	4. Impose a first right of refusal for local property owners, or/then states, to purchase lands from federal ownership; 5. Require reporting of LWCF appropriations that includes a breakout of allocations to federal administrative and executive branch agencies.
Introduction of Endangered Species against State Laws	Department of Interior Bureau of Land Management Fish and Wildlife Service Department of Commerce	Federal agencies with responsibility for threatened and endangered species management have a history of noncompliance with state law. **Two examples . . . of many** In the case of the Black-footed ferret (BFF) USFWS established an experimental population in Logan County, Kansas after finding in its NEPA Environmental Assessment that introduction would not have a significant impact on the human environment. The ferret is considered the short-grass prairie "flagship" species. A release of 24 captive-reared ferrets was announced on December 20, 2007. In the wild, BFFs are found almost exclusively in prairie dog colonies, as prairie dogs are the preferred BFF food source. The Logan County BFF introduction created immediate legal conflicts, because county commissioners are required by Kansas statute to eradicate prairie dogs - the exclusive BFF food source. Despite being notified of the prairie-dog eradication mandate, USFWS proceeded with the BFF introduction, giving assurance that if properties became infested, USFWS would control prairie dog populations. USFWS also claimed that their plan in no way circumvented existing state law. A 2014 article, *Feds ignore consequences in bid to save endangered ferret*, provides a summary of the experience with the experimental Logan County population. It appears that once underway, USFWS did not feel the same level of commitment to adjacent property owners as they expressed in their Christmas 2007 press release. The USFWS *Fall 2015 Black-footed Ferret Survey, Logan County, KS* provides additional information. ———————————— In a more recent example, the National Park Service (NPS) and USFWS are moving ahead with a plan to reintroduce Grizzly bears into the North Cascades National Park and national forest lands around that park. The comment period for the Draft environmental impact statement recently closed. Of the alternatives described in the *Draft Grizzly Bear Restoration Plan / Environmental Impact Statement* for the North Cascades Ecosystem. All alternatives except the	16 USC §§ 1531-1544 Kansas 80-1202 *Finding of Fact and Conclusions of Law*. The Kansas Natural Resource Coalition. January 29, 2014 Washington RCW 77.12.035 *Migratory Bird and other Non-resident Species Acts* (predecessory to the ESA): 39 Stat 1702, 40 Stat 755, 45 Stat 1222, 48 Stat 401, 60 Stat 1080, 70 Stat 1119, 80 Stat 962, 87 Stat 884. State of Missouri v. Holland, 252 US 416 (1920) *Endangered Species Act. Report, Findings and Recommendations*. Congressional Working Group. February 4, 2014	Fish and wildlife conservation has always been one of "the powers not delegated to the United States by the Constitution, ... [and thus] are reserved to the States respectively, or to the people." Fish and wildlife are owned by the public and are managed as trust resources by state agencies. Those agencies have primacy for managing fish and wildlife within their borders and have concurrent management authority with federal agencies for migratory birds, inter-jurisdictional fish species, and T&E species. Although the federal government has been granted interstate preemption authority under the ESA, that authority only may be co-exercised with existing state authority. In the program for Black-footed ferrets in Kansas, USFWS entered a situation where a Kansas statute mandates eradication of prairie dogs state-wide. Introducing endangered species into habitat where its primary prey is under population reduction pressure mandates is not only unwise but is a major source of conflict between the ferret and prairie dog hosting property owners and their neighbors. As a result, the Kansas Senate passed *A RESOLUTION opposing the black-footed ferret programmatic safe harbor agreement and environmental assessment*. A supplemental note provides additional information on the Senate action. At the local level, the KRNC held a public hearing on USFWS-related species topics and the agencies' disregard for the public. The results of that hearing were outlined in the report entitled "*Finding of Fact and Conclusions of Law*." The Grizzly bear introduction into Washington's North Cascades differs in that the state has outright prohibited relocation of bears, or even transplantation of bears from another part of the state. Despite the statute, USFWS intends to ignore the expressly legislated policy of the Washington. Constitutionally, the federal government may regulate "interstate commerce" related to the sale, importation	**General** There are many examples where federal agencies have concluded they have the authority to operate programs in conflict with state law. This flouting of law generates ill will in the affected public and regulated community, and while it may be legitimate in agency policy and judicial precedent, the practice must cease. 1. The needs of the human environment and local economies must receive full and equal consideration along with the needs of the natural environment. 2. The responsible federal agency proposing an ESA action must provide early notice to the affected state(s) and local governments. 3. The responsible federal agency must invite states and local governments to coordinate the ESA action as government-to-government equals at the table, 4. A formal government-to-government coordination process must be used for any ESA process where a state or local government expresses interest in joining the process as a coordinating government entity. **Specific to Black-footed ferret project** With the understanding that the property where non-essential experimental populations of Black-footed ferrets are introduced have agreed to attempt recovery of a viable Black-footed ferret population, and further understanding that maintenance of the necessary prairie dog population as a food

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		"No Action" violate Washington State law: *RCW 77.12.035, Protection of grizzly bears—Limitation on transplantation or introduction—Negotiations with federal and state agencies*. As indicated by its title, RCW 77.12.035 is comprised of three parts. The second part unequivocally states "**Grizzly bears shall not be transplanted or introduced into the state.**" The state's intent clearly says that its wildlife agency will ". . . *encourage the natural regeneration of grizzly bears in areas of suitable habitat*." On pages 13 and 14 of the agency coordination section of the draft plan and EIS, USFWS asserts that the prohibition applies only to the state agency, and that it does not bind federal agencies, further asserting that no conflict exists between the state law and the ESA. They also state that the ESA preempts the statute, and that the Property Clause of the U.S. Constitution would also preempt because the reintroduction would take place on federal public lands. In other words, USFWS contends that even though the United States has never reserved to itself the power to manage state wildlife resources, the Tenth Amendment has no power in the state of Washington. The state of New Mexico has had similar problems with USFWS through unwanted introduction of wolf populations.		or interstate transport of anything (including "endangered species" and parts). Constitutionally, the federal government can exercise "exclusive legislation" over anything (including "endangered species") within the boundaries of federal "enclaves" (which includes some national parks and military bases) established by permission of the State Legislature. Constitutionally, private property cannot be taken for public use without due process and just compensation. Therefore, neither the federal nor State government can force a property owner to provide habitat for any species against his will.	source results in violation of Kansas law we recommend: 1. USFWS must obtain formal agreement from adjacent property owners prior to maintaining a prairie dog populations on the project property. If this was not done prior to establishing populations, it must be done as a condition of continuing the program. 2. USFWS must compensate adjacent property owners for any diminution of property values consequent to the maintenance of a prairie dog population on the project property. 3. Upon notification of prairie dogs taking up residence on any adjacent property, USFWS must immediately contract for priority prairie dog eradication measures on the subject adjacent property. **Specific to Grizzly bear project** 1. Evaluate the justification for the North Cascades Grizzly bear introduction project in the context of the needs of the species (*Ursus arctos*, an IUCN species of least concern), not the goals of a rewilding project that forces the injection of bears into the region. 2. Reassess the motivation for proceeding with the project despite the clear statutory prohibition for transplanting or introducing individual Grizzly bears from outside the State of Washington. 3. The Secretary should review the EIS and select Alternative A to keep the federal government in compliance with RCW 77.12.035 and to allow for unimpeded natural reestablishment of a Grizzly bear population in the North Cascades. 4. Coordinate Grizzly bear policy with the State of Washington and the local governments where bears are or are anticipated to become established. **Generally**

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					1. Split estate land owners do not have to provide habitat for endangered wildlife even within a grazing allotment of a National Forest. (US v. New Mexico). 2. Releasing dangerous predators, or disease carrying vectors onto someone's grazing allotment is a trespass and a threat to public health and safety. 3. Whether the land owner signs onto the governments wildlife plan or not is the choice of the property owner, federal ESA statutes provide for either government purchase or government rent of ranchers' property.
State Prerogatives in Endangered Species Management	Department of Interior Fish and Wildlife Service Department of Commerce NOAA NMFS	USFWS and NOAA NMFS artificially limit state agency participation and jurisdictional authority. The Endangered Species Act (ESA) makes clear provision for the participation of state agencies in the management of endangered species in Section 6 (16 USC § 1535, Cooperation with States. While the responsible federal agencies have made provision for state agencies with ESA responsibilities to participate in some aspects of species conservation, they have not fully engaged state agencies as Congress intended. In regard to fish and wildlife, their conservation was not a power delegated to the federal government, or reserved by the Congress to it. Fish and wildlife are owned by the public of the state in which they reside, and are managed as trust resources by state agencies. The federal agencies responsible for implementing the ESA do not appear to understand this concept. Indeed, they are not shy about preempting state prerogatives in their application of the mandates and provisions of the ESA. Those federal agencies also have a track record of moving the goalposts for what constitutes a species' recovery. This induces unnecessary uncertainty into what is already a restrictive regulatory framework for local economies. The relevant state agencies have far greater capacity to manage and conserve endangered species than do the responsible federal agencies. Where the state agencies lack funding, they have demonstrated track records of creative resource-building so that they can better conserve species at all levels of risk. State agencies and local governments have far greater incentive to recover species and then set them on a sustainable survival trajectory. The sooner a listed species	16 USC §§ 1531-1544	The legislative history of the ESA, as expressed in the Congressional Record, demonstrates that the states are to be provided the opportunity to act as the lead agents as full jurisdictional partners in conserving and recovering threatened and endangered species, and in providing programs that prevent species populations sinking low enough where they merit consideration for listing in the first place. Senator Tunney (CA) said, ". . . it was well established in the hearing record that most states possess much greater wildlife management resources than does the Federal Government . . . States with active endangered species programs are given full discretion to manage threatened species which reside in their boundaries." House Committee Report 93-412 stated, "Where a cooperative agreement has been put in effect, the bill allows concurrent jurisdiction over the species affected in both the state and federal judicial system." House Conference report 93-740 stated, ". . . the Act will have the effect of giving the states fundamental roles with respect to resident species for a given period of time . . . The conferees hope that this device will impel the states to develop strong programs to avoid the alternative of federal preemption." The Senate Environment and Public Works Committee held a hearing on ESA modernization and reform on May 10, 2017. We include the written testimony of the three witnesses: • wiley-testimony-05.10.2017.pdf	Not having fully complied with the mandates and provisions of the ESA in respect to encouraging and supporting effective state and local participation in the full range of ESA processes and activities, the federal agencies enjoy the opportunity to provide for significant ESA reform in the period leading to Congressional action to modernize and reform the ESA to meet the needs and opportunities of the 21st Century. We recommend that, without delay, USFWS and NOAA NMFS be directed to: 1. Accept that the states are their full jurisdictional partners and immediately begin coordinating ESA actions and activities with the states and their relevant agencies as such full jurisdictional partners. 2. Elevate the role of the relevant state agencies accordingly 3. Provide for working together as full partners on all aspects of ESA-mandated actions and activities as equals at the table, with neither the state or federal agencies being subordinate to one another. 4. Do not relegate a relevant state agency to the role of providing public comment as its primary interaction with the federal agencies during a listing process.

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		can be recovered at the local and state levels, the sooner a species listing can be downgraded or a species removed from a listing entirely, the sooner the regulatory constraints on local economies can be removed as well.		• voyles-testimony-05.10.2017.pdf • coit-testimony-05.10.2017.pdf	5. Accept state scientific and commercial data and analyses of those data as best available science/information. 6. Restore the distinction between threatened and endangered species. 7. Facilitate the relevant state agencies in decision-making and ESA actions an implementation to the fullest extent of their capacities. 8. Strengthen and leverage state participation in the recovery planning process. 9. Where capacity is lacking in a relevant state agency, assist that agency in developing the necessary capacity to carry out ESA actions and activities. 10. Engage the relevant state agencies through every step of the ESA mandated process.
Wildlife Corridors /Habitat Connectivity	Department of Interior Department of Agriculture Department of Transportation Department of Defense NOAA Other Executive Agencies	Wildlife corridors and their elements of all scales include moderate to severe land and water use restrictions. (Language in the documents for the current Lesser prairie-chicken (LPC) process include language that could lead to the development of wildlife corridors for the LPC's recovery. If the Monarch butterfly is listed, it too, will have corridors.) Various statutes mandate achieving a balance between the human and natural environments, most notably the National Environmental Policy Act and its CEQ NEPA implementation rule. The imposition of wildlife corridor systems renders compliance with that balancing mandate impossible within the boundaries of wildlife corridors and their surrounding buffer zones. Wildlife corridors and habitat connectivity have been adopted by numerous federal departments and their agencies as part of the national climate change policy adopted by the previous administration without noticeable concern for the statutory noncompliance issues they raise, nor for the impacts to the human environment where the corridors are imposed. The exist at all scales from site-specific to the developing continental-scale "wildways" where human access and use come under varying degrees of administrative control. The Center for Biological Diversity's *Principles of Wildlife Corridor Design* white paper	Interior SO 3289 EO 13514 (revoked, still cited by Interior 523 DM 1) EO 13653 EO 13693 CEQ *Federal Agency Climate Change Adaptation Planning: Implementing Instructions* Interior 523 DM 1 National Fish, Wildlife and Plants Climate Adaptation Strategy	The early vision for wildlife corridors as we are coming to experience them in the United States came from what was then the Wildlands Project, which has become the Wildlands Network.. The organization has designed several continental-scale wildlife corridors they term "wildways" covering North America.  The process of establishing wildlife corridors was defined in the conservation biology community, and has been given the term "rewilding" by its developers and proponents. A more radical vision of this than the	Because the establishment of networks of wildlife corridors render compliance with the NEPA mandates to balance the needs of the natural environment with the needs of the human environment essentially impossible, we recommend federal departments and their agencies: 1. Manage habitat connectivity in balance with their multiple use mandates so as to support the former without adversely impacting the latter. 2. Review all existing wildlife corridors using the requirements below. Suspend the force of regulatory frameworks for those wildlife corridors that do not meet the requirements until such time the responsible agency has complied with those requirements. 3. Not be permitted to enter into any agreements to establish wildlife corridors in support of landscape or continental-scale wildlife corridor programs sponsored by nongovernmental organizations such as the Wildlands Network or

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		outlines the conservation biology "ideal" for how wildlife corridors are designed and human activities controlled. The habitat connectivity comes at high cost to local economies through extraordinarily burdensome regulation and wildlife-specific infrastructure, such as highway overpasses and underpasses designed specifically to reduce vehicle-wildlife conflicts. Wildlife corridors consist of core areas surrounded by extremely wide buffer zones. Although some wildlife corridor work had originally appeared in various regulatory frameworks piecemeal, a far more robust program was inserted into the previous administration's climate change adaptation executive orders. Considerable effort has been placed in asserting authorities derived from existing statutes in anticipation of climate change executive orders being revoked at some point in the future. The primary authority stated in Department of Interior Part 523, Chapter 1, Departmental Manual, as currently available on the department's ELIPS system, is Executive Order 13514. That order was revoked by Executive Order 13693 at Section 16(b) on March 19, 2015. Interior 523 DM 1 thus appears to be without authority until such time as it is amended. As currently constituted, wildlife corridors, particularly at the continental scale, require regulatory frameworks that effectively proactively deny achievement of the statutorily mandated balancing between the needs of the natural environment and the needs of the human environment. Large-scale, particularly continental-scale wildlife corridor systems represent foreign entanglements for which there are no treaties nor statutory mandates.		version promoted by the Wildlands Network can be found at The Rewilding Institute website. Attempts have been made to establish these continental-scale megacorridors legislatively. Those attempts having failed, steps toward establishing the corridor system were shifted to the executive branch. Because of the polarizing response wildlife corridors engendered by regional and continental projects, such as the Yellowstone to Yukon Initiative (Y2Y), wildlife corridor mandates have been masked by incorporating them into climate change executive actions. Y2Y is just one component of the 6,000 mile long Wildlands Network's Western Wildway. More recently, the United Nations Environment Programme (UNEP) has committed to the development of a Connectivity Conservation Strategy that follows the same rewilding principles. As part of this commitment the IUCN World Commission on Protected Areas released draft guidelines for defining Areas of Connectivity Conservation. Once finalized, this document will guide recognition and define governance for ACCs globally.	international governance entities such as the IUCN World Commission on Protected Areas. 4. Not be permitted to develop or implement mandatory regulatory frameworks that would harm local economies or withdraw federal public lands from multiple use in support of wildlife corridors. 5. Not be permitted to enter any conservation easement in support of a wildlife corridor that is of more than twenty (20) years' duration. 6. Enter formal coordination processes with any state and all counties where wildlife corridors on federal land are proposed. 7. Provide thorough and complete justification of the scientifically demonstrated need for the establishment of a wildlife corridor for the continuing viability of the species for which the corridor is proposed. 8. Prohibit the establishment of a wildlife corridor on federal public land without written consent and agreement by the local governments in all jurisdictions where such a corridor would be located.
Landscape Conservation Cooperatives	Department of Interior Department of Agriculture Department of Homeland Security Department of Defense Department of Energy Department of Transportation EPA Other Executive Agencies	The actions of the Landscape Conservation Collaborative Network that was established consequent to Interior Secretarial Order 3289 illegitimately infringe upon the prerogatives of state and local governments. Pursuant to Interior S.O. 3289, the Landscape Conservation Cooperative Network (LCC Network) was launched by USFWS. This network of 22 individual self-directed conservation regions covering the United States and large portions of Canada and Mexico operate across a multitude of jurisdictional boundaries, including nations, states and provinces, counties, municipalities, and other formally established government entities. Comprised of hundreds of national, state and provincial, local and tribal government agencies and non-governmental organizations, the LCC Network functions as a quasi-governmental entity to facilitate collaboration across jurisdictional boundaries, develops shared conservation	Interior S.O. 3289 (Expiration Date: 9/14/2020 Interior Departmental Manual Part 604, Chapter 1 (Effective Date: 01/19/2017)	On September 14, 2009 Interior Secretary Salazar signed Secretarial Order 3289, *Addressing the Impacts of Climate Change on America's Water, Land, and Other Natural and Cultural Resources*. Among other actions, the order established the Landscape Conservation Cooperatives program. Despite mixed response in the conservation community, 22 Landscape Conservation Cooperatives (LCCs) were established in the United States, Canada, and Mexico to facilitate collaboration and conservation management across jurisdictional boundaries. These LCCs are coordinated by a USFWS team at the agency's Falls Church, VA office. In addition to the U.S. federal government member agencies, numerous Canadian and Mexican national government agencies are members. Many state, provincial, local and tribal governments are members, as are many nongovernmental organizations.	1. Revoke Interior Secretarial Order 3289. 2. Terminate U.S. federal agency participation in the Landscape Conservation Cooperatives and the Landscape Conservation Cooperative Network. 3. Terminate the boundary of any trans-national LCC at the United States border. 4. Recall, re-draft, and publish a revised DOI Departmental Manual Part 604, Chapter 1: *Implementing Landscape-Level Approaches to Resource Management*, removing all references to Landscape Conservation Cooperatives. (The

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		priorities and common science needs among partners, and **creates conservation strategies to be implemented *by participating agencies*** or other partners. **Each LCC has its own governance structure**, coordinators, and steering committee, which **develop strategic conservation priorities for the region**. LCCs do not have meaningful accountability to local government.  Click on image for interactive map (One wonders why taxpayer dollars extracted from struggling American citizens are being dumped in that huge foreign LCC in the Arctic, extending thousands of miles north of the last available terrestrial landscape. Same goes for the massive one out there in the western Pacific. Where's the landscape being conserved there?)		At least 43 separate federal government entities have membership in the LCC Network. (Participating Agencies and Organizations) (Federal Agency Participation in the Landscape Conservation Cooperative Network.) The LCCs and the LCC Network have been funded at roughly $14 million per year, and received about $11 million for science support in fiscal years 2014 and 2015.	**effective date of Part 604, Chapter 1 is 01/19/2017**, indicating that the previous administration anticipated the revocation of S.O. 3289, but found the continuation of federal participation in the LCC Network to be essential to progressive conservation goals.) The OMB director needs to be mindful that revocation of EO 3289 will not be sufficient to remove the federal government entities from the Landscape Conservation Cooperative Network, now that the program is included in the Department of Interior's departmental manual. It needs to be removed from the departmental manual, too.
United Nations Convention on Biological Diversity	Department of Interior Department of Agriculture USGS Other Executive Agencies	One of the primary purposes of the USGS National Inventory of Protected Areas' Protected Areas Database of the United States (PAD-US), published by the USGS Gap Analysis Program (GAP) is to develop information and report that information to the United Nations Environment Programme World Conservation Monitoring Centre (UNEP-WCMC) World Database on Protected Areas. Aichi Biodiversity Target 11 requires that at least 17% of the world's terrestrial areas be placed into conservation status acceptable under the Convention's requirements by the end of 2020. At the end of 2016, the United States reported 12.97% of its land base as qualifying as protected in accordance with the target. https://www.protectedplanet.net/country/USA An obvious question arises as to why the USGS is regularly providing data on an extraordinarily broad range of public and private lands and their conservation status. This is not, however, the most important question for this item.	UNEP-WCMC Protected Planet Interactive Map PAD-US Interactive Map	Then-president Clinton signed the United Nations Convention on Biological Diversity in 1992.United Nations Convention on Biological Diversity in 1992. Largely as a result of the opposition of the people of the United States, the United States Senate declined to ratify the Convention and bring the force of law to its provisions within the boundaries of the United States. Since 1992, the United States has experienced the designation of vast acreages of federal public lands as national monuments, far in excess of the amounts of land necessary to protect singularly significant locations as envisioned by the Antiquities Act. The otherwise inexplicably insatiable demand for numerous large-acreage national monument designations by the previous three presidential administrations may logically be presumed to be driven by a desire to meet the goal of placing no less than 17% of the land base of the United States into	Because the Senate declined to ratify the Convention on Biological Diversity as a result of the clear rejection of the Convention by the people of the United States, the current administration should ensure that its ongoing review of national monument designations include the question of whether those monuments were designated in whole or in part in compliance with the provisions of the Aichi Target 11 as even partial justification for the designations. If the administration finds that this was the case, Congressional action should immediately be requested to adjust the boundaries of such monuments to ***only*** the size necessary to protect the antiquities contained therein, with the excess acres returned to multiple use. Should Congress fail to act, the administration should consider executive action to reduce the size of such monuments, justifying such action

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				conservation status under the provisions of the Aichi Target 11. Less clearly evident is why the departments and agencies of those administrations would be so willing to run rough-shod over the people of the United States, particularly those living in the communities adjacent to those massive new monuments with their readily foreseeable adverse impacts to the human environments of those communities.	as remedy for previous administrations' having established those monuments contrary to the interests of the people of the United States. (The finding of previous administrations' having designated such monuments in compliance with the provisions of the Aichi Target 11 would need to be backed by readily producible ironclad written proof.) While the data the USGS collects and maintains for its PAD-US tool may be useful to State and local conservation programs, the administration needs to determine why USGS is reporting that data to the UNEP-WCMC despite the Senate having declined to ratify the Convention. Because the Convention does not have the force of law in the United States, the administration should instruct the USGS to stop reporting the PAD-US data to the UNEP-WCMC.
Sustainable Development	All	Sustainability, sustainable development, and sustainable practices permeate every level of government and society. From the federal level, sustainable development and sustainability in general are promoted and local actions controlled through conditions placed on grants, imposed school curricula, water and land use planning mandates, engineering requirements for federally-funded projects, and more. These mandates and other requirements add significant administrative burdens and action constraints that are highly redundant additions to sustainability and sustainable development mandates and requirements imposed at state and local government levels. The federal layer of mandates adds little to no substantive improvement to on-site sustainability efforts. They do, however, add significant project cost and consume many administrative compliance hours that could be used more productively.		The modern concept of sustainability / sustainable development gained its initial foothold in the early 1970s when it started being used to describe what proponents see as a desirable state of global equilibrium that is sustainable without sudden and uncontrolled collapse and capable of satisfying the basic material requirements of all of its people. This is described more fully in the report, The Limits to Growth, which was prepared for the Club of Rome's Predicament of Mankind project in 1972. Since that time, the concept has matured to a point where it permeates every development public policy from international levels, to our federal level and down to the smallest levels of government policy and individual citizen practice. Today, formal policy programs and employee hours dedicated to sustainable development and general sustainability practice are wholly redundant and no longer serve a viable purpose at the federal executive branch level.	Because sustainability and sustainable development needs are already well met at the state and local level, where they are more appropriately addressed, we recommend: 1. Phasing out all federal sustainability, sustainable development, and sustainable behavior programs. 2. Remove federal sustainability requirements from federal contracting and grant-making. 3. Defer sustainability initiatives to state and local governments for their consideration.