

RESOLUTION NUMBER 2017-25
LINCOLN COUNTY COMPREHENSIVE PLAN
(Rescinds Resolution No.1997-33)

WHEREAS, on July 17, 2007 the Board of County Commissioners adopted a Lincoln County Comprehensive Plan developed by Sites Southwest and funded under a Community Development Block Grant; and

WHEREAS, the Comprehensive Plan of July 2007 was to be used, and has been used as a guide to the County's general approach and particular policies to be considered by elected officials, appointed boards, and staff in decision making; and

WHEREAS, the Board of County Commissioners recognized a need for the Comprehensive Plan of July 2007 to be modified and updated; and directed its Land and Natural Resources Advisory Committee ("LANRAC") to modify and update the Comprehensive Plan of July 2007 for future guidance and decision making.

WHEREAS, the LANRAC has modified and updated the Comprehensive Land Use Plan of July 2007, as directed.

NOW, THEREFORE, BE IT RESOLVED, that the Board of County Commissioners of Lincoln County, New Mexico, adopts this Comprehensive Plan of February 2018.

PASSED, APPROVED AND ADOPTED this 13th day of February 2018.

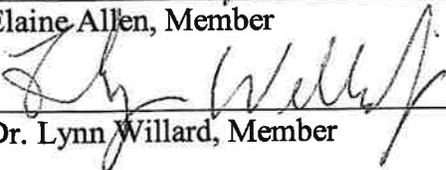
Board of Commissioners
Lincoln County, State of New Mexico



Preston Stone, Chair



Elaine Allen, Member



Dr. Lynn Willard, Member

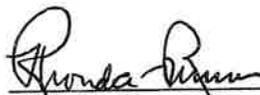


Dallas Draper, Vice Chair



Thomas F. Stewart, Member

ATTEST:



Rhonda Burrows, County Clerk



LINCOLN COUNTY
COMPREHENSIVE LAND USE PLAN

The Lincoln County Comprehensive Land Use plan is to provide a direction from the people of Lincoln County to assist county, private, state and federal decision-makers involved in private and/or public land use planning and management. This plan promotes the productive use and protection of all of essential scarce natural resources in Lincoln County. The plan is a guide to protect the private rights, protect and enhance the customs and cultures, and the economy and tax base necessary for both the well-being of the people and for environmental quality.

SECTION 1, PREAMBLE

We, the people of Lincoln County, State of New Mexico, accept, support, and sustain the constitutions of the United States of America and of the State of New Mexico. We affirm the fundamental rights of mankind as enumerated the Declaration of Independence and acknowledge the limited nature of government as intended by the nation's founding fathers. Furthermore, we affirm that the highest and best uses of land and water resources are best made through free markets and by the protection of private property rights, consistent with the cultural, historical, and economic interests of the County.

Based on these cherished traditions, we declare that all decisions affecting Lincoln County should be guided by the principles of:

1. Protecting health, safety, and private property and water rights water and interests on private and public lands;
2. Protecting local customs and cultures;
3. Maintaining traditional economic structures through self-determination and risk taking;
and
4. Opening new economic opportunities through reliance on free markets.

The comprehensive plan relies on an informed and responsible county government working with informed and responsible local citizens. Each working cooperatively within their communities and the context of a free market, arriving at land use decisions that are ecologically sound, socially acceptable, and economically prudent.

SECTION II, PLANNING AND ORGANIZATION

A. Why Plan?

The purpose of the Lincoln County Comprehensive Land Use Plan is to provide a direction from the people of Lincoln County to assist county, private, state, and federal decision-makers involved in private and/or public lands planning and management. This plan promotes the productive use and protection of all of essential scarce natural resources in Lincoln County. It is a guide to protect the private rights, protect and enhance the customs and cultures, and the economy and tax base necessary for both the well-being of the people and for the protection of the environment and its resources.

We undertake this planning process for one simple reason; we have a vested interest in ensuring the future of Lincoln County and protecting its scarce resources for future generations. We believe Lincoln County is a special place and want to ensure it remains a special place for the generations to come. What makes Lincoln County special? It is the interconnectedness between our water, our land, the people and our culture. We want to protect these scarce resources and their connections.

Change is inevitable. This Comprehensive Land Use Plan is a “living document” and does not attempt to keep the status quo nor turn back the hands of time. Rather, we have identified the goals which we believe provide the direction which we should move in the future. The policies generated from this plan provide the steps along the way.

Within Lincoln County, land ownership and jurisdictions are mixed with both private and government lands (see Figure 2). Government lands make up a substantial part to Lincoln County which includes land managed by the Bureau of Land Management (BLM), United States Forest Service (USFS), military reservations, and state trust lands. Moreover, Lincoln County’s economy is dependent on business activities on federal and state lands. These activities are inseparably tied to the patented lands, water rights and the permits and other uses held by private individuals on public lands in Lincoln County. The intent of the Lincoln County government land use plan is to protect the custom and culture of County citizens through protection of private property rights and private rights in public lands, the facilitation of a free market economy, and the establishment of a process to ensure self-determination by local communities and individuals.

It is, therefore, necessary to develop and implement land use planning mechanisms that also focus on federal and state land uses and activities. The Plan addresses federal and state land

management issues directly. It is intended to be used as a positive guide for federal and state land management agencies in their development and implementation of land use plans and management actions. The County and its citizens support the continued multiple use of federal and state lands in Lincoln County. Therefore, it is the policy of Lincoln County that federal and state agencies should inform local government of all pending actions affecting local communities and citizens; coordinate with them in the planning and implementation of those actions. The Lincoln County Commission, when affected by such actions, should be consulted and activities coordinated with County in accordance with the laws of New Mexico and the United States.

B. How is this Plan Organized?

This document first provides an assessment of Lincoln County customs and cultures, followed with an overview of the Lincoln County natural resources conditions and trends. The major sections consist of goals, policies, and action plans, beginning with an identification of related issues identified by the people who participated in the planning process. The goals are stated as broad, general principles applicable for now and in the future. The policies are framed as more of a course or direction to attain our goals. The action plans are specific actions or activities. Some of the studies and other documentation upon which relied are also mentioned. However, we have prepared appendices which include the technical information which supports the plans.

C. The Legal Basis for Planning

Basic county police powers in New Mexico is conveyed and defined in the New Mexico Statutes.

“...to provide for the safety, preserve the health, promote the prosperity and improve the morals, order and convenience... [and] enact general police power and zoning. County ordinances are effective within the boundaries of the county, including privately owned land or land owned by the United States.” NMSA 1978, §§4-37-1 to -13 (Cum. Supp. 1997)

Both statutory authority and the general police powers provide the legal basis for Lincoln County to prepare and implement a comprehensive land use plan. Refer to Appendix A: Lincoln County Authority to Manage and Regulate Natural Resources, Land Use & Environmental Quality. The purpose of the plan is to:

...guide a coordinate, adjusted and harmonious development of the [County] which will in accordance with existing and future needs, best promote health, safety, morals, order, convenience, prosperity, or the general welfare as well as efficiency and economy in the process of development. NMSA 1978, §3-19-9 NMSA (1997 Cum. Supp.) and NMSA §4-57-2 (1992 Repl. Pamp.)

D. The Lincoln County Planning Process

This version of the Lincoln County Land Use Plan is the outgrowth of the Lincoln County Comprehensive Land Use Plan (Resolution 1997-33). The plan is the culmination of this planning process which involved public input and participation. The Board of County Commissioners appointed the Land and Natural Resource Advisory Committee (LANRAC) comprised of seven members from different communities in Lincoln County to review and revise as necessary, and to work with consultants in compiling the necessary documentation and studies. The specific planning actions to develop the plan include but not limited to:

1. Assessing and documenting public attitudes about property rights, protection, customs and cultures, land and water use, resource and environmental agency actions.
2. Assessing and documenting public assessment about the natural resources, environmental quality and condition of public and private lands.
3. Assessing and documenting the resource conditions and trends in the County.
4. Using a process that is compatible with county, state and federal agencies laws.

It is the goal of the County Commission to use the Comprehensive Land Use Plan as its guide for resource and environmental planning, long-range growth, land and water use, and development decisions. The County should have an on-going planning process that will be guided by the goals and policies of this plan.

E. Who should use this Plan?

Land and water use planning occurs every day by all of us; it is done at the individual and community level by private land owners, businesses and public agencies. The Land Use Plan is not intended to usurp these planning efforts. Rather, the intent of this plan is to provide information for connecting or linking these activities and interests in the future of the County into a larger picture, the overall natural resource base; aka Lincoln County ecosystems.

The goals and policies in this Comprehensive Land Use Plan are intended to guide local decision-makers, including the County Commission, LANRAC, the Planning and Zoning Committee, County administrative staff, as well as local soil and water conservation districts. It

is also intended for other government agencies; i.e. USFS, BLM Natural Resource Conservation Service, Department of Defense, State Engineer's Office, New Mexico Department of Agriculture, State Highway and Transportation Department, Department of Environment, State Forestry and others, to incorporate these goals and policies into their decisions that might impact the future of Lincoln County. Our Plan also provides valuable information for Lincoln County residents and we hope the public will consult it frequently.

SECTION III, LINCOLN COUNTY PROFILE

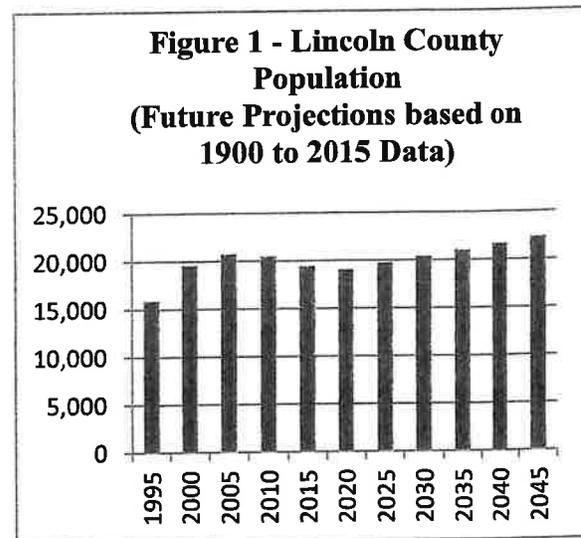
A. Introduction

Lincoln County is located in south central New Mexico. Named after Abraham Lincoln, the County was established in 1869. At that time, it made up nearly one fourth of the entire state and was the largest county in the United States. Today it comprises 4,859 square miles which range from sprawling ranch lands to mountain settings. Important natural features in Lincoln County include the Lincoln National Forest, Sacramento Mountains, Capitan Mountains, Bonito Lake, Alto Lake, Grindstone Lake, Snowy River Cave Conservation Area, Rio Ruidoso, Rio Bonito, Rio Hondo and the Valley of Fires lava fields.

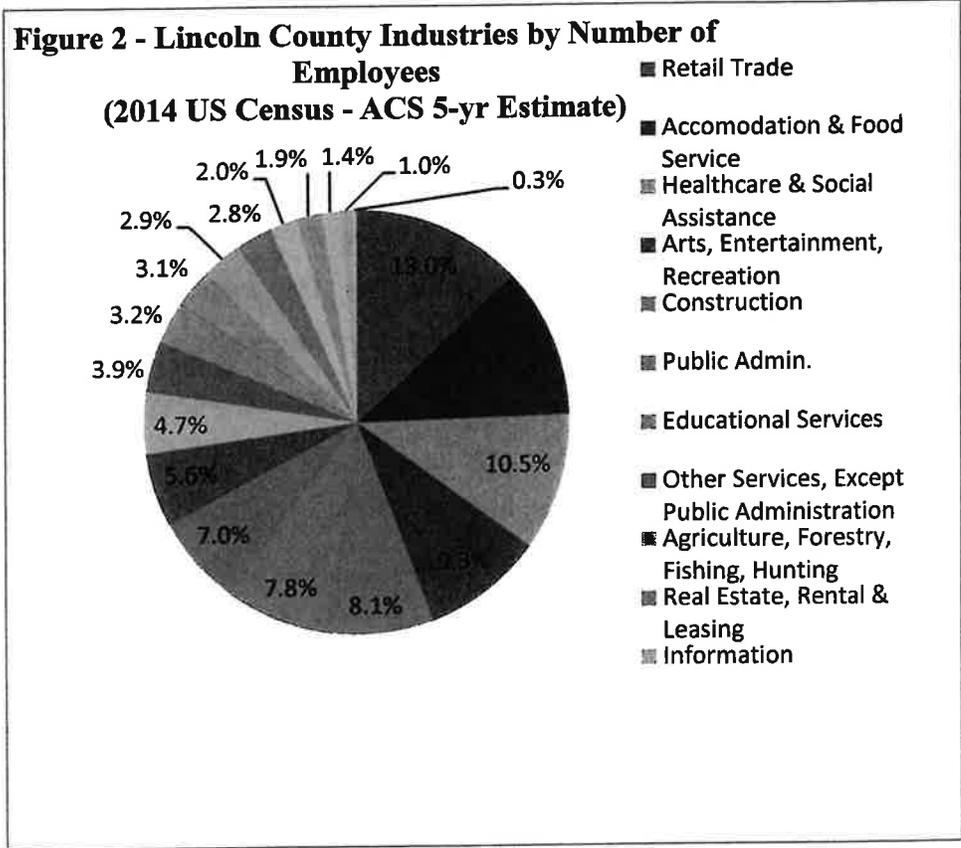
Lincoln County also has a rich history. It lays claim to some of the most well-known figures of the West, including Billy the Kid and Smokey Bear. The County is also dotted with ghost towns and artists' enclaves, as well as the resort town of Ruidoso.

There are three primary roadways into Lincoln County: US routes 380, 70, and 54. Route 380 bisects the County, running west to east. It connect Interstate 25 to Carrizozo, through Capitan, Hondo, and eventually goes to Roswell and Texas. Route 70 runs southwest to northeast, connecting Las Cruces, Alamogordo, and Tularosa to Ruidoso before joining route 380 at Hondo. Route 54 is a south-north roadway, which runs from El Paso, through Carrizozo, north to Corona, and continues northeast through several states. There are two small public airports in the County, including the Carrizozo Municipal Airport and Sierra Blanca Regional Airport. From Carrizozo, the county seat, the nearest metropolitan center is Las Cruces, which lies 125 miles to the southwest. Albuquerque is 153 miles to the northwest, while Santa Fe, the state capital, is 160 miles to the north.

Lincoln County has become increasingly popular as a second home and retirement destination, particularly for people from other parts of New Mexico, as well as California and Texas. The population grew almost 70% from 1990 to 2005 before falling 6% from 2005 to



2015¹. The influx of new residents, as well as tourism, has been an important economic generator for the County. Hence, it is not surprising that Retail Trade, Accommodation & Food Service, Health and Social Assistance, Arts, Entertainment, Recreation, and Construction are the top industries in Lincoln County.



B. Brief History

1. Early Records

In late Pre-Columbian time, the land that currently makes up Lincoln County was inhabited by the Jornada Mogollon peoples (1000 A.D. to 1687 A.D), who were semi-sedentary tribes that descended from the same culture that built the Gila Cliff Dwellings in Grant County and the Las Humana’s dwellings north of Carrizozo. Many of these tribes lived in villages consisting of sunken pit houses or apartment-like structures of stone and mud construction. These people grew corn and squash, and hunted mammals for sustenance. The various Apache tribes came later, and settled the Plains and the Southwest by a least 1400 A.D. Descending from Athapaskan speakers, the Apaches came from the Mackenzie Basin of Canada. The Mescalero Apaches established themselves in southeastern New Mexico, reaching into present day Texas. They were mountain hunters and gatherers who migrated with the seasons and lived

¹ US Census Data

a nomadic lifestyle. They were skilled horsemen and experts in guerilla warfare. They were given the name “Mescalero” because they gathered and ate the mescal plant, which was the staple of their diet.

In the Lincoln County area, the Mescalero Apache inhabited the Sacramento Mountains as well as the Guadalupe Mountains and surrounding plains. Their sacred mountain is Sierra Blanca, towering above the Rio Ruidoso canyon. Although their population was small, they had firm control over what would become Lincoln County when the Europeans first encountered them, and they fought to retain their lands well into the 19th century.

2. The Arrival of the Spanish

Spanish explorer Cabeza de Vaca was likely the first European to through the southeastern New Mexico area when he made his way from Florida through what is now the southern United States to Mexico City in 1536. In 1540, Francisco Vasquez de Coronado and his Army entered New Mexico in search of the seven cities of gold, and in 1598, Juan de Oñate established the first Spanish settlement in New Mexico, claiming the entire territory for Spain.

Over the next few centuries after de Vaca’s travels, other explorers such as Antonio de Espejo and Caspar Castaño also made their way through southeastern New Mexico, but never officially settled the area, even though it had been claimed by New Spain and then Mexico, after that country’s independence in 1821. Despite the area’s natural beauty, Spanish settlers largely avoided the harsh region in favor of the more fertile Middle Rio Grande Valley. Though some Spanish settlers did establish scattered communities, the area was primarily viewed at the homeland of the Mescalero Apaches and other tribes.

3. Settlements

In 1848, Colonel Steven Watts Kearny claimed the New Mexico territory for the United States, Lincoln County was formed in 1869 and until 1891 comprised nearly all of southeastern New Mexico. In the mid-1800 Fort Sumner and Fort Stanton were established in southeastern New Mexico to offer protection for miners and Anglo settlers from hostile Indian attacks.

The town of Lincoln was settled in 1849 and was known by the Spanish families who settled it as Las Placitas del Rio Bonito or “the little town on the pretty river.” In honor of President Abraham Lincoln, the town was renamed in 1869 and was designated as the County seat of newly-formed Lincoln County. The town of Lincoln would later become infamous as the home of the Lincoln County War of 1878.

In 1873, the Mescalero Apache Reservation was created near Ruidoso, and today encompasses 720 square miles. There are three sub-bands that compose the tribe: Mescalero Apache, Chiricahua Apache and the Lipan Apache. Although the reservation created by an executive order of President Ulysses S. Grant on May 27, 1873, the tribe did not receive clear title to the land until 1922. After establishment of the reservation, conditions were difficult for the Apaches, marked by outbreaks of disease and degradation by bands of white outlaws and hostile settlers. Today it runs Ski Apache and the Inn of the Mountain God Resort and Casino located in Otero County and is a major employer of Lincoln County residents.

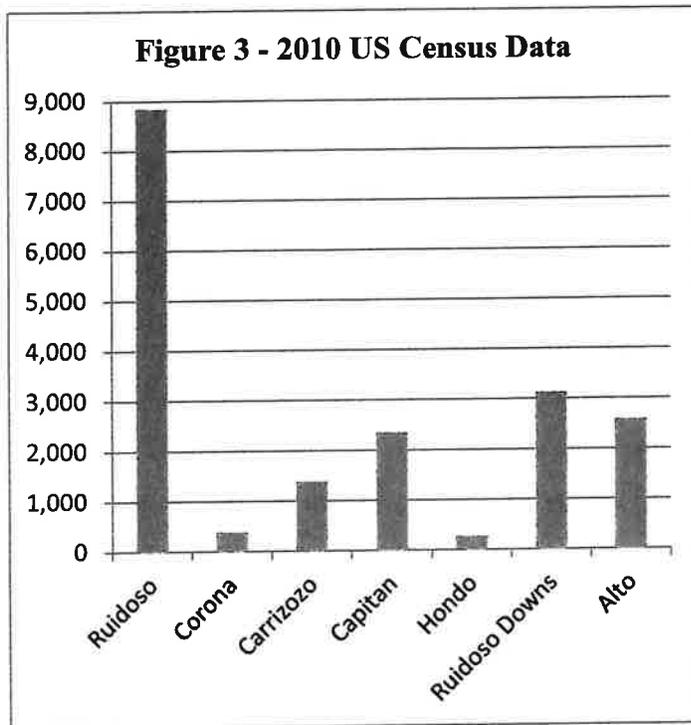
The violent and bloody conflict known as the Lincoln County War of 1878 was the culmination of disputes between local factions of ranchers and merchants. The Tunstall-McSween and Murphy-Dolan groups were vying for control of Lincoln's lucrative mercantile business, which included nearby Fort Stanton. The two factions, representing local ranchers and owners of the County's largest mercantile store, were bitterly competing for control of government contracts to provide food for the U.S. Army at Fort Stanton and nearby Indian reservations. Cowboy William H. Bonney, aka Billy the Kid, became involved in the battle, siding with the Tunstall faction after his friend and employer was killed by a deputy. Avenging the death of John H. Tunstall, Bill the Kid killed the deputy and two others, including the Lincoln County sheriff, William Brady. The conflict made national news and President Hayes ordered the Territorial Governor Lew Wallace to settle the conflict. The slaying of Alexander McSween, the other leader of the Tunstall-McSween rancher faction, ended the conflict. In 1878 Wallace offered amnesty to the combatants and developed a long-lasting truce between the factions. Billy the Kid got his infamous start from this war, eventually becoming a fugitive, and later, after being captured, making a daring escape from the Lincoln County Courthouse in 1881. He was tracked down and allegedly killed three months later at For Sumner by Lincoln County Sheriff Pat Garrett.

Even before the Lincoln County War, the town of Lincoln was known for its banditry and conflicts. Neighboring Texans referred to the area as the "badlands" for its hostile terrain and reputation as a hideout for outlaws. Lincoln continued to serve as a supply center for ranches and mines in the area and in 1888 reported a population of about 800 residents. Today the entire town of Lincoln has been designated a National Historic Landmark and a state monument, preserving it as one of the last remaining non-commercialized 19th century Western towns.

The discovery of valuable minerals in southeastern New Mexico near the turn of the century attracted miners and led to the development of new towns. White Oaks, named in 1879 for the trees surrounding its two natural springs, quickly prospered with the discovery of gold and silver in its lithosphere. Within 25 years, the town was the largest in Lincoln County with a population of more than 4,000 people. During its prime, White Oaks produced \$3 million worth of gold and silver, as well as the state's first governor, W.C. McDonald, and the state's first U.S. Marshal, Judge Andrew Hudspeth. When the population began to decline in the early 1900s, abandoned log-and frame houses were torn down and used as fuel. Today, White Oaks is largely a ghost town with only a few brick and stone structures remaining.

Ruidoso, which was originally known as Dowlin's Mill, was located on the Chisholm Trail. Captain Paul Dowlin began building his mill on the Rio Ruidoso around 1869. By 1885, the town was renamed Ruidoso for the "noisy" stream that ran into town. In the early 1900s, Ruidoso began attracting tourists as a health resort. Today it is the largest municipality in Lincoln County, and its economy is still based around tourism.

Developed in 1899 as a mining and railroad town, the town of Ancho is now largely a ghost town. Its houses and commercial structures were characterized the factory-made, light-colored bricks used throughout New Mexico at the turn of the century. In the early 1900s, Charles B. Eddy, a wealthy rancher and entrepreneur from New York, worked, along with his brother, John A. Eddy, to establish railroad tracks north from El Paso to connect with the east-west Rock Island Line at Santa Rosa. Bypassing nearby White Oaks, the El Paso and Northeastern Railroad ran further east, and Eddy brothers established the new town of Carrizozo on the flats. After building a spur from Carrizozo to the Salado coalfields, the Eddy brothers platted the Capitan Townsite, originally called Gray in 1900. The coalfields, near present-day Capitan, were abandoned the following year. Carrizozo flourished attracting railroad employees and new residents. In 1905, the Eddy brothers sold their railroad to the Phelps Dodge Company, which renamed it the El Paso and Southwestern. In 1906, developer Ira Wetmore bought the Eddy brothers' development company and platted the town of Carrizozo. Named for reed-like grass growing in the area, Carrizozo was incorporated in 1907. In 1909, Lincoln County voted to move the County seat from Lincoln to Carrizozo because of its proximity to the railroad. After a four-year court battle, the U.S. Supreme Court decided in Carrizozo's favor. It became the County seat in 1913.



C. Municipalities and Communities²

Carrizozo was established as the Lincoln County seat in 1913. Other incorporated places include Ruidoso, Ruidoso Downs, Capitan, and Corona. The County also embraces a number of small communities, including Alto, Ancho, Arabela, Fort Stanton Glencoe, Hollywood, Hondo, Lincoln, Nogal, Picacho, San Patricio, and Tinnie.

Carrizozo had a population of 1,386 in 2010. The town was platted in 1906 and became the Lincoln County seat in 1913. The railroad that runs through it

brought people, businesses, and entertainment to what were previously sparsely-populated ranchlands. With World War II and the introduction of the automobile, however, the town began to decline. Nevertheless, Carrizozo is the County seat, housing the County courthouse and other government offices. It's quiet, small-town charm is enticing new residents and visitors. Carrizozo has a number of noteworthy historic buildings, and can be a starting place from which to explore the many nearby attractions in the County.

Ruidoso is Lincoln County's most populous town, with 8,845 residents in 2010. This mountain resort town draws tourists year-round. Visitors enjoy shopping, museums, the Spencer Theater for the Performing Arts, golfing, and the casino at the Inn of the Mountain Gods, just outside of Ruidoso on the Mescalero Apache Reservation.

In the mid to late 19th century, Ruidoso Downs was a major stop for the Butterfield Stage lines along the route from Roswell to Tularosa. Later, the town prospered from timber cutting and lumber mills. Initially, it was called Palo Verde, and then Green tree. In 1961, citizens voted to change its name to Ruidoso Downs. Today the city's claim to fame is the Ruidoso Downs Racetrack. The track opened in 1947 and hosts the All American Futurity, the world's

² See Figure 3

richest quarter horse race. The Hubbard Museum of the American West was built in 1991 and the Billy the Kid Casino opened in 1999. The 2010 population of Ruidoso Downs was 3,132.

The Village of Capitan had a population of 2,351 in 2010. It is home to one of the nation's most recognized figures, Smokey Bear. In the Lincoln National Forest near Capitan in May 1950, a fire crew rescued a badly-singed black bear cub from a charred pine tree after devastating man caused fires had destroyed most of the forest. The bear cub recuperated in a veterinary hospital near Santa Fe before traveling to the National Zoo in Washington, D.C. where he became a national symbol for forest fire prevention. Smokey Bear was buried in Capitan after his death in 1976.

Corona is the smallest incorporated village in Lincoln County, having a population 381 in 2010. Although the small village has only a few retail stores and accommodations, it boast a remodeled Village Hall complex, Medical Clinic, Senior Center, and its own Museum which houses the local library. The Village has made improvements to its park and Main Street, and has ambitiously implemented its own waste recycling program. In addition, Corona is a hub for education, offering K-12 schooling for students from surrounding areas up to 40 miles away.

D. Acequias

Acequias, or community ditches, are recognized under New Mexico law as political subdivisions of the state. Many of the state's acequia associations have been in existence since the Spanish colonization period of the 17th and 18th centuries. Historically, they have been a principal local government unit for the distribution and use of surface water. As in the past, acequia communities today are still in charge of their day-to-day governance and collectively maintain their irrigation works and repair of their diversion structures.

In Lincoln County, several small irrigation systems and acequias have been and continue to be maintained on the streams with perennial flows; this includes Rio Bonito, Rio Ruidoso and Rio Hondo. These acequias have and continue to irrigate approximately 2,230³ acres.

E. Customs and Culture

Lincoln County lies at the geographic heart of the American Southwest. It also lies at the heart of the Great American Myth-the soul bearing the spirit haunted by infamous outlaws, lawless lawmen and great Native-American civilizations of the old west. It is a mystique ghosting the fabulous beauty of the high mountain grandeur as it slips restlessly into the sublime

³ New Mexico Stockman, 2017 *Directory of New Mexico Agriculture*, July 2017

valleys nestling the various booming villages around the county. For everyone here, it is an irreplaceable beauty drawing them to stay where they were born, come back when they retire, or move to escape the wave of pollution, violence, and crowding of the urban worlds they left behind. Now, however, what many of the people in Lincoln County are trying to escape seems irreversibly catching up to them, casting a shadow across Utopia. This shadow manifests around struggles for power, forms of resistance and a rift, between the values brought to the area by people with primarily urban perceptions of life and those whose beliefs and customs are rooted adamantly in the soils of their rural upbringing. All of this depends on scarce land and water resources; and how they are used and protected will dictate the direction Lincoln County will take in terms of growth and the kinds of people who live in Lincoln County.

Conversations with County residents, as with other rural areas, tend to move around the cultural concept of life found in *place, values, and self-identity*. Each of these concepts, though for Lincoln County people, do not fully honor the thoughts and deeds attached to these highly personal and powerful pieces of life. *Place*, for example, is the most pervasive, simply because it is literally and figuratively the groundwork upon which all else in rural life is constructed. *Place* is at once the sound and the echo of living here. Not just the space within which a person resides, but the *place* endowed with meaning through an individual's sense of connection to it. *Place* as a piece of life might be viewed with what I.G. Simians calls that, "...whole complex of cultural response such as memory, experience, values, evaluation, and judgment [which] are present in the process of cognition with the result being a construction of environment which is perhaps analogous to a map of a landscape: representation but not the terrain itself."

The attachment to *place* exhibited by county residents appears clear and powerful in the words of these people. A common expression of the value for home and land is summed up by one resident who stated, "*It's important to me to keep this place in family, you bet it is. Very much so. Because I love the land. I worked for and enjoy it and I raised my family to love and I think they'll continue with it. My ranch is not for sale and it will never be; not for anybody, for any price.*" This comment has been echoed throughout the County and exemplifies the fierce commitment to *place* residents have here. Land has value only in that it stays with the family. There is not enough money in the world to buy the emotions people here have invested in their land. That is why it is crucial to understand the word "constriction" as it applies to *place* in people's lives here in the county. It is within *place* that we find the spirit of Lincoln County-

upon this scared ground where life and death are the same breath forming ideas and ideologies from the land. *Place* holds a deeply personal, emotional and spiritual meaning for County people. As another resident states, *"Our place is not for sale. We have land but we don't have money. And that's the way we want it. It's the way of life that keeps us here: community, self-sufficiency, raising a family in the country. This is our place as long as we can keep it. It's our home. Family was born here and family died here. You can't buy a place like that."*

For many County residents, the value of a house or a piece of land is immeasurable because of the experiences like *"...family has born here and family died here."* Thus *place*, the construct of structures, streets, and furrowed fields, as well as the emotive and spiritual guises cast upon it by the residents, is the terrain upon which a person's identity is founded. And like the land made landscape, a person's identity is shaped and forever cast by relationship developed here between the person, his or her family and the land the person lives with. *Place* should be recognized in this resolution as an expression in many ways at the very heart or essence of residents lives. That is why there exists such a deep sense of commitment to the lands of Lincoln County. *Place* is the sign of resident's history of complex family ties to the landscape they work with, the structures they call home, the communities they live within, and the ecology that has written the nature of their being inexorably in the land.

It is through these feelings for the land and the *place* that County communities have grown to exhibit strong and trusting bonds between neighbors. It is not uncommon to hear a resident say about his or her neighbors, *"We're all good friends and if somebody holler "help" everybody's there."* This sense of community centers around a rural way of life that has long held itself together through an unspoken bond of reliance and commitment by and on your neighbors.

This sense of community and trust is an essential part of people's identity here. It is also because of the values and beliefs formed in the midst of so much and spectacular land that people's identities have formed as they have. Identities shared at some level by most Americans, who still hold the view of rural, western people (especially those who ranch or farm) as honest, hardworking, self-reliant individuals. A characterization most are familiar with, traits our country's leaders often use in their election-rhetoric as ascribe to their own characters. These attributes of character can be found in abundance in County residents. It is not pretentious; it merely rests upon the shoulders of people here like a guardian of nation's founding and most fundamental core values.

Lincoln County residents are not assuming the role set for them through American mythology and history, but rather hold these traits and values as natural, inveterate, and intrinsic to individuals everywhere. As a resident stated, *“People here have a kind of code they live by. They don’t boast about it, and it ain’t anything we ourselves are terribly aware of having. But we all have the same ideas, pretty much, and most of have the same morals. And we live by it and we like to see our children live by it and so on. It means a lot to us and is a big part of our life and one of the big reasons we stick around. We hate to see our children brought up in the city with all the crime and violence.”* These words echo those of many American’s leading sociologists who see the rural west as perhaps the last bastion of true American values left. Even when people have been forced to leave the County because of economic necessity, a large number return at some point in their lives because residents will tell you, *“There’s just something about this place that draws you back.”* Others stay with it. They are what Wallace Stigner calls “stickers”, people who hang on and do what they have to stay in *place*. Residents have summed up these attitudes with: *“We pay our debts and try to manage the ranch. There’s not a lot of put-on to us, we’re just a hard-working bunch of people, that’s what I’d call ranchers in this area. Most all our friends and neighbors are in the same shoes and we all have our difficult times. But none of have ever quit. They’re all good neighbors.”*; *“We like the way we live and we like being independent. Most ranchers do. That’s a big appeal to us.”* and *“It’s a great life. It’s a good life. It’s a hard life. Your hours are long unless you just walk off and the work undone. You can work 24 hours a day if you choose—but that’s a personal preference.”*

The irony is, that while Lincoln County and the rest of rural America embody the values our country prides itself upon, those values and the people living them are in grave danger of disappearing due to ever growing and unchecked populations moving into isolated communities and agricultural areas who do not share or value those traits rural people hold. The result is often a very emotional clash of will, money, politics, and power. Most often, rural interests are buried by the overwhelming numbers of urban people pressing against them from all sides. This has led to rather strong warnings from a wide range of social scientists. Foremost among these is Stuart Hall, who claims: *“...the changing balance and relations of social forces throughout...history reveal themselves, time and time again, in struggles over the forms of the culture, traditions and ways of life of the popular classes...that is why popular culture is linked, for so long, to the question tradition, of traditional way of life—and why its “traditionalism: has been so often*

misinterpreted as a product of a merely conservative impulse, backward looking and anachronistic. Struggle and resistance but also, of course, appropriation and ex-proportion. Time and again, what we are really looking at is the active destruction of particular ways of life, and their transportation into something new. "Cultural change" is a polite euphemism for the process by which some cultural forms and practices are driven out of the center of popular life, actively marginalizing. Rather than simply "falling into disuse" through the Long March of modernization, things are actively pushed aside, so that something else may take their Place."

To put this another way, being traditional is not a way of hiding from change, but questioning the change that occurs and making the conscious choice whether to abandon the old to embrace the new.

This is a major problem in Lincoln at this point. Urban and rural ideologies are approaching an impasse. People are coming into the area in large numbers, pressing heavily upon the local people who have lived all or most of their lives in these small communities. The people who come in are attracted by the rural way of life, but as one resident said: *"...the [newcomers] come into our community and say they love it, but they want to change it to the place they left."*

As "other highly urbanized states grow increasingly polluted, violent, and unlivable thousands of people are moving...in search of refuge", they bring with them vastly different assumptions and significantly differing values than those they find in rural Lincoln County. It is a plight recognized throughout rural places in America. J. Kennedy explains the underlying: *"...all this socio-political change is the shift of public land values of an American industrial nation that emerged from W.W.II to become an urban post-industrial society in the 70's. Much of the American public holds environmentally-oriented public land values today, versus the commodity and county economic development orientation of the earlier conservation era (1900-1969)."*

Lincoln County still holds to the values of the earlier times—values that keep family, community, and land together in highly cooperative systems. But with the influx of people into the area, long-time residents are feeling caught in the middle of something they never expected to see. The results are a mixture of uncertainty and despair. There are residents who will speak reflectively, who have experienced urban life and who realize the inevitability of what is taking place in Lincoln County. From these you hear things like: *"Growth is the way it is...It'll bring some adverse things and it will bring some positive things."*

But there are others who fell much stronger about the changes in growth and the shift in values of Lincoln County. People who are literally caught in the middle, especially the ranchers, who, in many cases, have seen the lands surrounding them turn into housing developments so that they are forced into selling their cattle are constantly being harassed by people, dogs, and the up-keep on the property becomes too much for what the ranch can support.

Other changes are apparent in the schools where, as one teacher put it: *“When I started teaching to now there has been a whole change in attitude towards education. Back then, teachers were really respected and parents backed the teachers and expected their children to go to school to learn. By the time I retired, discipline was a totally different concept. Both the students’ and the parents’ attitudes were different. The child became the dominant person. They ruled the parent as well as the teacher. It became child-centered education.”*

This is a view held even by the young adults themselves, some of whom told that the change in the area was because of all the people moving in from the cities was turning their experience in school, and life, into a negative one. One young person said, *“Well, I think that growth is always good, but in this small historical town we’re losing our values. We’ve always been known as a little town famous for Billy the Kid and it’s a lot of old timers who remember the past and everything. And now all these new people are moving in and it’s kinda like all our values that we’ve built are going down the drain. They come in thinking they own the town and telling the old-timers what they should think.”*

The stress being exerted on Lincoln County by its rapid growth is felt by young and old alike. It is causing some resident to exclaim: *“We helped build Lincoln County, why should we let somebody come in and drive us out. That’s what’s happening—that’s what I feel and I know a lot of my neighbors feel the same. It used to be you knew all you neighbors and you could set out your door and holler at them and they’d be right there. But now, I’m not so sure you could step out the door and holler and anybody would come.”*

Many of the feelings expressed here come from people who pride themselves on self-reliance, individuality, and strong family and community bonds. It is, as explained, a rural view, particular to the American West and the image of the rancher. It is the identity of the vast majority of the people interviewed in Lincoln County felt they shared. When a way of life that is so unique becomes endangered as the rural life way is in today’s America, the defense of such a life way becomes at times a religion. The decline of the rural life way into the ever expanding

urban field of vision is something everyone interviewed wanted to talk about. The typical response was: *“I don’t resent anybody getting ahead, anybody doing better for themselves. But it worries me about our country’s future whenever the family ranch is taken off the land and the land is held by big corporation or big money people. They want these ranches and farms for a tax write-off. That’s why they’re buying and investing their money because they don’t want to have to pay taxes.”*

Another resident carried on the thought: *“I don’t see that it is good for our country for our bread-basket to be owned by the very wealthy or by big corporations. The one world thing is scary.”*

There is something more to this. Perhaps the ultimate cruelty is that for these people, who have spent their lives learning the place they love, is that very place and the increasing value attached to it by a consuming, urban culture, which is the most persistent threat to their continued life way with the land. The value of the land in economic terms often makes it impossible for families to hand their property to the next generation. It is a problem Lincoln County residents are blaming for the destruction of their culture: “It’s putting a lot of people out of business you know. And the family is being broken up. That’s a heck of a thing to do with people raised in this place. They got to sell all they own to pay the government. Then they have to go to the city to look for a job.”

The pain is clear in the voices of the people struggling to come to terms with the growth of Lincoln County and the face of a different America suddenly on their doorstep demanding more than they believe they have to give. It is for many of the people in Lincoln County both frightening and unjust.

SECTION 1V, AN OVERVIEW OF RESOURCE CONDITIONS AND TRENDS

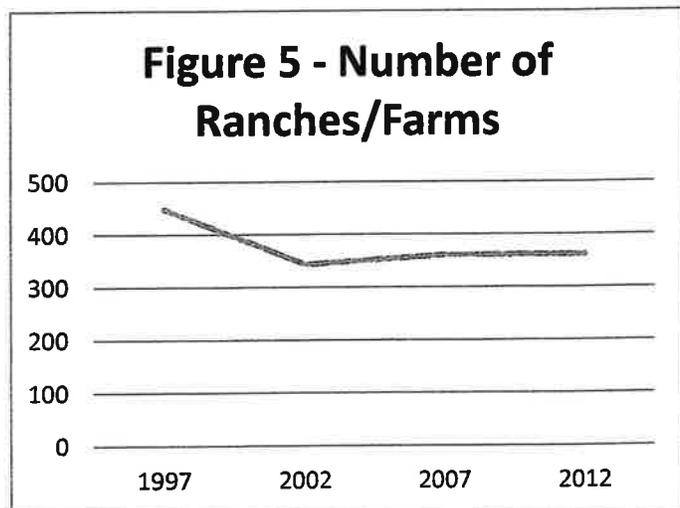
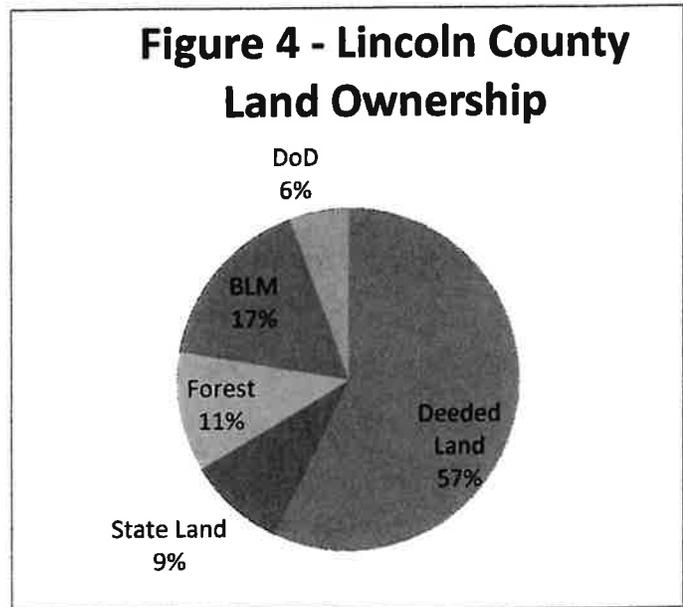
Lincoln County Residents enjoy a close alliance with the forest and rangelands. As a source of livelihood and recreation, the land provides for the well-being of the community. Now, as in the past, changing values and priorities affect traditional ways in which resources are managed. Consequently, an awareness of resource conditions and trends is vital to the management of the entire environment and attending economic concerns. This section presents an overview of the natural resources and environmental conditions and trends

including forest health, air quality, water quality and quantity, range conditions, wildlife, mineral resources, and environmental health and waste. The overview of resource and environmental conditions and trends is the result of agency reports. These contacts are listed at the end of this section entitled, "Work Consulted for Resource Conditions and Trends".

A. General Background

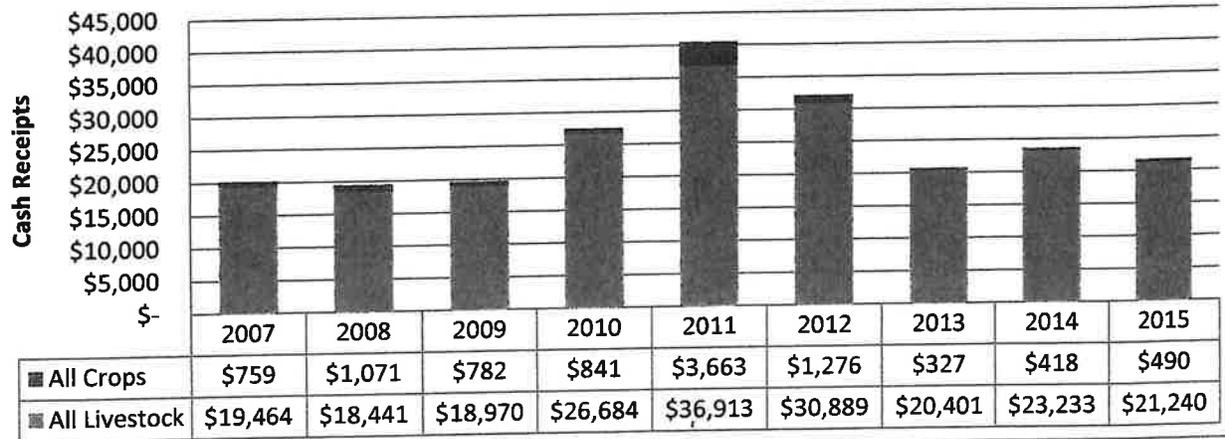
Of the 3,109,760 acres⁴ or 4859 square miles of land that comprise

Lincoln County, 57.2% deeded to Private, County and Village interests, 33.6% belonging to the Federal Government and 9.2% controlled by the State. See Figure 4. Therefore, management practices and treatments applied to public land greatly affect other County users. According to available data, those most affected are tourism industry and the ranching community who utilize



⁴ Lincoln County Assessors Office

**Figure 6 - Agriculture Cash Receipts
(1,000 dollars)**



public lands for grazing. In 2012 there were 362⁵ ranches in Lincoln County but down from 1997. See Figure 5⁶.

There are 1,780,299 acres of deeded land in Lincoln County. Historically, the greater part of this privately owned land has been dedicated to sheep, goat, and cattle ranching. Although this is still true today, much of the upland riparian area formerly utilized for crops or grazing is being developed as private residences. In 1990, agriculture accounted for nearly 18 million dollars in revenue. In 2011 cash receipts⁷ were \$40,576,000 but down to \$21,730,000 in 2015. See figure 6.

The number of livestock and other agricultural products, together with revenue accrued from these enterprises, reflect market and environmental conditions (i.e. drought) that has been devastating to New Mexico's agrarian communities. In 1997⁸, there were 27,126 head of cattle, 55,513 sheep/goats, and 950 horses in the County. As of March 2017⁶, there are 30,684 head of cattle, 3047 sheep/goats⁹ and 1198 horses¹⁰.

⁵ 2015 New Mexico Agricultural Statistics, US Department of Agriculture

⁶ US Department of Agriculture Census Data

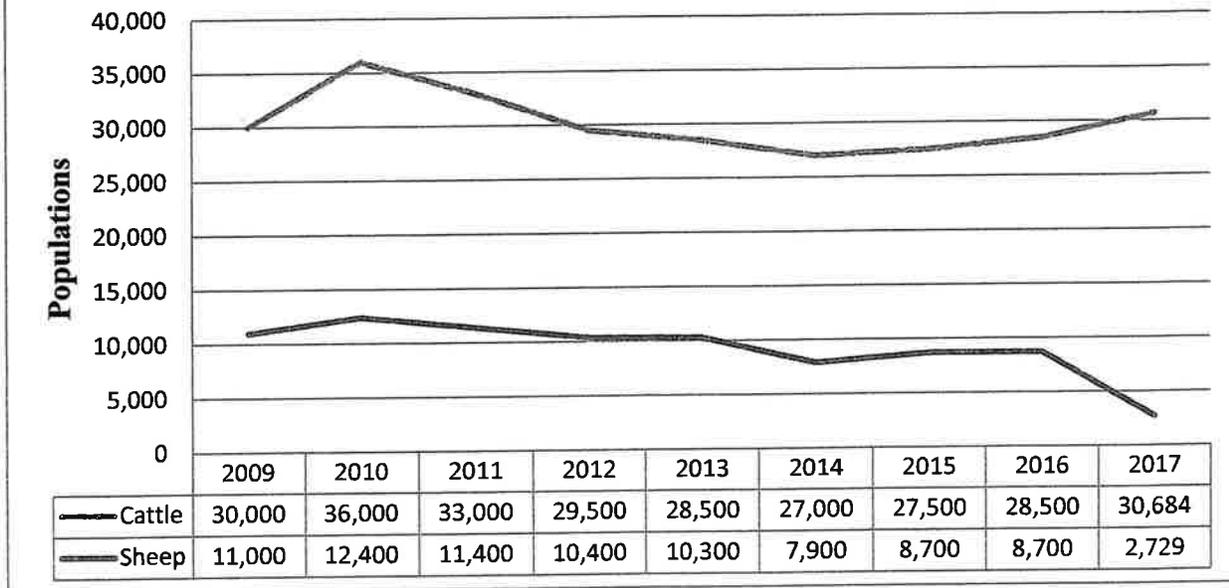
⁷ 2015 New Mexico Agricultural Statistics, US Department of Agriculture

⁸ Lincoln County Assessor's Office

⁹ Includes 2729 Sheep, 279 Goats of all kinds and 39 Lamas

¹⁰ Includes 1125 horses and 73 Mules/Donkeys

Figure 7 - Cattle and Sheep Populations



B. Forest Health

The quality of air and water, originating from the wooded areas of Lincoln County reflects the condition of the forests’ health. Similarly, economic consideration involved with tourism, agriculture, and real estate, among other sources of revenue, are dependent upon the vitality of the forest and the resources that emanate from it. At the same time, natural resources and environmental quality are dependent up social capital; that is the social and economic investment, or stewardship, by communities and individuals most affected by those resources.

In an attempt to work with the complexities of natural resource management, federal and state agencies endeavor to implement Best Management Practices (BMP). These are contemporary resource management techniques which strive to emulate natural processes, with the goal of restoring and maintaining forest and rangeland health with employing little human intervention. The practices of logging and thinning, for example, are currently being curtailed or stopped: sometime, superseded by prescribed burning as a way of managing forest and rangeland. Historically, mechanical treatment of forest and range areas (i.e. logging, thinning, etc.) adequately emulated the natural fire-forest/range cycles and as the prescribed way to treat high fuel loads, disease or insect infestations, while contributing substantially to the economy. Unfortunately, the politics of special interest groups have halted this method of treatment. It has

been determined that areas designated as Critical Habitat (according to the U.S. Fish & Wildlife Service designation) are to be given priority over other resource management techniques, social, and economic interest. The potential long term economic benefits that ensue from these issues challenge society to include endangered species and other environmental factors, yet restore the resource interdependencies with cultural and economic dimensions (social capital) into the complexity of this matter. One method of achieving BMP is the prescribed burn method of forest fire control. Like mechanical treatment, controlled burns and let-burn programs attempt to imitate the forces of nature.

The risks involved with prescribed burns should not be overlooked. By eliminating traditional management methodology in favor of habitat creation, the forests will become over-loaded with decadent vegetative matter or fuel loads. Under this condition a prescribed burn could easily get out of control. According to some scientists, excessive fuel loading does not occur in a natural ecosystem because less intense fires that would occur every 5 to 7 years continually reduce the fuel load while purging parasitic infestations. It should be noted that most forest rangelands in Lincoln County are not this pristine – humans have intervened for thousands of years, manipulating, or managing forest and rangeland through fire and mechanical treatments. Now in some habitat designated areas the possibility of catastrophic fire is increasing.

Catastrophic wildfire is particularly devastating to the environment due to the extreme heat produced. These catastrophic fires by definition result in biological degradation of entire ecosystems. Fires of this magnitude are more difficult to control, subjecting the environment to heightened level of devastation; air and water qualities are negatively impacted, the biological community disturbed, and the adversely affects the human population. When abnormally dense fuel loads combined with multi-storied forest canopies, the potential for catastrophic fire is imminent. Heat generated by such fires not only destroys the vegetation, in a way ordinary fires would not, but also sterilize the soil by destroying its microscopic organism community. Soil subjected to high temperature fire is virtually inert and unable to sustain vegetation. This complicates interrelated problems of soil erosion, diminished water quality, aesthetic abatement, as well as negatively impacting the condition of the air. Also residences, business, and community infrastructure are jeopardized. Ironically, in an attempt to protect certain endangered species, the specter of catastrophic wildfire threatens to destroy their safeguarded habitat.

Special strategic arrangement must also be considered in order to coordinate county, state, and federal fire suppression agencies in the event that such a fire does occur. In June 2012, the Little Bear Fire was such a wildfire adversely affecting the entire County.

“The Little Bear Fire was started by a lightning strike in the White Mountain Wilderness Area of Lincoln County on June 4, 2012. Suppression activities were instigated by the Lincoln National Forest that afternoon and a preliminary fire line had been completed by June 8th. However, high winds lifted fire embers beyond the fire line, leading to a fire that burned a total of 44,330 acres of which 35,339 were Lincoln National Forest, 357 on Mescalero Tribal land, 112 on state land and 8,522 on private land, including 242 houses and 12 structures. The fire was very complex in terms of fire behavior and response coordination. Fire behavior was extreme with an unexpected run that quickly covered thousands of acres and burned down hundreds of houses. While the fire affected public and private land in Lincoln County, its proximity to the Village of Ruidoso led to significant concern about possible outcomes if the fire entered Ruidoso. The critique that the destructiveness of the Little Bear Fire was attributable, at least in part, to ineffective forest management practices.”¹¹ This fire has adversely affected all aspects of life in Lincoln County. Industries from agriculture with loss of grazing land, reduced water quality, loss of vegetation and flooding to tourism with the loss of camping, hunting and fishing areas have suffered from the Little Bear Fire. As of 2017, Bonito Lake has not fully recovered from this fire and is not expected to open until 2020. This catastrophic fire is often used as an example of where Forest Service policies need to change.

Studies indicate mechanical methods of reducing fuel loads are not only more cost effective, in terms of suppression costs verses cost of prevention but the income derived from mechanical treatment (thinning, logging, etc.) is considerable. A study that assesses the risks of wildfire on the Lincoln National Forest speaks to this issue.

... If this treatment (mechanical) for high fire risk and overall ecosystem management were implemented forest-wide on the Lincoln National Forest, it would be the first step in the direction managing the health of the forest ecosystem. At the same time, it will substantially reduce the high risk of catastrophic fires and the potential loss of lives, home and other

¹¹ *Little Bear Fire Summary Report*, Research Note NRS-178, United States Department of Agriculture, September 2013.

properties amounting to billions of dollars. Finally, it would have the side benefit of supporting approximately 150 jobs related to the local timber mill and inject a sustainable 4 million dollars annually into [the local] economy...¹²

C. Air Quality

The air quality of Lincoln County, one of the area's greatest resources, is generally thought to be excellent. Historically, wind power has been used to power windmills and it is increasingly being used to power Wind Energy Conversion Systems, aka electric wind turbines.

The problem of winter air inversion that affects other areas of New Mexico is not as problematic in this region. The dust generated by wind, drought conditions, unpaved access roads, mining operations, and oil and gas extraction is marginal. At present, the greatest threat to Lincoln County air quality is some from prescribed burns and wildfires, followed by automobile and fireplace emissions.

New Mexico Environment Department (NMED) is responsible for enforcing air quality standards of the Federal Clean Air Act. Regulatory authority comes from the state's Environmental Improvement Act, Air Quality Control Act, and State Implementation Plan approved by the Environmental Protection Agency (EPA).

D. Water Quality

Water is essential for all life: human, livestock, wildlife and plants. In this desert region water is the single most important resource: amount and quality are perhaps the most vital topics in resource management. The prospect of Lincoln County's population increasing to around 23,000 in the next 30 years, makes the preservation of this scarce resource increasingly important. Soil erosion, associated problems of siltation and ground water pollution are being studied, such as controlled use (grazing, recreation, etc.), juniper and pinion (P&J) management, revegetation programs as well as solid waste treatment systems.

Research argues that P&J encroachment into grassland exacerbates erosion; therefore, adversely affecting the water supply and quality. A U.S. Forest Service (USFS) program is trying to resolve a portion of this problem by way of P&J management. P&J, along with other

¹² *Risk assessment of Wildfires on the Lincoln National Forest*, Southwest Center for Resource Analysis, Western New Mexico University, May 1995

woody species, discourage the growth of grasses that hold soil in place with their shallow but complex root matrices. By reclaiming grassland areas USFS is making headway towards resolving this problem. According to the Bureau of Land Management (BLM) and USFS: *"Before the Carrizo project (P&J management), researchers estimate that each year more than 20 tons of soil per acre were washed from severely eroded upland slopes into rivers and streams... This sediment originates from the bare ground beneath stands of pinon, pine and juniper that have become too crowded to support a grass understory... Bob Alexander, 1996, BLM* *"Since the inception of the Carrizo Demonstration Area, a number of projects have been implemented which are moving the area closer to the desired condition. With the help of cooperative partnerships, approximately 4,000 acres of unsatisfactory condition watershed have been treated through vegetation management to increase herbaceous ground cover; 3.6 miles of gullies have been treated through the installation of structural improvements or gully sides slope stabilization, and four miles of roads have been obliterated to reduce another source of downstream sedimentation. Specific improvements for wildlife habitat have been implemented on almost 2,500 acres through prescribed fire or creation of wildlife openings. In addition, two wildlife water developments were installed, and 15 acres of existing riparian areas have been fenced to control livestock grazing. Forest products sold as a result of vegetation treatments include 5,100 cords of fuelwood, 4,000 board feet of timber, and 500 small and medium poles". Richard Edwards, Carrizo Project Coordinator, USFS.*

In addition, grasses benefit the environment by providing forage for wildlife and serve as a primary combustible material for prescribed burns.

In regards to water pollution, such crops as apples are in decline; the potential for pesticide and fertilizer contamination is diminished accordingly. Water pollution in the past has been simply a problem of not knowing. It should also be taken into consideration that the water quality of the Tularosa Basin, a closed system, has traditionally been poor, due to natural salinization.

Conversely, problems of siltation, turbidity, metal and chemical contamination are problematic in the Pecos River and its tributaries. Although many of the pollutants come from sources to the north, according to the New Mexico Water Quality Control Authority a substantial amount of contaminants do emanate from various watersheds in Lincoln County.

The Rio Ruidoso from Seeping Springs Lake to the Mescalero Apache Reservation boundary and the Rio Bonita after the Little Bear Fire are examples of water quality being adversely affected by siltation, turbidity, reduction of riparian vegetation and stream bank destabilization. The possible sources are listed as, land disposal (septic systems), recreation (road/parking lot runoff), construction (building site preparation), and agriculture (grazing). There are also other contaminants such as metals in the various streams and creeks of the watershed but are not a chronic toxicity levels.

The negative impact from real estate development on the rangelands is perceived by some to be less damaging than other uses; there is substantial evidence to the contrary. Water quality in the Ruidoso area, for example, shows a definite deterioration due to contraction practices and septic systems. Although contamination has not yet reached chronic toxicity levels, the situation call for close monitoring as the population increases, particularly in areas of high population density. It should be noted the full result of population increase has not been thoroughly evaluated.

E. Range Conditions

The condition of range land is contingent upon quality of the soil, vegetation, and water that comprise it, as well as the amount and duration of use it is exposed to. It is a consensus among range specialists that the rangelands in Lincoln County have generally been improving since the “dustbowl” days of the 1930’s. The current range trend is stable to upward range conditions. Effective public-private sector partnerships have resulted in improved rangelands for both wildlife and livestock. It is estimated that the average public land rancher invests approximately \$7,000 per year in rangeland improvements, such as water and trail development and maintenance.¹³ These kinds of efforts have resulted in increased viability of the vegetation as well as conservation of water and soil resources. Howard Shanks addresses this matter in his study¹⁴: *“In 1992, several Federal agencies provided funds to implement natural resource improvements in Lincoln County...The Bureau of Land Management (BLM) funds are spent to manage and enhance the vegetative resource by installing structural and non-structural improvements including fencing, water development, prescribed burning, and brush*

¹³ Dr. John Fowler, *Characteristics of Western Livestock Industry*, New Mexico State University, March 1993

¹⁴ Howard Shanks, RC&D Coordinator for the Soil Conservation Service, *Economic Impacts of Public Land Grazing in Lincoln County, NM*, 1997

management...The Natural Resources Conservation Services¹⁵ provides funds through conservation program on private and state lands. These funds are used to install conservation practices similar to those mentioned above...these practices not only improve wildlife habitat they also enhance the overall condition of the natural resource.

Increasingly, upland and riparian areas, once utilized for livestock grazing and cropland, are being converted into residential and commercial uses. The impact of changing uses can have adverse effects on upland range and riparian areas, resulting in water quality problems discussed earlier. There is also the question of a growing pleasure horse census in the County. These animals require different habitat than a working horse, creating a growing impact on the environment and economy. There is no information addressing this situation; however, there are 1198 head of horses in the County at this time versus 950 in 1997.¹⁶

F. Wildlife Management

Three major wildlife management topics are discussed: Threatened and endangered species, animal damage control/wildlife predation, and big game species (deer, oryx and elk).

Endangered Species: The topic of endangered species is also pertinent to the broader issue of water, forest and rangeland health. Some ecologists equate the preservation and propagation of native flora and fauna with the ability of the ecosystem to provide a sustained yield of renewable resources. Ironically, while striving to protect habitats suitable for such species as the Southwestern Willow Fly Catcher, Mexican Spotted Owl, and Goshawk, federal agencies may be creating situation that threaten the bio-system they seek to preserve, while a large segment of the established community is placed at risk.



Both natural section and the interface between human enterprise in the natural world have resulted in the decline of certain species of flora and fauna. Endangered species are defined as: *“an animal or plant listed by regulation as being in danger of extinction throughout all or a*

¹⁵ Aka Soil and Water Conservation Districts

¹⁶ Lincoln County Assessor's Office

significant portion of its range.” A “threatened species” is “any animal or plant likely to become endangered in the foreseeable future throughout all or a significant portion of its range.”¹⁷

As of July 2016, New Mexico was home to 118 species: 56 endangered species and 64 threatened species.¹⁸ Of the 56 endangered species there are 12 Invertebrates, 15 Fishes, 4 Amphibians, 7 Reptiles, 12 Birds and 6 Mammals. Of the 62 threatened species there are 15 Invertebrates, 9 Fishes, 2 Amphibians, 8 Reptiles, 20 Birds and 8 Mammals. Currently New Mexico has 37 plant species that are listed endangered, including 13 federally listed species. Two of these plants, Goodding’s Onion (*Allium gooddingii*) and Kuenzler’s Hedgehog Cactus (*Enhinocereus fendleri* var. *kuenzler*) can be found in Lincoln County. Growing concern for loss

Of species, hence their impacts on the sustainability and yield of natural resources, has engendered a response from federal and state agencies who are mandated by law to preserve the natural resources of this Country. This response manifests in a myriad of ways such as, more stringent regulations on predator control, increased grazing fees, and restrictions on timber harvest or mineral extraction, to name a few. A changing perception of the highest and best use of natural resources tends to agree with the interest of tourism and real estate development. The influence these two industries have on natural resource conservation will be increasingly felt by those who rely upon the gathering of these resources as a means of livelihood.

Animal Damage Control: This topic includes wildlife predation and animal damage control present and future management problems. Predation refers here to predators: bear, mountain lion coyotes, wolf, etc., that prey on other wildlife, i.e. deer and on livestock. The issue of predator



The Endangered Species Act (ESA) of 1973

¹⁸ 2016 Biennial Review of T & E Species of NM, October 5, 2016, New Mexico Fish and Game

control, in a community traditionally based on sheep and cattle ranching, is of vital importance. Predators such as the wolf, coyote and mountain lion adversely impact livestock. A coyote may take one to three lambs per night, while a mountain lion may kill several head at a time.

Devices such as the livestock

protection collar and several varieties of anti-predator fencing have been used in addition to the more traditional methods of predator control. The collar is achieving a degree of success, targeting the specific predator in question. It uses the substance Compound 1080 (sodium monofloractate), while protecting the throat area of the young animal. Fencing, on the other hand, has been successful in eliminating coyote predation on sheep. However some environmentalists contend that coyote fencing impedes the migration of antelope. According to New Mexico State University wildlife specialist, Dr. V. W. Howard, fencing is an effective technique and research can provide alternatives that maintain predator fencing, as well as opportunities for migration of antelope herds.

Government trappers use conventional methods of predator control when working in the County. In recent years there has been growing concern for the welfare of predator species, and their role in the environment. The culmination, in some areas, is the reintroduction of the Mexican Wolf. Escalating pressure from environmental concerns has benefited some populations at the expense of livestock. Ironically, big game animals such as elk and deer benefit from predator control, which in turn stimulates positive cash flow from hunters. As the economic shift from agriculture to tourism and real estate increases, the pressure on local agencies to curtail predator control is becoming more pronounced. Yet, this can create serious environmental health problems if disease carrying predators are not controlled for such outbreaks as rabies. As communities intrude into the range of predators and other animal habitats, a new realization has evolved about the increased potential for outbreaks of rabies, hantavirus, tularemia and the plague. The realization also points to the need for continued animal damage control as well as different types of animal control.

Big Game Species: A growing concern expressed by wildlife professionals, sportsmen, and livestock producers is the dramatic decrease in deer herds and the steady increases in elk herds. Deer herds have been on the decline for some time. The decline of deer herds has been attributed to predation, especially from mountain lions and from increased hunting pressure. Elk herd populations have correspondingly escalated. According to Jed Elrod, wildlife specialist with New Mexico Department of Agriculture, another reason for this shift of dominance is fire suppression and human population increases, creating a vegetation shift that favors elk. The elk population increase is causing deterioration of range conditions, especially in riparian areas, according to Gary Snider, Forest and Range Experiment Station, USFS, Northern Arizona

University. The elk problem has also resulted in a rising number of property damage, traffic accidents and deaths in Lincoln County.

G. Mineral Resources

In the past gold, silver, and copper mining operations were more abundant in Lincoln County and contributed greatly to the public coffers. In 1997, there was only one fully operational placer gold mine. It is located in White Oaks Canyon, and employed up to 30 employees. Currently, there is only one such operation in the County, north of Capitan. In 1996, sand and gravel operation provided the main source of mining jobs and taxes to local and state governments. At that time, several sand and gravel quarries operated around the County. At the beginning of 2017, there was only one quarry in operation.

The environmental consequence of past hard rock mining activity, especially last century, is evident in the levels of contamination found today in the area. An example of this is Willow Creek in the drainage of the Terro Mine, where there is a significant amount of pollution. According to the Water Quality Control Authority (WQCA), the contamination is from metals, siltation, conductivity, and turbidity. The elements Copper, Zinc, and Cadmium are at acute levels of toxicity. This condition is attributed to mine tailings.

In today's regulated climate of mining and with the availability of New Mexico Tech resources, Lincoln County has the potential to develop its mining resources. With proper reclamation, mining can provide substantial revenues and jobs to County businesses, government, and schools.

H. Environmental Health and Waste

Lincoln County is striving to keep step with solid waste problems that accompany a growing population. Landfill demands along with septic tanks are the major problems associated with waste in the County. At present, the impact of nitric contamination of ground water is minimal. In regards to environment health, there is evidence of coliform bacteria in the drinking water supply.

From 2010 to 2016, the New Mexico Department of Health's Division of Epidemiology reports on five cases of Giardia, one case of Hepatitis A, two cases of Hepatitis B, eight cases of Hepatitis C, 13 cases of Salmonella, six cases of Shigella, 24 cases of Streptococcus Pneumonia, and three cases of Rabies. There were no reported incidences of HIV, Hantavirus, plague or other communicable diseases during the same reporting period for Lincoln County. In terms of

relative risks, Salmonella and Shigella in food preparation can be problematic; although the number of these cases remains low. Influenza or flu season can be a significant health risk to certain high risk categories, namely children and the elderly.

SECTION V. GOALS, POLICIES AND ACTION PLANS

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1. Lincoln County Custom and Culture

1.A Issues Related to Customs and Cultures: Issues, concerns, and preferences expressed from public input into the plan include:

- Lincoln County is rich in cultures, archeological and historic sites with an expressed interest to protect the heritage in the County;
- Concerns over people moving in and not recognizing or understanding the customs and cultures;
- The importance of understanding the impact of government laws and regulations and the impacts of their actions on the customs and cultures to conserve and use natural resources; and
- The need for intergovernmental coordination to assess the impacts and preserve the heritage of the County.

1.B Goals, Policies, and Action Plans for Protection of Lincoln County Customs and Cultures

Goal 1.1 Protect the customs, cultures, historic, and cultural ties to the land.

Policy 1.1.1 The County encourages the unique cultural traditions and heritage, especially those customs associated with land use and conservation.

Action Plan A The County encourages the coordination between the Land and Natural Resources Advisory Committee and the Lincoln County Historic Preservation Board for integration and consistency between the Land Use Plan and the Lincoln County Historic Preservation Ordinance.

Action Plan B The County supports the Lincoln County Historic Preservation Board, the State Historic Preservation Office and other heritage, cultural and historic preservation groups in its efforts to protect cultural, historic and archeological resources.

Action Plan C In considering historic, cultural and archeological preservation sites affecting private lands, the County encourages all government agencies to work through the private property owner and take the appropriate steps to insure that the rights of the affected landowners are protected.

Policy 1.1.2 Lincoln County heritage, customs and cultures should be given adequate consideration by federal and state agencies proposing actions within the County that may affect the County and its residents.

Action Plan A The County, state and federal agencies should coordinate their efforts in assessing the impacts of actions and proposed projects, when there is a potential for significant impacts on the customs and cultures of Lincoln County.

Action Plan B The County, State Forest Service, BLM and US Forest Service should develop, through their existing Memoranda of Understandings (MOUs), a coordinated approach to identifying, evaluating and mitigating potential impacts on customs, cultures and community stability that may result from agency actions.

2. Private Property Rights

2.A Issues Related to Private Property Rights

- Concerns about the lack of consideration and proper protection of property rights and civil rights in government actions; lack of understanding as to what all these rights encompass;
- Lack of understanding as to the importance and the relationships of protection of property rights in government actions related to land use, growth planning and the protection of the environment and natural resources in the County; and
- The lack of proper assessment as to the potential negative impacts on property and civil rights, and the lack of interagency coordination in addressing potential or actual threats to these rights per County, state and federal laws.

2.B Goals, Policies, and Action Plans for Protecting Private Property Rights

Goal 2.1 Foster the use and enhancement of private property rights as a proactive way to improve natural resources and environmental quality of Lincoln County.

Policy 2.1.1 The County supports a proactive view of property rights and reaffirms that the highest and best uses of the land are best made through free markets and when private property rights are protected and consistent with the cultural and economic interests of the County.

Action Plan A The County defines private property rights that are vested and accrued under territorial and state laws, customs and court decisions. See Appendix C: Development of Private Property Rights. Specifically, the County reaffirms the Doctrine of Prior Appropriations; that is, first in time and first in use.

Action Plan B When plans or actions affect private property rights, the County encourages local, state and federal agencies to use private property incentives and protection of property rights as the primary mechanism for promoting stewardship and conservation and protection of resources and environment.

Policy 2.1.2 The County should work with the federal, state and county agencies to notify potential affected private property right owners of proposed actions at the earliest possible time to enable the owner to provide their input.

Goal 2.2 Protect the civil rights, liberties and property rights of the people of Lincoln County.

Policy 2.2.1 – The County should strive to protect the constitutional, civil and property rights.

Action Plan A The County strives to protect the constitutional, civil rights and privileges: The County is required to protect the citizens from current and potential violations of their rights or privileges. A petition can be filed with the County, an investigation of the alleged violation must occur.

Action Plan B The County strives to protect the property rights, interest and privileges through the existing Lincoln County Property Rights Ordinance 1992-4, according to the Fifth and Fourteenth Amendments to the Constitution: The County is required to protect property rights from current and potential violation of their rights and privileges under this ordinance and the County Civil Rights Ordinance. Once a petition is filed with the County, an investigation of the alleged violation must occur.

Action Plan C Citizens concerned about potential threats to their civil and/or property rights due to proposed government action should first contact the County for information, referral and/or guidance.

Policy 2.2.2 The County recognizes and supports the proper protection of property rights in all government decisions.

Action Plan A When there is a potential threat to civil and/or property rights, the local, state or federal agencies should evaluate that potential threat. The County, through coordination and joint planning, encourages that all proposed county, state and federal actions should include an assessment of the potential impacts on private property rights to include, but

not limited to, impacts on (1) civil rights, (2) potential for physical invasion, (3) potential for monetary loss, (4) and/or the threats to due process and equal treatment under the law.

Action Plan B When a proposed local, state or federal actions or decisions potentially or actually poses undue burdens to individuals or communities in Lincoln County, the County should be involved, and the appropriate legal impact analyses be conducted and incorporated into the decision. Legal impact analyses include but not limited to the Lincoln County civil and property rights ordinances, Takings Implication Assessment (Presidential Executive Order 12630 ensures that government actions are undertaken on a well-reasoned basis with due regard for fiscal accountability, for the financial impact of the obligations imposed on the Federal government by the Just Compensation Clause of the Fifth Amendment), Environmental Justice Assessment (Presidential Executive Order 12898, focuses federal attention on the environmental and human health effects of federal actions on minority and low-income populations with the goal of achieving environmental protection for all communities), the Regulatory Planning and Review Regulation (Executive Order 12866, protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory approaches that respect the role of State, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable), and civil rights assessment requirements for federal and state agencies.

Policy 2.2.3 – The County should work with the federal, state and County agencies to notify potentially affected private property rights owners of proposed actions at the earliest possible time to enable the owner to give their input.

Action Plan A The County, through cooperation and coordination with state and federal agencies, should strive to mitigate (significantly reduce or eliminate) adverse impacts on individuals and communities when plans or actions are identified as having potential adverse effects or impacts.

Action Plan B.2 The County request that all federal and state agencies, implementing the Endangered Species Act, coordinate with the County, pursuant to NEPA, in the planning, development and implementation of critical habitat designations for threatened or endangered.

Action Plan C Through the County's civil and property rights ordinances, the County should strive to work with state and federal agencies to prevent taking of private property rights through implementation of the Endangered Species Action or other federal or state actions.

3. Coordinated Planning with Federal and State Agencies

3.A Issues Related to County Coordination with State and Federal Agencies:

- Concerns expressed about the need for closer County cooperation and coordination with state and federal agencies, especially when their actions could impact the County;
- The need for intergovernmental coordinated planning especially Lincoln County involvement in impact assessment, planning and monitoring; and
- The need for interagency coordinated process with the County for assessing impacts and identifying ways to mitigate negative impacts on the people of Lincoln County.

3.B Goals, Policies and Action Plans for Coordinated Planning with State and Federal Agencies

Goal 3.1 Assert its legal right to coordinate and jointly plan with federal and state agencies relative to proposed actions affecting 1) water, timber, forage, wildlife and mineral resources, and 2) access and private property rights on national and state forest systems and public lands within Lincoln County to ensure these actions are in the best interest of the people of Lincoln County.

Policy 3.1.1 The state and federal agencies should fully comply with federal and state laws, regulation and policies that require coordination and consultation with the County government; including, but not limited to, the state and federal laws and regulations specified in Appendix D: Federal and State Laws and Regulations Proving for Consultation with County Government.

Action Plan A The County continues to encourage the development of processes and procedures to ensure that the County and participating state and/or federal agencies are able to efficiently and effectively meet their responsibilities as public entities, and do so for the benefit of Lincoln County.

Action Plan B The County continues to encourage an intergovernmental framework that fully considers the social, economic, and cultural impacts of federal and/or state proposed actions as a part of the overall planning and decision processes.

Action Plan C Any regional, federal, or international government agency proposing action in Lincoln County should provide early consultation and coordination with Lincoln County Board of Commissioners.

Policy 3.1.2 The County should work closely with and enter into coordination joint planning efforts with the USFS, BLM, USFWS, NMDGF, and the State Forestry Division to ensure that the natural resource and private property rights goals of Lincoln County's Comprehensive Land Use Plan on the state trust, national forest system, and public lands are included in the agencies' planning and management actions.

Action Plan A The County continues to consider the recommendations of the Land and Natural Resource Advisory Council (LANRAC) in making public land use decisions.

Action Plan B The County continues to facilitate increased public participation in the preparation of the USFS Forest, BLM Resource Management, US Fish and Wildlife Service, and other federal agency plans or actions that may affect Lincoln County.

Action Plan C The County encourages the federal and state agencies involved to share with the County information they routinely collect (including geographic information system mapping and the assessment of new management practices and techniques).

Policy 3.1.3 The County asserts its legal authority under the National Environmental Protection Act to be a joint planner with the federal agencies. The Lincoln County Comprehensive Land Use Plan is a resource and environmental plan which constitutes an environmental planning and review process according to NEPA.

Action Plan A Federal agencies should notify the County to cooperate as either joint lead or cooperating agency in proposed actions in compliance with NEPA – which provides for County involvement and requires federal agencies "...to maximum extent possible" to cooperate with the County in joint planning processes, joint environmental research, joint public hearings, and joint environmental assessments (Title 40 Code of Federal Regulations §1506.2).

Policy 3.1.4 Federal agencies should display all significant effects of their proposed action on the human environment.

Policy 3.1.5 Lincoln County LANRAC is the contact point for federal and state land agencies for the coordination and joint planning when proposed actions may affect Lincoln County and/or affect the jurisdiction of the Lincoln County Commission to protect the health, safety, private property rights and welfare of its citizens.

Policy 3.1.6 Any federal and state agencies that propose action that will affect the Lincoln County Land Use Plan goals, policies or action plans, should prepare and submit in writing and in a timely manner, a report on the purpose, objectives and estimated impacts of such actions, in accordance with the laws of New Mexico and of the United States of America.

Action Plan A Such reports shall be provided to the County for review and coordination prior to initiation of the proposed actions.

Action Plan B The County has a 75-day notice period to officially respond or comment to federal and state agency proposals or actions. Hence, federal and state agencies must provide a minimum 75 days turn-around time for comments or response from the Lincoln County Commission.

Action Plan C The County will utilize Constructive Notice as a mechanism to communicate to federal and state agency matters for the public record, and as sufficient and important to give notice.

Policy 3.1.7 The BLM and the USFS should assess the consistency of federal resource plans with the Lincoln County Land Use Plan in accordance with Federal Land Planning and Management Act (FLPMA) and National Forest Management Act (NFMA).

Policy 3.1.8 To the extent required for compliance with federal and state law, all federal and state agencies should strive to comply with the Lincoln County Land Use Plan and coordinate with the County Commission for the purpose of planning and managing federal and state lands within the geographic boundaries of Lincoln County, New Mexico.

Policy 3.1.9 The County should be involved in coordinating and joint planning with all federal and state agencies involved in decisions relating to public roads and right of ways for access to and through federal public lands and state trust lands.

Action Plan A The County should support actions to provide access to or across federal and state lands that will not place encumbrances or restrictions on private property rights.

Policy 3.1.10 The County should ensure, through coordination and joint planning, that proposed state and federal land use actions include an assessment of potential impacts on private property rights.

Action Plan A The assessment of the potential for private property rights taking should include, but not be limited to, an evaluation as to the impacts on civil rights, the potential

for physical invasion: the potential for monetary loss, and/or threats to due process and equal treatment under the law. The County should assist the federal or state agencies in these analyses.

Action Plan B The County request that all federal and state agencies involved in implementing resource plans or Endangered Species Act comply with Goal 2.1, Policy 2.2.1, 2.2.2, 2.2.3 and Goal 6.1, Policy 6.1-4 of the Lincoln County Comprehensive Land use plan.

Policy 3.1.11 The County endorses the State of New Mexico Soil & Water Conservation District's Coordinated Resource Management Policy: the preferred resource and environmental planning approach is an...” integrated ecological, economic, and social...to maintain and enhance the quality of the environment to best meet current and future needs” through interagency coordination and grass roots and localized leadership.

Goal 3.2 It is the goal of the County that all federal and state land disposals, including land adjustments and exchanges, be carried out to the benefit of the citizens of Lincoln County.

Policy 3.2.1 The County asserts its right, consistent with federal and state laws and regulations, to be notified at the earliest time possible, and be involved in joint planning and coordination of all proposed federal and state land adjustments within Lincoln County prior to implementation.

Action Plan A Federal and state agencies should provide a minimum 75-day turn-around time for comments or responses from the Lincoln County Commission.

Policy 3.2.2 The County supports land disposal decisions which ensure that any land sale, transfer, or exchange is done in a manner to maintain at a minimum, parity in land ownership status between public and private entities.

Policy 3.2.3 The County supports land disposal decisions which protect and enhance private property interests, including private interests in public land.

Action Plan A The initiating or lead agency of a proposed land disposal should notify potentially affecting private property owners at the earliest possible time.

Action Plan B The initiating or lead agency of the proposed land disposal should notify the County at the same time the agency notifies private property owners in Lincoln County.

Policy 3.2.4 The County supports land disposal decision which target federal lands that are difficult to manage or lie in isolated tracts for disposal to the private sector.

Policy 3.2.5 The County opposes any future withdrawal of land for wilderness or roadless areas, and federal or state agencies considering land withdrawals for wildlife or areas of critical environment concern, should provide early consultation and coordination with the County.

4. Water Resources

Lincoln County recognizes that the protection and development of its water resources are essential to its short and long term economic and cultural viability. Lincoln County shall develop its water use policy based on private water rights so as to best protect water quantity and quality.

4.A Issues Related to Water Resources:

- Concerns over water quality and quantity;
- Proper protection of water rights; and
- Need for local and regional water planning to protect the County's interest and citizen rights.

Goal 4.1 It is the goal of the County to support the utilization and protection of private water rights, including the head waters of our rivers, as the most effective means for providing water resources for agricultural, municipal, industrial and domestic purposes. Therefore, transfers of water rights and use should be carefully considered in the relationship to the history, tradition and culture of Lincoln County.

Police 4.1.1 The County supports the system of private water rights currently provided by State law and the Doctrine of Prior Appropriation for beneficial use, and should support the utilization of private water rights as the most effective means for providing water resources for agricultural, municipal, industrial, and domestic purposes.

Action Plan A Under the Doctrine of Prior Appropriations, the County declares that historic and customary beneficial water use, under state law, should take precedence over any and all in-stream flow use designations.

Action Plan B Under the Doctrine of Prior Appropriations, the County discourages federal agency water right purchases. Furthermore, the County encourages federal agencies to lease the right from the state or private water rights owners, subject to Action Plan A, above.

Policy 4.1.2 Lincoln County is to be notified of all interstate and federal water development, conservation or other actions that may have impact on the water rights or uses in Lincoln County prior to initiating actions.

Action Plan A Any federally proposed designation of Wild and Scenic Rivers and all federal policies regarding riparian management in Lincoln County shall be coordinated with the County Commission and comply with any County water use plans.

Action Plan B Lincoln County shall be consulted and participate in the preparation of plans for the protection of all Threatened and Endangered species within its boundaries. At a minimum, any recommended designations shall include a review of the custom and culture of the area under consideration. Federal and state agencies managing waterways and wetlands containing such species shall coordinate their management activities and plans with the County Commission.

Goal 4.2 It is the goal of the County to protect and conserve the water resources of Lincoln County.

Policy 4.2.1 The County should strive to develop its water use policies based on private water rights so as to best protect water quantity and water quality.

Policy 4.2.2 The County should strive to support actions that ensure that any transfers in water rights and use will be carefully considered in relationship to the history, customs, and culture of Lincoln County.

Policy 4.2.3 The County supports the Lincoln County Water Plan as shown in Appendix E.

Policy 4.2.4 The County supports and wishes to participate in local and regional water planning.

Policy 4.2.5 Lincoln County Soil and Water Conservation District Boards are the responsible local lead and point agencies for all plans and actions under the US Clean Water Act for both point and non-point source water pollution.

Action Plan A The County supports Soil and Water Conservation District Board responsibilities for the analyses and identification of contaminant sources; the development of Best Management Practices; and, the development of policies and implementation strategies for improving water quality.

Action Plan B State and federal agencies involved in planning and/or implementing the Clean Water Act should coordinate and cooperate with the appropriate Soil and Water Conservation District Boards in Lincoln County.

Policy 4.2.6 During periods of drought or other emergencies, the County should work closely with local Soil and Water Conservation District Boards, The State Engineer and other state and federal agencies to ensure the availability of water to critical needs. These critical needs shall include, but not limited to, human consumption, fire protection and agriculture (plants and animals).

Action Plan A All emergency actions shall be subject to notice to the Board of Commissioners.

Policy 4.2.7 The County recognizes ditch associations (acequias) as political subdivisions of the State.

Action Plan A The County should coordinate and cooperate with ditch associations (acequias) in water planning and water related issues.

5. Forest and Rangeland

5.1.A Issues Related to Forests and Rangelands:

- The need for coordination between the County, it's citizens and USFS personnel on the use and management of the Lincoln National Forest;
- Concerns throughout the County about forest health and potential wildfire risks due to the increased fuel loads;
- The need for coordination between the County, its citizens and USFS personnel on residents ability to access both public forest lands and private forest lands;
- The importance of USFS personnel being sensitive and appreciative of local community cultures and traditions, and thoroughly understand the significance of their actions on same;
- The importance of opportunities for local residents to use forest products for personal use (such as fuel wood); and
- The importance of continuous communication between the USFS and County; allowing the County to have a voice in how the public forest lands are managed.

Issues related to rangelands/agriculture and recreation, refer to Goals 5.2 and 5.3.

5.1.B Goals, Policies, and Strategies for Forest and Rangelands

Goal 5.1 It is the goal of the County to protect timber and range resources, and promote the continuation of sustainable forage and wood product's industry on the public lands, national forests and state forest lands with the County.

Policy 5.1.1 Agencies involved in forest and range management and planning should recognize the complexities of forest and range management and their consequences, especially pertaining to the health, safety and welfare of the citizens of Lincoln County.

Policy 5.1.2 The County supports the New Mexico Senate Joint Memorial 62: Requesting the USFS to Implement Best Management Practices to Restore the Watershed Under Its Jurisdiction (see Appendix F: New Mexico Senate Memorial – Forest Service Restoration of Watersheds.)

Action Plan A The County requests that the USFS, BLM, and State Land agencies and other interested agencies work closely with the County and the local Soil & Water Conservation District Boards to improve the watersheds and provide sustained yield of products and services and to undertake studies of the natural resources in Lincoln County.

Action Plan B The County requests involvement in the development and implementation of Best Management Practices (BMP) used by the Forest Service, BLM, Natural Resource Conservation Service (NRCS) and State Trust Lands, especially as BMPs relate to the consistency with the Lincoln County Land Use Plan.

Action Plan C Coordinate National Forest and BLM planning activities, plans and project planning through current Memorandum of Understandings (MOUs).

Policy 5.1.3 The County should continue to take a strong role in ensuring that management practices on the forest and within Lincoln County do not endanger the health, safety, and welfare of citizens of Lincoln County.

Action Plan A The County should continue to work closely with the federal and state forest and range management agencies and private landowners to reduce the risk of catastrophic flooding and wildfires which threaten the lives and property of the citizens of Lincoln County.

Action Plan B The County should continue to participate in State Lands, Forest Service and BLM planning to increase opportunities with respect to forest and range products,

especially wood and forage harvest and development, such as saw logs, small diameter and fuelwood markets.

5.2.A Issues Related to Rangelands and Agriculture

The following are representative types of issues regarding agricultural pursuits:

- The importance of coordination between the county, state and federal agencies in the protection and enhancement of private and public rangelands;
- Lack of adequate impact assessments of their actions on the individual ranch and circulating dollars the County tax base and on the culture of ranching;
- A need to increase the productivity of agricultural/ranchlands; lack of technical information (e.g., markets, etc.);
- Information is not reaching the people who need to know;
- Traditional divisions of land for inheritance have resulted in plots too small to be economically productive;
- Need to identify more markets for “home grown” products;
- Tension exists between allocating water for recreational uses and development vs. maintaining adequate supplies for traditional agricultural uses;
- Retirement of water rights – drying up formerly irrigated lands;
- Residents fear that development (subdivisions) will destroy the agricultural lifestyle of Lincoln County;
- Many of the Lincoln County youth don’t understand or appreciate the value of water, water rights and agriculture to our culture;
- Water supplies fluctuate drastically throughout the year (lack of small retention reservoirs and erratic precipitation patterns);
- Improvements are needed in many of the irrigation ditch delivery systems (e.g., head gates); and
- Concerns about lack of understanding as to the importance of agriculture, especially livestock production.

5.2.B Goals, Policies, and Action Plans for Rangelands and Agricultural Land

Goal 5.2

It is the goal of the County to protect agricultural lands which are predominantly rangelands and to promote the continuation of agricultural pursuits by protecting private property rights, relying on self-determination, and supporting open market conditions.

Policy 5.2.1 The County should sustain agriculture as an integral part of its rural lifestyle and economy, and promote the protection of agricultural land for production of food and fiber.

Action Plan A The County should work with Soil and Water Conservation District Boards in the planning and development of their long-range plans.

Action Plan B Where feasible, the County should use geographic information available from state and federal agencies in order to facilitate future private and public land use decision making.

Policy 5.2.2 The County should continue to take a strong role in ensuring that management practices on the rangelands and within Lincoln County do not endanger the health, safety, and welfare of citizens of Lincoln County.

Action Plan A The County should participate in BLM, Forest Service and State Land planning to support action that maintain livestock grazing on federal and state lands at levels consistent with the local customs and culture, and the protection of equitable property rights.

Action Plan B The county requests participation in the prioritization and distribution of Range Betterment Funds.

5.3.A Issues Related to Recreation:

- The importance of maintaining and improving access to federal lands for recreation;
- The need to provide private recreation opportunities over government recreation services;
- Support of the ski industries and supporting businesses; and
- Public support of recreation and tourism that is compatible with the customs and cultures of Lincoln County

5.3.B Goals, Policies, and Action Plans for Recreation and Access

Goal 5.3

It is the goal of the County to support recreation in the management of forest and rangelands that are consistent with the multiple use of these lands, and to promote the continuation of historical access on federal lands.

Policy 5.3.1 The County should work closely with federal and state agencies involved in these lands to promote recreational opportunities for Lincoln County citizens and visitors.

Action Plan A The County should foster public input from County residents as to the desired recreational activities that should be maintained or developed on national forests and other public lands.

Action Plan B The County encourages private sector development of recreation services and programs.

Policy 5.3.2 The county recognizes the importance of winter sports as a major part of the County's economy. The County also supports the continuation of winter sports on the national forest.

Policy 5.3.3 The County supports recreational mining such as gold panning and prospecting.

6. Wildlife Resources

6.A Issues Related to Wildlife

- A major concern is lack of Fish & Wildlife Service coordination with the County and affected property in the listing, designation and recovery of threatened or endangered species, as well as New Mexico Game & Fish Department (NMGFD) coordination with the County;
- Lack of adequate game management plan for deer and elk herds, lack of adequate of predator control for wildlife and livestock management.

6.B Goals, Policies, and Action Plans for Wildlife

Goal 6.1.1

It is the goal of the County to support sound management of wildlife resources on forest and rangelands to meet the multiple use desires and practices of the citizens and visitors of Lincoln County.

Policy 6.1.1 The County supports cooperation and coordination with the New Mexico Department of Game and Fish, the USFS, the BLM and the US Fish and Wildlife Service to ensure that there will be opportunities for a sustained harvest of game birds, fish, and mammals in Lincoln County in a manner which is beneficial to these game populations.

Policy 6.1.2 The County encourages that wildlife management practices that sustain wildlife resources and habitat without measurable degrading of other multiple use activities or private property rights.

Action Plan A The County should enter into formal agreements with the New Mexico Game and Fish Department, along with the Forest Service and the BLM in developing and implementing plans for improving the management of native fish, elk, Oryx, antelope, and deer habitat in Lincoln County.

Action Plan B The County should enter into formal agreements with USDA Animal Damage Control and UNDA Animal Damage Control to reduce the predation on wildlife (especially deer herds) and on livestock.

Policy 6.1.3 The County should take an active role in the consultation with the USFWS, the NMDGF, and the BLM relative to the protection of threatened and endangered species.

Action Plan A The County should enter into a formal agreement with the USFWS and the NMDGF to determine steps that may be taken to (1) avoid listing of threatened and endangered species; and (2) de-list recovered species; and (3) involvement in Section 7 Consultations with the USFWS.

Action Plan B In the planning procedures related to endangered or threatened species, the County request that the US Fish and Wildlife Service and the NMGFD coordinate with the County, according to the provisions of the New Mexico Wildlife Conservation Act.

Action Plan C The County encourages and emphasizes the application of sound science in the listing and de-listing of threatened and endangered species both for the state and under the US Endangered Species Act (ESA).

Policy 6.1.4 The County endorses the US Supreme Court Decision in *Bennett v. Spear* (No. 95-813, March 19 1997) which states: “that another [Endangered Species Act] objective (if not the primary one) is to avoid needless economic dislocation produced by agency officials zealously but unintelligently pursuing their environmental objectives. That economic

consequences are an explicit concern of the Act is evidenced by §1536(h), which provides exemption from §1536(a)(2)'s 'no jeopardy mandate' where there are no reasonable and prudent alternatives to the agency action and benefits of the agency action clearly outweigh the benefits of any alternatives.”

Action Plan A The County request the US Fish & Wildlife Service (USFWS) uphold the judicial law of the US Supreme Court: (1) that economic consequences and/or a potential for a taking of private property are explicit concerns of the Act (§1536(h)); (2) exemptions will be made from §1536(a)(2)'s 'no jeopardy mandate' when there are economic consequences and/or potential for a taking of private property; and (3) “best scientific and commercial data” provision of ESA is intended to prevent uneconomic jeopardy determination. This requires the USFWS to coordinate with the County and the potentially impacted property owners; and (4) the action must be one by which “legal rights or obligations have been determined,” according to the US Supreme Court ruling.

Action Plan B The County's Property Rights Ordinance provides an avenue for redress when property rights are threatened by a taking of private property rights through implementation of the Endangered Species Act or any other federal or state action.

Goal 6.2

It is the goal of the County to oppose the introduction or transplant of threatened and endangered species within the boundaries of the County.

Policy 6.2.1 The County should enforce Ordinance #1994-1: Prohibiting the release into the wild, certain genera (Canis, Ursus or Felis).

Policy 6.2.2 The County discourages the release of non-domesticated exotic wildlife species.

Policy 6.2.3 The County request more effective management of Oryx populations and confinement of the Oryx to the White Sands Missile Range.

7. Mineral Resources

7.A Issues Related to Mining

- Lack of understanding and development of the mineral resources in the County;
- Problems with increasing regulations; and

- Need for coordinated efforts between the County, State and Federal agencies, and New Mexico Tech School of Mines in the inventory, projection and development of mineral resources.

7.B Goals, Policies and Strategies for Mineral Resources

Goal 7.1

It is the goal of the County to support beneficial mining efforts and their economic impacts, and encourages mining efforts on private and public lands.

Policy 7.1.1 Public lands suitable for mining exploration and development should continue to be used for that purpose.

Policy 7.1.2 Open access to public lands by both small and large-scale prospecting and exploration should be preserved to provide incentives for private investment in mining. A mining friendly environment should be encouraged, and over-regulation which inhibits mining should be discouraged.

Policy 7.1.3 The County requests the assistance for New Mexico Tech mining program in the inventory and assessment of mining potential in the County.

8. Environmental Services

8.A Issues Related to Environmental Health and Disease: The environmental issues, policies and goal in this section relate to environmental disease, drinking water systems, waste, roads, and fire protections. Issues are discussed for each goal.

8.1 Environmental Disease

8.1.A Environmental Disease Issues: A major concern in the County is proper notification of environmental threats to human and animal health in the County, especially when an environmental or communicable disease is detected. Environmental diseases are associated with human disease transmitted in the local environment to include but not limited to Hepatitis Virus, Hanta Virus, Bubonic Plague, Rabies, Giardia, Salmonella, Shigella, HIV or other communicable disease. These and other diseases can have disastrous effects on people, families and the plant and animal life in Lincoln County. Of the various diseases recorded in Lincoln County, the most serious threats can be from influenza (the various strains of flu) and the two food transmitted diseases: Salmonella and Shigella.

8.1.B Goals and Policies for Environmental Disease

Goal 8.1

Early reporting and monitoring of environmental disease or communicable disease should be made available to the County.

Policy 8.1.1 Early Detection and Notification of Environmental Disease

Outbreaks to Humans: The County requires early notification and coordination by public health and environmental service agencies and private medical practitioners in the prevention and/or detection of environmental diseases to include but not be limited to Hepatitis virus, Giardia, or other communicable diseases.

Policy 8.1.2 Early Detection Animal and Plant Diseases: The County encourages relevant agencies and affected parties to notify the County of any serious outbreak of diseases that can adversely affect livestock, pets and plant life important to Lincoln County Resources.

8.2 Water Systems

8.2.A Water Systems Issues: Concerns expressed include the recognition that domestic or potable water systems are an important source of water for many households in Lincoln County and must be protected through cooperation with property rights holders and through water conservation and the continued use of water rights systems through local control; storage capacity and new wells, will needed for most of these systems to grow in the future; and there is very little excess capacity at present. Periodic/season shortage and system breakdowns are common concerns.

8.2.B Goals and Policies for Water Systems

Goal 8.2

It is the goal of the County to preserve and protect the County's drinking water supplies.

Policy 8.2.1 Water Conservation: The county encourages and fosters water conservation of its drinking water supplies, delivery and use.

Policy 8.2.2 Public Involvement: The County should ensure that the County and its residents will be involved in the protection, conservation and use of its water supplies.

Policy 8.2.3 Water Planning Coordination: The County request that the County and regional water planning groups will consider the land use and water policies enumerated in this plan.

Policy 8.2.4 Coordination and Support of Lincoln County Subdivision Ordinance: The County encourages the coordination between this Land Use Plan and the appropriate sections of the Lincoln County Subdivision Ordinance to ensure proper water management.

8.3 Waste

8.3.A Issues Related to Waste: Most homes and businesses in Lincoln County are on private septic systems. Concerns about sewage disposal as a serious environmental concern, especially in rural areas such as Lincoln County where the majorities of these systems are private septic tanks and leach fields; concerns about the lack of properly-designed or poorly-maintained systems can present serious threats to water quality especially with increased density in developments and the cumulative impacts of small, individual septic systems can be severe, especially in those areas of relatively- higher population density; concerns about the soils and topography may severely limit the placement of septic systems because of the poor percolation rates and runoff and, concerns about new development, particularly subdivisions adversely affecting soils and ground water.

8.3.B Goals and Policies for Waste Management

Goal 8.3

The County should strive for wastewater management that protects the water supply and water quality that enhances the health, safety and welfare of Lincoln County Residents.

Policy 8.3.1 Proper Wastewater Siting: The County encourages residential, and commercial and industrial developments to take into consideration siting of waste facilities which contributes to environmental health and does not threaten water quality in the County.

Policy 8.3.2 Coordination and Support of Lincoln County Subdivision Ordinance: The County encourages the coordination between this Land Use Plan and the appropriate section of the Lincoln County Subdivision Ordinance to ensure proper waste water management.

8.4 Roads

8.4.A Issues Related to Roads: The road network in the County is a major network for social, cultural, environmental and economic prosperity. Expressed concerns and demands for road maintenance and improvement are dramatically increasing, while financing these road

needs never seem to catch up; the need for more coordination between the County and the State Highway Department; and the need to secure and maintain RS2477 Roads that are on federal lands.

8.4.B Goals and Policies for Roads

Goal 8.4

It is the goal of the County to strive to provide a safe, cost-efficient, and well-designed roadway system in the County.

Policy 8.4.1 Road Maintenance and Improvement Project Coordination: The County should coordinate with State and Federal Agencies in the planning and development of road maintenance projects within the County.

Policy 8.4.2 Access Across Public Lands: It is the policy of the County to support activities that optimize accessibility within the County and that minimize the cost of movement between all communities and across public lands.

Policy 8.4.3 RS2477 Roads: It is the policy of the County to identify and retain ownership of RS2477 Roads in the County.

Action Plan A The County should strive to inventory RS2477 Roads that are on, cross through or are adjacent to federal lands.

Action Plan B Upon completion of inventory, the County should strive to designate RS 2477 Roads to retain ownership thereof.

Policy 8.4.4 Coordination and Support of Lincoln County Subdivision Ordinance: The County encourage the coordination between this Land Use Plan and the appropriate sections of the Lincoln County Subdivision Ordinance for proper transportation management in the development of subdivisions.

8.5 Fire Protection

8.5.A Fire Protection Issues

- Some districts have old and deteriorating equipment that need repair or replacement;
- The County needs better communication facilities on the eastern side of the County so that emergency and firefighting crews can communicate with each other;

- Residential and commercial development in the forests are not designed for defensible space for fire protection;
- Need to encourage recruitment of volunteers;
- Inadequate water sources for firefighting is a problem in many areas of the County;
- Funding from the State needs to be revised—without an adequate funding source, the district cannot afford to improve its equipment or its rating; and
- High fuel loads exist on public and private forested lands in the County that seasonally expose resident, wildlife, and property to high wildfire risks.

8.5.B Goals, Policies and Action Plans for Fire Protection

Goal 8.5

It is the goal of the County to strive for adequate fire protection throughout the County.

Policy 8.5.1 Coordinated Fire Prevention and Preparedness: The County encourages and supports proper fire management, starting with prevention of catastrophic wildfires. The County supports collaborative actions between all private and public entities to reduce the long term risks of wildfire through appropriate fire prevention, especially through removal of fuel loads, along with fire suppression and prescribed fire techniques.

Action Plan A The County supports its rural fire department and state forestry education regarding prevention especially fire resistant environments, proper structure clearance and construction recommendations.

Action Plan B The supports coordination and interagency planning for fire prevention between the County and its rural fire department, municipalities, the State Forestry, State Fire Marshall, USFS and BLM. The focus would be to develop a fire prevention plan to significantly reduce the fuel loads in high risk areas.

Action Plan C The County supports the use and application of the State Pollution Prevention Act (see Appendix A) financing economic development opportunities associated with fire prevention through thinning of high fuel loads.

Action Plan D The County supports the emergency preparedness and evacuation plans where residential communities are at high risk to catastrophic wildfires. This

includes the coordination of the agencies mentioned in Action Plan B with the County Emergency Services Coordinator as lead.

Policy 8.5.2 Communication: The County should strive for adequate communication services throughout the County for firefighting and medical emergency response personnel.

Action Plan A The E-911 service and rural addressing program should be implemented throughout the County at the earliest feasible date.

Action Plan B Firefighters, medical emergency services, the sheriff's office and other affected agencies should be the lead agencies for developing a coordinated communication system.

Action Plan C The County supports the development of mutual aid agreements between the local agencies mention in "Policy 8.5.1 Action Plan B along with municipalities, State Fire Marshall, State Forestry, USFS, BLM, and other emergency and fire protection agencies.

Policy 8.5.3 Equipment: The County should strive to improve firefighting equipment and facilities to meet the fire protection requirements.

Action Plan A Periodically, the County should review rural fire department needs and capabilities to respond to County population growth.

Action Plan B The County should develop and maintain equipment sharing agreements with neighboring fire protection agencies.

SECTION VI. THE IMPLEMENTATION PLAN

A. Overview

The overall purpose of the Lincoln County land Use Plan is to provide a guide to land use, environmental and resource planning and management activities in the County. It is not a plan with regulator or zoning requirements. Regulation for urban growth are found elsewhere, the *Lincoln County Subdivision Ordinance* and represented by the County Planning and Zoning Committee. The management of urban growth is vested in the incorporated town and villages as well as spelled out in the *Ruidoso/Lincoln County Extraterritorial Zoning Ordinance* and *Lincoln County Historic Preservation Ordinance*.

B. Implementation Policies

The following policies are included in this section to assist the County with implementation of the Lincoln County Comprehensive Land use Plan.

Policy 1 The County should ensure that implementation of the Comprehensive Land Use Plan will be done in a way to protect the customs, cultures, and private property rights of the citizens of Lincoln County.

Policy 2 The County should take an active role in coordinating land use planning activities with other agencies and other planning processes.

Policy 3 The County should encourage people to take active roles in decisions that may impact the future of Lincoln County.

Policy 4 The County should take the lead in establishing vital links between federal, state, regional, and private agencies whose actions and policies may impact the future of Lincoln County.

Action Plan A The County should compile a list of those key agencies, with the appropriate contact people, that are identified as having a significant impact on the future of Lincoln County. A copy of this Comprehensive Land Use Plan and related ordinances should be sent to appropriate federal and state agencies.

Action Plan B The County should encourage representatives from those key agencies to attend the Agriculture and Rural Affairs Committee, Land and Natural Resource Advisory Committee and County Commission meetings.

Action Plan C The County should send a representative from the County to attend those meetings of key agencies which it feels play a significant role in the future of Lincoln County.

Action Plan D The County Should actively engage in regional planning processes to ensure that its interests are addressed.

Policy 5 The County should actively seek to communicate the importance and significance of its history and cultural traditions with residents, visitors, decision-makers and the youth.

C. Implementation Responsibilities

The Land and Natural Resource Advisory Committee (LANRAC) shall serve under the direction of the County Commission. The Commission should ensure adequate geographic and industry representation. LNRAC will report regularly to the Lincoln County Commission on committee activities and findings. The Commission may create additional committees or subcommittees as needed. The Lincoln County Board of Commissioners has the following responsibilities:

- Monitoring federal, state and local agency's compliance with the Comprehensive Land Use Plan and Lincoln County ordinances.
- Monitoring and advising local communities of potential impacts from federal, state, and local legislation and regulatory actions.
- Monitoring for taking or potential taking of property rights, or infringements on the customs, cultures, or economic stability of the County.
- Encouraging and participating in mitigation plans with state and federal agencies to significantly reduce or illuminate adverse impacts on individuals and communities when plans or actions are identified as having potential adverse effects or impacts.

SECTION VII. MISCELLANEOUS

A. Changes or Amendments: This plan or any portion thereof may be amended by law or repealed by the Lincoln County Board of Commissioners in the manner prescribed by law.

B. Severability: If any part or application of this Resolution is held invalid, the remainder of its application to other situations or persons shall not be affected.

C. Effective Date: This Resolution shall be effective on the [day] of [month, year], and is intended to replace the Lincoln County Comprehensive Land Use Plan, Resolution 1997-33, which has been repealed.

This Resolution was adopted in a regular session of the Board of County Commissioners of Lincoln County, New Mexico, on the 13th of February 2018.

**LINCOLN COUNTY AUTHORITY
TO MANAGE AND REGULATE NATURAL RESOURCES, LAND USE &
ENVIRONMENTAL QUALITY**

Lincoln County has the authority to regulate the health, safety and welfare/well-being on private and government lands. It has subject matter jurisdiction (i.e., specified authority or primacy over subject matters such as water or air quality), on government lands. The specific land administration (e.g., Forest Service) has territorial jurisdiction to manage and regulate the land resources. State, federal and county governments can have concurrent or dual regulations to protect the health and safety of citizens, as well as protection of the resources. The areas of subject matter jurisdiction include but are not limited to general enabling powers, watershed, water quality, air and smoke/visual quality, nuisance, and pollution prevention ordinances. These resource and environmental areas are discussed below according to the following outline:

1. *Resource Area*
2. *Purpose*
3. *Primacy*
4. *Authority*
5. *Regulations/Enforcement*
6. *Examples*
7. *Notes/Issues*

A. General Enabling Powers: to exercise police powers over land use, resource management and environmental protection

Purpose: NM statutes grant broad powers to counties to adopt regulations or take measures to protect health/suppression of disease, regulate refuge, nuisances, hazards and environmental health and safety.

Authority: to provide for the safety, preserve the health, promote the prosperity and improve the morals, order and convenience...[and] enact general police power and zoning ordinances (NM Stat Ann 4-37-1 to 4-37-13 (1978)). Also see Article 36: Miscellaneous Powers of Counties (NM Stat Ann 4-36-1 to 4-36-7).

Regulations/Enforcement: County authority to regulate land use, natural resources and environmental quality Zoning Act: NM Stat Ann 3-21-1 to 3-20-16). County ordinances are effective within the boundaries of the county, including privately owned land or land owned by the United States (NM Stat Ann 4-27-2, 4, 37-3 (1978)).

Examples: NM County land use regulations; examples are outlined below under specific resource and land use types. These ordinances include smoke, debris, and nuisance, etc.

Notes/Issues: General authority for environmental health and protection as well as protection for a safe and secure home is at the core of the broad police powers granted to

counties by NM legislature. See attachment entitled, "Lincoln County Jurisdiction and Authority to Plan and Regulate on Private and Public Lands". Counties can regulate overall resources as well as specific resources and environmental quality, such as water and air quality.

B. General Resource Management, Watershed Management Soil & Water Conservation

Purpose: Land, air, and water resources are basic physical assets of NM and their preservation and development are necessary to protect and promote the health and general welfare of the people of the state. (NM Stat Ann 73-25-1).

Authority: Soil and Water Conservation Districts have authority to control and prevent soil erosion, prevent floodwater, to conserve and develop natural resources, provide flood control, preserve wildlife, protect the tax base and promote health, safety and welfare (NM Stat Ann 73-25-1 to 73-20-49).

Regulations/Enforcement: Develop comprehensive natural resource conservation and development plans; coordinate intergovernmental resource plans and projects; work with consent and cooperation of private property owners; assist counties through terrain management review and recommend water quality aspects of subdivision proposals.

Examples: Refer to Lincoln County Soil & Water Conservation District's approach.

Notes/Issues: NM counties vary in the way counties and their soil and water conservation districts interact in resource planning. In Lincoln County soil & water conservation districts provide subdivision review for terrain management.

C. Water Resources

Purpose: Under the general county primacy over environmental health and safety, NM counties plan, manage and regulate water resources to include water quality (surface and ground water) and quantity (protection of water rights), and community welfare criteria for water allocation.

Authority: A county can declare a public nuisance any introduction of offensive or dangerous substances into public bodies of water which flow or are located within the county in order to protect the health of the inhabitants of the county to prevent the spread of disease and or to improve the environmental quality of the county. (derived from NM Stat Ann 4-56-3(C) and 4-37-2 and 3). In addition, Lincoln County Soil and Water Conservation Districts have been granted authority by New Mexico Water Quality Control Commission under the Clean Water Act for both point and non-point water pollution. The soil and water conservation districts duties include the analyses and identification of contaminant sources, the development of Best Management Practices and the development of policies and implementation strategies for improving water quality.

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ATTACHMENT

Lincoln County Jurisdiction and Authority to Plan and Regulate on Private and Government Lands

A. Basic County Authority: Lincoln County has police powers to regulate land use, environmental, and resource uses. Police power are defined by Black's Law Dictionary as

[a]n authority conferred by the American Constitutional system in the tenth Amendment, U.S. Constitution, upon the individual states, and, in turn, delegated to local governments. Police power is the exercise of the sovereign right of a government to promote order, safety, security, health, morals and general welfare within constitutional limits and is an essential attribute of government.

B. County Police Powers: Police powers are designed to protect the health, safety and well-being of the citizens. These powers include:

- The power to tax.
- The power to invoke emergency police powers.
- The power to regulate land use: land use planning; conditioning permits and impact fees; anti-nuisance/debris; and, subdivision regulations; building and landscape codes; critical control policies; growth management policies; transportation regulations; and, land sales restrictions.
- The power to protect the environment and natural resources through regulation and enforcement to include but are not limited to water quality and water rights protection, stream/riparian management air and visual quality, soils and flood plain management; declare emergency and natural disaster measures and, hazardous and toxic wastes, noxious plants, construction moratoriums, landfill regulations, and environmental health regulations and standards (such as regulating for hantavirus control).
- The power to codify and regulate property rights and their relationships with other property rights and protectable interests.
- The power to invoke condemnation - the exercise of eminent domain.
- The power and responsibility to protect civil liberties, civil rights, and property rights associated with the protectable interests in split estates: to protect citizens from physical invasion by the government agencies, loss of economic value through "takings", due process and basic rules of fairness, and the effects on the "personality" of the property rights, or, the customs and cultures associated with occupancy and use.

These powers are broad for government - that is why such powers were vested in local government - to provide close scrutiny to avoid abuses. These powers, while broad, are not absolute or in isolation. It should also be noted that federal and state powers can be concurrent with county powers or constrain county powers. The county as an extension of the state, derives its basic authority from state law.

Regulations/Enforcement: As a nuisance, the county can regulate and establish permitting process for any substance introduced which is either injurious to public health, safety or welfare, or, interferes with the exercise and enjoyment of public rights. Any violation of which is a misdemeanor, subject to fines not to exceed three hundred dollars (\$300.00) (per NM Stat Ann 4-37-3(A), enforceable by the Sheriff's Department, or Code Enforcement Officer.

Examples: The Grant County Water Pollution Nuisance Ordinance provides an illustration of County "nuisance" ordinance that is applicable to private and federal land agencies.

Notes/Issues: Water quality and quantity management and regulation primacy is vested in the state (and "arms" of the state, such as counties and soil and water conservation districts, acequias, and water districts). One needs to recognize the authority of both the State Engineer's Office and the Water Quality Division of the Environment Department for both quality and quantity regulation. Also, communities in Lincoln county should establish community welfare criteria to protect water rights allocation. Final note, NM will start regional water planning process in the near future. Counties should be prepared to develop their water plans first and foremost.

D. Air Quality

Purpose: Air quality management and regulation includes air pollution from chemicals and other particulates, smoke, visual quality Under the general county primacy over environmental health and safety.

Authority: A county can declare as a public nuisance any introduction of offensive or dangerous substances located within the county in order to protect the health of the inhabitants of the county to prevent the spread of disease and or to improve the environmental quality of the county (NM Stat Ann 4-56-3(C) and 4-37-2 & 3).

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Examples: Bernalillo County air quality ordinances include not only regulations for air quality, smoke, wood and open burning, but also they have an MOU with BLM and the Forest Service to coordinate county regulations over these federal agencies.

Notes/Issues: Lincoln should consider a Burn Ordinance that should be applicable to any individual, business or government agency who is considering open burning, such as

household and industrial trash burning and vegetative matter burning. In regulating and enforcing a burn ordinance, it is suggested that the ordinance spell out the burn permitting procedures. The unhealthy condition of the national forest could pose threats to the health and safety of county citizens: resulting smoke affects on respiratory impaired residents; the potential for human and property loss from catastrophic fire, and visual impairment from smoke. The public is concerned about current control and "let burn" policies of the Forest Service.

E. Pollution Prevention for Environmental Health

Purpose: The County Pollution Control Revenue Bond Act was established by NM legislature "...for the reduction, abatement or prevention of pollution, including the removal of pollutants, nuisances, contaminants or foreign substances from land, air or water or for treatment of any substance which would cause pollution" (NM Stat Ann 4-60-1). It also allows the county to issue bonds for defraying pollution prevention project costs.

Authority: The County Pollution Control Revenue Bond Act is designed "...to authorize counties to acquire own, lease or sell projects for the purpose of reducing, abating or preventing pollution...[or] removing or treating any substance...which would cause pollution [in order] to protect and promote the health, safety of the citizens of this state and its habitat and wildlife, with the resultant higher level of employment and economic activity and stability" (NM Stat Ann 4-60-1 TO 4-60-15).

Regulations/Enforcement: The County Pollution Control Revenue Bond Act allows the county to issue bonds for defraying pollution prevention project costs (this is not a general obligation bond). It does not authorize the county, itself, to operate the prevention. Finally, it does not specify additional regulations or enforcement powers to counties.

Examples: Catron County has established a Pollution Prevention Implementation Plan and Pilot County Land Management Services Program with a focus on forest health and fuel load build-up

Notes/Issues: In combination with police powers (e.g., regulation of smoke), the County Pollution Control Act can provide the opportunity to create jobs and businesses dedicated to preventing pollution. More specifically, this act can provide an umbrella authority to exercise its police powers to, say, regulate smoke from forest burns but also set up mechanisms for removal of fuel loads through bonding.

64		White Oaks
65		Oscuro
66		Reventon
67		Nogal
68		La Sierrita
69		Indian Settlements
70	1598	Mescalero Apaches
71	1598	Jicarilla Apaches
72	1873	Mescalero Reservation established.
73		(after mining started from nogal to ancho, two townships were taken
74		from the Jicarillas, and moved to Dulce)
75		
76		Negro Settlers
77	1855	George Washington - helped build the Torreon
78	1871	someone in White Oaks. Mr. Bates - employee of Coe Family
79	1876	Buffalo soldiers in Fort Stanton
80	1890's	Mr. Jackson - White Oaks
81		Other Settlers (Oriental, etc.)
82	1890's	Chinese laundryman in White Oaks
83		Hispanic Settlements
84	1855	Sabino Gonzalez helped build the Torreon
85	1860	Mauricio Sanchez - San Patricio - appointed Sheriff on 3/12/1869 by Gov. Heath
86	1860	Tenorio and Sedillo Gallinas Mountains
87	1861	Lorencita Miranda born in Lincoln
88	1860's	Names from baptismal records, at Rio Bonito, Henriquez Trujillo,
89		Josefa Chavez, Sabino and Encarnacion Gonzales and Manuel and
90		Encarnacion Gonzales and Manuel, Jose Manuel Salas, sons, Juan de Dios
91		and Antonio, Juan Almazon, Dolores Chavez, Jose Aldrete,
92		Candelario Griego, Apolonia Mirabal, George Kimbrell and wife Paula Romero,
93		Satumino Baca and wife Juana Chavez
94	1860	Names from 1860 census - Hugh Beckwith, Moses Schnabacher, Alec Duval
95	1860	Manuel Otero to Jicarilla's Ancho Gulch

96	1869	Jose Montoya lived in Jicarillas
97	1878	In Lincoln during War - Jesus Sais, Candelario Hidalgo, Ignacio Gonzales,
98	1878	Ignacio Torres, Timoteo Analla, Navor Chavez, Atanasio martinez, Juan Armijo,
99	1878	Isaquo Sanchez.
100	1878	Manuel Aguilar to Lincoln from Manzano
101	1877	Fernando Trujillo in San Patricio
102	1840	Jose Cordoba in Lincoln 1865 - Arabela
103	1860	Roman Barragan - Glencoe
104	1860	Anayas - San Patricio
105	1860	Sedillos - San Patricio
106	1868	Juan Sisneros in Lincoln from Manzano - killed in '68 by Indians (Guadalupe)
107	1877	Pacheco born in Lincoln - to Arabela in 1898
108	1878	Jose Chavez y Chavez hay farm near Ft. Stanton (in McSween House when burned)
109		Anglo Settlers
110	1867	Blazer's Mill
111	1867	Robert Casey (homesteaded in 1871)
112	1871	Frank and Al Coe
113	1867	Hughes, Cheney, Warner
114	1875	Alexander McSween
115	1876	John Tunstall
116	1880's	Several after Civil War
117	1881	Paul Mayer - White Oaks
118	1878	Henry Farmer in Lincoln
119	1882	Pfingsten to Bonito
120	1875	Judge Swan - Nogal
121	1880's	Consbruch, Mayberry, Rademacher, Brazel
122	1878	Lincoln - George Peppin, George Herman, Dick Brewer, Jack Long Green Wilson, Is
123	1877	Lesnett
124	1868	Heiskell Jones in Hondo
125	1878	John Skinner - Bonito
126	1880	Dr. M. G. Paden - White Oaks
127	1869	William Brady was sheriff

128	1875	John Allred born in Lincoln
129		Catholic Churches
130	1880's	Hondo
131	1880's	San Patricio
132		Ruidoso
133		Carrizozo
134		Corona
135	1880's	Picacho
136		Lincoln
137		Ruidoso Downs -
138		Ruidoso Downs -
139		
140		Protestant Churches
141	1940	Tinnie - First Baptist
142		Glencoe St. Anne's Episcopal
143		Mormon
144		Presbyterian
145		Ruidoso
146	1984	Capitan - Trinity Baptist
147	1946	Ruidoso Downs - First Baptist
148	1908	Carrizozo - First Baptist
149	1905	Corona - First Baptist
150	1878	Jose Chavez y Chavez- hay farm near Fort Stanton (in McSween house when burned)
151	1867	Blazer's Mill
152	1867	Robert Casey (homesteaded in 1871)
153	1871	Frank and Al Coe
154	1867	Hughes, Cheney, Warner
155	1875	Alexander McSween
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166	1878	John Skinner - Bonito
167	1880	Dr. M. G. Paden - White Oaks
168	1869	William Brady was sheriff
169	1875	John Allred born in Lincoln
170		
171		Mining history
172	1865	Billy Gill gold - Nogal/American mine
173	1865?	Benito Gallegos
174	1865	Jose Maria Vega (Vera Cruz mine)
175	1865?	Gregorio Pino
176	1878	White Oaks, Baxter (1890 gold \$209,709, Silver \$8,750)
177	1885	Red Cloud by Corona (copper and zinc)
178	1897	Capitan (coal)
179	1880	Bonito - gold
180	1880	White Oaks gold reworked (in 1600 Spanish gold mine) & boom (also coal & iron)
181	1882	Sawmill at Ruidoso (later Blazer's) had been Spanish sawmill
182	1885	Red Cloud mining by Corona (copper & zinc)
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APPENDIX C: DEVELOPMENT OF PRIVATE PROPERTY RIGHTS

I. Spanish & Mexican Law. Under Spanish and subsequently Mexican laws, the title to private property could only be acquired through permission of the Spanish King, the Mexican government, or their representatives. To acquire title under Spanish or Mexican law, the citizen or settler first had to request permission of the King or government. Once that permission was acquired, the settler was allowed to enter the property, then occupy and improve that property. After four years of land occupancy and improvement, the settler could then apply for land title. Once the King's or government's representative was ensured that the requirements were satisfied, the King or government granted title to the requesting party.

These requirements of occupancy and improvement came to be known as public good and public weal. Judge Brocchus, in his dissenting opinion in *Pino v. Hatch*,² defined public good as

“...[t]hose uses [that] were the cultivation of the soil, the pasturing of flocks, the promotion and encouragement of industrial pursuits, and in general such purposes as looked to the settlement of the uninhabited portions of the province, the enhancement of the value of the soil, the development of the resources of the country, and the promotion of the public good.”

In that same opinion, J. Brocchus describes “public weal” as public good with an additional requirement of “...*the enhancement of the value of the adjacent lands belonging to the public domain.*”

Another way that title could be acquired was a grant by the Spanish or Mexican government for services rendered, such as for assuming responsibility for defense against nomadic Indians or for “peopling” or developing the tracts in question. Although the acquisition of lands by grant from the Spanish King or Mexican government came to an

²Sup. Ct. Jan. 1855. Need proper cite

end with the signing of the Treaty of Guadalupe Hidalgo in 1848, the custom of occupancy and creating public good/public weal did not. These concepts carried through to the American concept of preemption.

2. United States Public Domain Disposal Statutes. During the period after the Treaty of Guadalupe Hidalgo, the United States Congress passed a series of public land laws based on the principle of preemption. Under preemption, the settler was required to hold the land by occupancy, then create "public good" and "public weal" before he could acquire title in a similar manner as had been done under Spanish and Mexican law. Under the preemption laws, which included the Homestead Act of 1862,³ the settlers gained title to the land by meeting all the requirements for occupancy and use, and receiving a Patent from the government. The Patent document was then recorded in the County Clerk's Office, thus establishing title to the land as fee simple ownership under state law.

3. Appropriative Rights. In addition to securing fee simple ownership of land under the preemption laws, settlers also secured vested and accrued private property rights to portions of the public domain under the principle of appropriation. Justice Field, in his dissenting opinion in *Spring Valley Water Works v. Schottler*⁴ described the principle of appropriation as follows:

"Indeed, it is a general principle of law, both natural and positive, that where a subject, animate or inanimate, which otherwise could not be brought under the control or use of man, is reduced to such control or use by individual labor, a right of property in it is acquired by such labor...

"It was in conformity with this principle that this court, in *Atchison v. Peterson* [20 Wall., 507, 512], in speaking of the general occupation

³Homestead Act of 1862, 12 Stat. 413.

⁴*Spring Valley Water Works v. Schottler*, 110 U.S. 347 (1884).

of the public lands made free for mining, and the rights of the first appropriator of lands containing mines, said that:

'He who first connects his own labor with property thus situated, and open to general exploration, does, in natural justice, acquire a better right to its use and enjoyment than others who have not given such labor. So the miners, on the public lands throughout the Pacific States and territories, by their customs, usages, and regulations, everywhere recognize the inherent justice of this principle, and the principle itself was, at an early day, recognized by legislation and enforced by the courts of those States and Territories'" [emphasis added]

The Supreme Court of the United States has ruled that appropriation "*is nothing more nor less than setting apart the thing for some particular use*"⁵, and when the public domain shall "*have been once legally appropriated to any purpose, from that moment, the land thus appropriated becomes severed from the mass of public lands*"⁶.

Title to these appropriative rights was not vested⁷ by a written instrument or an oral statement by some government official, but by the act of putting the that which was appropriated to beneficial use under local laws, customs, and decisions of the courts. It was the labor of the individual (public good and public weal) in creating the beneficial use which secured and vested these rights. The legal principle of using this method of

⁵*Wilcox v. McConnell*, 13 Pet.496, 512.

⁶*Ibid.*, 513.

⁷ Black's Law Dictionary, 6th ed.: Vested Right. In constitutional law, rights which have so completely and definitely accrued to or settled in a person that they are not subject to be defeated or canceled by the act of any other private person, and which it is right and equitable that the government should recognize and protect, as being lawful in themselves, and settled according to the then current rules of law, and of which the individual could not be deprived arbitrarily without injustice, or of which he could not justly be deprived otherwise than by the established methods of procedure and for the public welfare. Such interests as cannot be interfered with by retrospective laws; interest which it is proper for state to recognize and protect and of which individual cannot be deprived arbitrarily without injustice. *American States Water Service Co. of California v. Johnson*, 31 Cal.App.2d 606, 88 P.2d 770, 774.

establishing a person's vested, superior right to the water and range has become known as the Doctrine of Appropriation.

a. Doctrine of Appropriation. The principle of appropriation has become known as the Doctrine of Appropriation. The rights so obtained under Spanish/Mexican law continued to be recognized when the United States gained possession of these lands. The term "Doctrine of Appropriation" has primarily been applied to appropriative water rights. Dr. Clark, in his book *Water in New Mexico*,⁸ summarizes the development of the Doctrine of Prior Appropriation and the relationship between the states and the federal government pertaining to ownership of the waters on public lands as follows:

"Colorado was the first western state to be admitted into the union following passage of the mining act of 1866. In asserting public ownership of waters, its constitution differed sharply from the common-law position that title to the *corpus* of water was in no one. This departure became the basic premise of the so-called Colorado doctrine: all of the waters within a state were the property of the public held in trust by the state. It denied that acquisition of any water rights came from the federal government, insisting that the state was the sole source of such rights. Every state could adopt the system best suited to its climatic conditions, and the United States was obligated to follow the water-rights doctrines of the respective states in which public lands were located. The theory was justified by two lines of reasoning. The first was that when a state was admitted into the federal union it assumed jurisdiction over all lands within its borders as an incident of sovereignty, and the United States was merely a landed proprietor subject to its laws. The second, in recognizing the acquisition of water rights on public lands by prior appropriation under the mining act of 1866 and subsequent legislation, Congress surrendered control over these waters to the

⁸Clark, Ira G.. *Water in New Mexico: A History of Its Management and Use*, University of New Mexico Press, Albuquerque, N.M.

states and territories to which the federal laws applied. The waters would be put to use under the laws of the respective jurisdictions. Congressional acceptance of state constitutions declaratory of state ownership of waters was final evidence that the federal government accepted such an interpretation.”⁹ [emphasis added]

Congress recognized the doctrine of prior appropriation which had arisen from the necessities of putting the arid western public domain to use for mining, agricultural,¹⁰ stock raising, and other purposes. In the Mining Act of 1866,¹¹ Congress provided that:

“Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of the courts, the possessors and owners of such vested rights shall be maintained and protected in the same;...” [emphasis added]

The courts have consistently upheld this Act. The Supreme Court of California, in *San Joaquin & Kings River Canal & Irrigation Co. v. Worswick*,¹² stated:

“This section providing that whenever by priority of possession rights to the use of water have vested and accrued and are recognized by local customs, laws, and the decisions of courts, the possessors and owners thereof shall be maintained and protected therein, refers to the customs, laws, and decisions of the courts of the particular state in

⁹Ibid., p. 39.

¹⁰See paragraph C.3.1 of this document.

¹¹Mining Act of 1866, 14 Stat. 253, c. 262, July 26, 1866.

¹²*San Joaquin & Kings River Canal & Irrigation Co. v. Worswick*, 203 P. 999 (1922).

which the appropriation is made, and in which the land affected lies.” [emphasis added]

In *Osgood v. El Dorado Water, etc., Min. Co.*,¹³ the same court ruled:

“This section recognizes the right of the prior appropriator of water upon the public domain, even as against the United States and its grantees, if said appropriation was authorized by the statute of the state where the appropriation was made.” [emphasis added]

b. Appropriative Rights Dependent on Beneficial Use. To be a lawful appropriation, that which is appropriated must be put to beneficial use. In relation to water, Wells B. Hutchins¹⁴ states that:

“The right obtainable with reference to the water of a public stream in New Mexico is the right to appropriate so much thereof as is actually used for some beneficial and legal purpose.¹⁵ The appropriative right therefore is a right of beneficial use.

“The courts recognize—and the State constitution so provides¹⁶—that beneficial use is the basis, the measure, and the limit of the right to use of water. In *First State Bank of Alamogordo v. McNew*, 33 N. Mex. 414, 422 (1923), the New Mexico Supreme Court affirmed that the use of water in stock raising is a beneficial use for which water may be appropriated.” [emphasis added]

¹³*Osgood v. El Dorado Water, etc., Min. Co.*, 56 Cal. 571 (1880).

¹⁴Op.Cit.

¹⁵*Albuquerque Land & Irr. Co. v. Gutierrez*, 10 N. Mex. 177, 236-237, 61 Pac 357 (1900).

¹⁶N. Mex. Const., Art XVI, Sec 3.

A primary use of this principle was the appropriation of water and range on the public domain for the beneficial purpose of raising livestock.

c. Appropriative Rights the Established Law of New Mexico. The Doctrine of Appropriation is the established law of New Mexico for both water and range.

Water. Wells B. Hutchins in *The New Mexico Law of Water Rights*:¹⁷ states that:

“The law of prior appropriation existed under the Mexican republic at the time of the acquisition of New Mexico, and one of the first acts of this government was to declare that ‘the laws heretofore in force concerning water courses...shall continue in force.’¹⁸ In *United States v Rio Grande Dam & Irr. Co.* (9 N. Mex. 292, 306-307), the U.S. Supreme Court stated that ‘The doctrine of prior appropriation has been the settled law of this territory by legislation, custom and judicial decision...’”

‘New Mexico water law is based on the doctrine of prior appropriation for beneficial use which has not been repealed.¹⁹ The appropriative right, which is a usufructuary right, is property.²⁰ It is a property right of high order.²¹ Such a right is real estate.’²² [emphasis added]

¹⁷Hutchins, Wells A., *The New Mexico Law of Water Rights*, Technical Report No. 4, Production Economics Research Branch, Agricultural Research Service, USDA, Santa Fe, 1955.

¹⁸Code proclaimed by Brigadier General Kearney, September 22, 1846.

¹⁹N. Mex. Const., Art XVI, sec 3. See *Holloway v Evans*, 55 N.Mex 601, 607, 238 Pac. (2d) 457 (1951); *Middle Rio Grande Water Users Assn. v Middle Rio Grande Conservancy Dist.*, 57 N.Mex 287, 298-299. 258 Pac. (2d) 391 (1953).

²⁰*Murphy v. Kerr*, 296 Fed. 536, 541 (D. N. Mex., 1923); *New Mexico Products Co. v. New Mexico Power Co.*, 42 N. Mex. 311, 321, 77 Pac (2d) 634 (1937, 1938); *Lindsey v. McClure*, 136 Fed. (2d) 65, 70 (C.C.A. 10th, 1943).

²¹*Posey v. Dove*, 57 N. Mex. 200, 210, 257 Pac. (2d) 541 (1953).

²²*Ibid.*

Range. The New Mexico Territorial Legislature applied the Doctrine of Prior Appropriation to appropriation of range for the purpose of raising livestock on the public domain, the same as for water. In fact, the Legislature tied both the appropriation of water and range for raising livestock together in its Grazing Act of 1889,²³ which granted possession of the range to those that may appropriate a range on the public domain and stock it with cattle as follows:

“Any person, company or corporation that may appropriate and stock a range upon the public domain of the United States, or otherwise, with cattle shall be deemed to be in possession thereof; provided, that such person, company or corporation shall lawfully possess or occupy, or be the lawful owner or possessor of sufficient living, permanent water upon such range for the proper maintenance of such cattle.”²⁴ [emphasis added]

This application of the Doctrine of Appropriation to range as well as water was affirmed by the New Mexico Supreme Court in *First State Bank of Alamogordo v. McNew*,²⁵ where the Court stated:

²³Laws of 1889, ch. 61, § 1; reenacted upon statehood and now found as NMSA 1978, §19-3-13.

²⁴The term “cattle” has been used by the courts in both a limited and general sense, as evidenced by the following excerpts from court cases:

“Word ‘cattle’, in its usual and popular sense, means animals of the cow family, though it may be used in broad sense of ‘livestock’.” *Henry v. State*, 18 So.2d 140, 141.

“The word ‘cattle’ is often confined to neat cattle alone, that is, cattle of the bovine genus, but it is also a collective name for domestic quadrupeds generally, including not only the bovine tribe, but horses, asses, mules, sheep, goats, and swine....” *Decatur Bank v. St. Louis Bank*, 88 U.S. 294, 21 Wall. 294, 22 L.Ed. 560.

“The term ‘cattle’ includes sheep. *Davis v. Collier*, 13 Ga. 485, 491; *Henderson v. Wabash, St. L. & P. Ry. Co.*, 81 Mo. 605, 606.

The use of the term “cattle” must therefore be construed, in the general sense of the term, to include sheep, since in the 1889 to 1891 period there were approximately 4,000,000 sheep in the State of New Mexico.

²⁵*First State Bank of Alamogordo v. McNew*, 33 N. Mex. 414, 422, 269 Pac. 56 (1928).

“...W.H. McNew having appropriated and stocked said [public] range with cattle, and being the owner of permanent water for use upon said range for the maintenance of cattle thereon, had possessory rights in the said public lands, which he could protect as against one forcibly entering thereon without right...Equity would protect him in such possession by enjoining another stock owner not owning or possessing water from willfully turning his cattle upon such range...Such possessory rights in the public lands are subject to transfer...It is plain, therefore, that W. H. McNew was in the enjoyment of a property right in land...” [emphasis added]

The 1889 Territorial Grazing Act was, in effect, an act of Congress since all actions of the Territorial Legislature had to be submitted to Congress for approval. The Organic Act Establishing the Territory of New Mexico²⁶ states in Section 7 that:

“All the laws passed by the legislative assembly and governor shall be submitted to the congress of the United States, and, if disapproved, shall be null and of no effect.”

Thus, the Territorial Grazing Act of 1889 became an approved act of Congress, since the statute was never disapproved and was included in the 1897 compilation of territorial statutes. Also, since the statute was a Territorial law at the time of statehood, it was required to be included in the laws of the State of New Mexico, and still exists as § 19-3-13 NMSA (1978).

The growth, development, and statehood of New Mexico was made possible in large measure by the establishment of these ranching units. Prior to 1900, the bulk of the public

²⁶ Act of September 9, 1850, 9 Statutes at Large 446, Chapter 49.

domain in New Mexico had been appropriated for the purpose of raising livestock. For example, in June, 1890, the value of the livestock in New Mexico was \$25,111,201, and in 1900, \$31,727,400. In terms of numbers, by 1907 there were an estimated 1.2 million cattle and four million sheep in New Mexico.²⁷

In 1934, the U.S. Congress enacted the Taylor Grazing Act and the Secretary of Interior issued grazing permits, which provides:

...permits to graze livestock...to such bona fide settlers, residents, and other stock owners...Preference shall be given in the issuance of grazing permits to those within or near a [grazing] district who are landowners engaged in the livestock business, bonafide occupants or settlers, or owners of water or water rights.²⁸

The Taylor Grazing Act goes on to state that "grazing privileges recognized and acknowledged shall be adequately safeguarded".²⁹

These grazing permits were subsequently adjudicated to determine who was eligible for grazing preference. The term "grazing preference" represents an adjudicated right to place livestock on public lands. The grazing preference was attached to the base property of the ranch (fee simple land) followed and was transferred with it. The adjudicated process provided predictability and security of tenure to livestock operators. The intent of Congress was to provide stockholders with "...some type of assurance as to where and what kind of range they may have and depend upon in the way of pasturage".³⁰ This predictability and certainty in grazing preference permits provide the security to obtain financing for livestock capital, operations and improvements on the public lands.³¹

Public accountability is built into this adjudicated preference. The Secretary of Interior has eminence power to regulate the grazing to protect the rangeland.³² Good range management and proper stewardship of the rangeland is ultimately linked to the security and tenure of the adjudicated preference grazing permit, as expressed and demonstrated by

²⁷History of New Mexico: Its Resources and People, Pacific States Publishing Co., 1907, Vol. II, p. 1013.

²⁸ 43 USC § 315B.

²⁹ 43 USC § 315B.

³⁰ 78 Congressional Record at 5371.

³¹ 78 Congressional Record at 5371.

³² 43 USC § 315a.

a variety of public land research economists³³ When predictability and certainty are removed, not only do the ranch finances and family suffer, but the incentive for good stewardship and investment into healthy rangeland improvements are thwarted.

4. Land Tenure and Lincoln County Customs and Cultures. The existence of Lincoln County families and communities continues to depend foremost on the availability of land for homes, livestock, crops, timber, recreation and other resources. Land *is* the life and well-being of the culture in Lincoln County. The health of the land affects more than the individual who use the resources. There is a powerful sense of the land that surrounds the residents of Lincoln County.

Customs and culture are based on individual accountability to each other and to the land. Those people who use the land resources for their economic stability are necessarily concerned about good stewardship of the land with a long tradition and accepted heritage with Lincoln County cultures. It is an integral part to the continued improvement of the land resources, from managing watersheds, forage and range to developing and maintaining water sources for wildlife habitats to providing recreation opportunities and a *sense of place*. The core value to good stewardship, sustainability and individual accountability is in protection of private property rights, and the recognition of the development of rights in property unique to New Mexico and Lincoln County.

³³ Martin, William E., "Mitigating' the Economic Impacts of Agency Programs for Public Rangelands", Workshop on Applying Socio-Economic Techniques to Range Management Decision Making", Boise, ID, May 1981.; Kelso, Maurice M., "The Fruitless Search for Tenure Security on Publically Owned Grazing Lands: Can We Make It More Fruitful?", Rangeland Policy and Range Economics Research Symposium, University of Wym., July 1983; and, Archer, Thomsa and Gary Snider, "The Effect of Reduction in Permitted Use on Gila County". A Technical Report, Department of Agricultural Economics, University of Arizona, Tucson, March 1984.

APPENDIX D

I. **FEDERAL LAWS AND REGULATIONS PROVIDING FOR CONSULTATION WITH COUNTY GOVERNMENT.**

The following federal laws and regulations require federal agencies to consult with state and local governments or the public.

1. National Environmental Policy Act ("NEPA"): 42 U.S.C. § 4331, 40 C.F.R. § 1500 series

a. Congressional Policy declares:

...that it is the continuing policy of the Federal Government, in cooperation with State and local governments, ...to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may--¹...assure for all Americans safe, healthful, productive and aesthetically and culturally pleasing surroundings;"² and "...preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice."³ [Emphasis added]

b. Protection of Custom and Culture: NEPA not only requires the federal government to consider the impacts of its actions on the environment, but it also requires federal agencies to preserve culture and heritage. NEPA states that cooperation and coordination will occur with "local governments," and that the culturally pleasing surroundings and cultural aspects of community will be preserved so as to support diversity and variety of individual choice.

Each county must determine and define its local custom and culture and then act to protect them. Once a county

¹42 USC 4331(b).

²42 USC 4331(b)(2).

³42 USC 4331(b)(4).

government has identified and defined its custom and culture, it must inform the federal agencies of the definition and request that custom and culture be preserved under NEPA. State agencies should also be informed and requested to comply accordingly.

c. NEPA mandates specific performance requirements which are crucial to the County:

all agencies of the Federal Government shall...(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on...

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between short-term uses man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

d. A significant element is the term "cumulative" effects:

Cumulative impacts can result from individually minor but collectively significant actions taking place over a time period...⁴ Effects include...cultural, economic social or health, whether direct, indirect or cumulative.⁵

⁴ 40 CFR § 1508.6.

⁵ 40 CFR §1508.8.

e. Furthermore, NEPA requires:

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and view of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, and shall accompany the proposal through the existing agency review processes;

G. Make available to

States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;⁶

The President, the federal agencies, and the courts share responsibility for enforcing the Act so as to achieve the substantive [pertaining to NEPA substance] requirements...."⁷. A major objective of the NEPA regulations is:

(b) Emphasizing cooperative consultation among agencies before the environmental impact statement is prepared rather than submission of adversary comments on a completed document.⁸

NEPA requires agencies to circulate both the draft and final environmental impact statements, except for certain appendices and unaltered statements, to appropriate Federal, State, and local agencies authorized to develop and enforce environmental standards.⁹

⁶42 USC 4332(2)(C)(i)-(v) and (2)(G).

⁷40 CFR 1500.1(a).

⁸40 CFR 1501.1(b).

⁹40 CFR 1502.19(a).

Joint Environmental Planning: NEPA provides the following guidelines for federal coordination with county governments to integrate federal environmental plans with local planning processes:

- (b) Agencies shall cooperate with state and local agencies to the fullest extent possible to reduce duplication between NEPA and state and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include:
 - (1) Joint planning processes.
 - (2) Joint environmental research and studies.
 - (3) Joint public hearings (except where otherwise provided by statute).
 - (4) Joint environmental assessments.

- (c) Agencies shall cooperate with state and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable state and local requirements, unless the agencies are specifically barred from doing so by some other law... such cooperation shall to the fullest extent possible include joint environmental impact statements. In such cases one or more Federal agencies and one or more state or local agencies shall be joint lead agencies. Where state laws or local ordinances have environmental impact statement requirements in addition to...those in NEPA, Federal agencies shall cooperate in fulfilling these requirements as well as those of Federal laws so that one document will comply with all applicable laws.

- (d) To better integrate environmental impact statements into state or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the

agency would reconcile its proposed action with the plan or law.¹⁰

2. The Intergovernmental Cooperation Act: The Intergovernmental Cooperation Act (ICA) requires federal agencies to coordinate and review with state and local governments, federal government programs and project plans. ICA: ¹¹

...provides opportunities for strengthening the consultation and coordination between federal, local and state governments through coordination and review of proposed federal assistance and direct federal development programs.

Furthermore, the President of the United States issued Executive Order 12372. It requires federal agencies to coordinate with state and local governments. It requires federal agencies to comply with state processes for intergovernmental review and coordination of federal programs and actions. The Executive Order states:

Section 1. Federal agencies shall provide opportunities for consultation by elected officials of those state and local governments that would provide the non-federal funds for or that would be directly affected by proposed federal financial assistance or direct federal development.

Section 2 (a)...federal agencies shall to the extent permitted by law:

...determine official views of State and local elected officials.

(b) Communicate with State and local elected officials' as early in the program planning cycle as is reasonably feasible to explain specific plans and actions.

c) Make efforts to accommodate State and local elected officials' concerns with proposed federal financial assistance and direct federal development...where the concerns cannot be accommodated, federal officials shall explain the bases for their decisions in a timely manner.

¹⁰40 CFR 1506.2(b), (c), (d).

¹¹ Intergovernmental Cooperation Act, § 401 and 3 USC § 301.

Section 3 (a) The state process referred to in Section 2 shall include those where States designate, in specific instances to local elected officials the review, coordination, and communication with federal agencies.

It should be noted that under ICA and the Executive Order 12372, the review body has the unique authority to appeal federal decisions directly to the U.S. secretaries of Agriculture and Interior departments. At present only these government entities can appeal federal land decisions and plans directly to these cabinet heads. Furthermore, under the new federal appeals process, the general public and special interest groups will not be afforded liberal appeals as in the past; only the Executive Order 12372 ICA organizations will have the unique appeal access to these cabinet heads.

3. Federal Land Policy and Management Act ("FLPMA"), 43 U.S.C. §§ 1701, et seq.,

- a. "The Secretary shall allow an opportunity for public involvement and by regulation shall establish procedures, including public hearings where appropriate, to give federal, State and local governments and the public adequate notice and opportunity to comment upon and participate in the formulation of plans and programs relating to the management of the public lands." 43 U.S.C. § 1712(f).
- b. Coordination with local government is required in addition to public involvement by regulation for development of land use plans, guidance and revision or amendment of plans. 43 C.F.R. § 1610.3. ?
- c. In exercising his authorities under this Act, the Secretary by regulation shall establish procedures, including public hearings where appropriate, to give the federal, State, and local governments and the public adequate notice and an opportunity to comment upon the formulation of standards and criteria for, and to participate in, the preparation and execution of plans and programs for, and the management of, the public lands." 43 U.S.C. § 1739(e).
- d. "The Secretary, with respect to the public lands, shall promulgate rules and regulations to carry out the purposes of this Act and of other laws applicable to the public lands, and the Secretary of Agriculture,

with respect to lands within the National Forest System, shall promulgate rules and regulations to carry out the purposes of this Act." 43 U.S.C. § 1740.

4. National Forest Management Act ("NFMA"), 16 U.S.C. 1600 et seq.

- a. In developing the reports required under subsection ^(c)~~(b)~~ [Resource Planning Assessments] of this section, the Secretary shall provide the opportunity for public involvement and shall consult with other interested governmental departments and agencies." 16 U.S.C. 1601 ^(g)~~(f)~~.
- b. "The Secretary shall provide for public participation in the development, review, and revision of land management plans including, but not limited to, making the plans or revisions available to the public at convenient locations in the vicinity of the affected unit for a period of at least three months before final adoption, during which period the Secretary shall publicize and hold public participation in the review of such plans or revisions." 16 U.S.C. 1604(d)
- c. National Forest land use planning is implemented in 36 C.F.R. Part 219.
 - (a) Public involvement in land use planning, 36 C.F.R. 219. ⁴~~8~~
 - (b) Coordination with other public planning efforts, 36 C.F.R. 219. ⁷~~4~~ Requires Forest Service to coordinate National Forest planning with that of other State and local governments and Indian tribes. In doing so, Forest Service officer must consider respective land use planning objectives, assess inter-related impacts, and identify conflicts and alternatives to resolve such conflicts. 36 C.F.R. 216. ⁷~~(c)~~ ^(a)~~(b)~~ ⁽¹⁾
 - (c) Supervisor required to meet with State and local governments and Indian tribes to discuss procedures for coordination. 36 C.F.R. 219. ⁷~~(d)~~ ⁴
 - (d) Research needs in developing forest plan are to be coordinated with State and local government and Indian tribes. 36 C.F.R. 219. ⁷~~(e)~~ ⁴

revision referred to in subsection (a)(1) or (3) [listing or critical habitat], the Secretary shall-- . . . give actual notice of the proposed regulation (including complete text of the regulation) to the State agency in each state in which the species is believed to occur, and to each county or equivalent jurisdiction in which the species is believed to occur, and invite the comment of such agency, and each such jurisdiction, thereon;" 16 U.S.C. § 1533(b)(5)(A)(ii);

(1) 50 C.F.R. §§ 424(c)(ii); 424(c)(iii);

(2) Public comment of at least 60 days from F.R. and 30 days in all other rules. 50 C.F.R. 424.16(c)(2);

(3) Public hearings if requested. 50 C.F.R. 424.16(c)(3).

b. The Secretary shall prior to final approval of a new or revised recovery plan, provide public notice and an opportunity for public review and comment on such plan. The Secretary shall consider all information presented during the public comment period prior to approval of the plan." 16 U.S.C. § 1533(f)(4).

c. Guidelines for classifying petitions and review of potentially threatened or endangered species shall have public notice and opportunity for comment. 16 U.S.C. § 1533(h).

d. Secretary is to cooperate with the states "to the maximum extent practicable." 16 U.S.C. § 1535(a). This includes signing cooperative agreements and working with state fish and wildlife programs.

6. **Administrative Procedure Act ("APA")**, 5 U.S.C. § 553, requires notice and comment of proposed regulations.

7. **Clean Water Act**, 33 U.S.C. §§ 1251, et seq.

a. It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of the States to prevent, reduce and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources and to consult with the Administrator

in the exercise of his authority under this chapter."
33 U.S.C. § 1251(b).

- b. "Public participation in the development, revision, and enforcement of any regulation, standards, effluent limitations, plan or program established by the Administrator or any State under this chapter, shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and public regulations specifying minimum guidelines for public participation in such process." 33 U.S.C. § 1251(e).
- c. "It is the policy of Congress that the authority of each State to allocate quantities of water within its jurisdiction shall not be superseded, abrogated, or otherwise impaired by this chapter. It is the further policy of Congress that nothing in this Chapter shall be construed to supersede or abrogate rights to quantities of water which have been established by any State. Federal agencies shall cooperate with State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources." 33 U.S.C. § 1251(g).
- d. "The Administrator, shall, after careful investigation and in cooperation with other federal agencies, State water pollution control agencies, interstate agencies, and the municipalities and industries involved prepare or develop comprehensive for preventing, reducing or eliminating the pollution of the navigable waters and ground waters and improving the sanitary conditions of surface and underground waters." 33 U.S.C. § 1252(a).

8. Resource Conservation Recovery Act ("RCRA"), 42 U.S.C. §§ 6901 et seq.

- a. State solid waste regulatory programs authorized. 42 U.S.C. §6926.
- b. State underground storage tank programs authorized. 42 U.S.C. § 6991(c).

9. Clean Air Act, 42 U.S.C. §§ 7401, et seq.

a. Public involvement in preparation of state and regional implementation plans, 42 U.S.C. § 7410.

10. Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601, et seq.

11. Community Right to Know, 42 U.S.C. §§ 11001 et. seq., implements broad authority to inform members of the public regarding the existence or presence of regulated substances.

II. STATE LAWS AND REGULATIONS PROVIDING FOR CONSULTATION WITH COUNTY GOVERNMENT.

The following state laws provide for state agencies or commissions to consult with local governments or to provide notice.

1. N.M. Stat. Ann. § 16-3-4. Art. 3 State Trails System, Parks, Recreation, and Fairs provides:

C. In the planning and designation of trails, the secretary shall give due regard to the interests of federal or state agencies, counties, municipalities, private landowners and interested individuals and recreational and conservation organizations. The secretary shall give full consideration to the inclusion of trails from all categories within the system.

2. N.M. Stat. Ann. § 17-1-1 et seq. Wildlife Statutes

a. N.M. Stat. Ann. § 17-1-14, requires notice and hearing for revocation of permit.

b. N.M. Stat. Ann. §§ 17-2-41, 17-2-44, require hearings for development of endangered species list or plan.

3. N.M. Stat. Ann. §19-2-2, requires United States to notify State public lands commission, governor, and county of intention to relinquish legislative jurisdiction over federal land within the state.

4. N.M. Stat. Ann §§ 67-3-15, 67-3-28, 67-3-31, 67-3-32; State Highway Construction, Location, and Maintenance, requires state to advise towns of planned road construction and maintenance and cooperation through cooperative agreements as to costs.

5. N.M. Stat. Ann. §§ 42A-1-14, 42A-1-18, Condemnation Proceedings requires notice to county of condemnation proceedings.

6. N.M. Stat. Ann. §§ 9-3-1 et seq. Mining and Mineral Development.

- a. N.M. Stat. Ann. § 69-3-2 requires persons locating mining claims to record such location with the county; required to file amended locations,
- b. N.M. Stat. Ann. § 69-3-3 requires filing of annual affidavits of labor and assessment with the county.
- c. N.M. Stat. Ann. §69-3-12.1 requires public hearing for consolidation of claims for development, N.M. Stat. Ann. §69-9-6.

7. N.M. Stat. Ann. § 69-25A-14 Surface Mining Act, Within ten days after the granting of a permit, the director shall notify the local governmental officials in the municipality, if any, and county, in which the area of land to be affected is located that a permit has been issued and shall describe the location of the land.

8. N.M. Stat. Ann. § 69-25B-7. Reclamation of Abandoned Mines.

- G. The director, pursuant to the state reclamation plan, when requested after appropriate public notice shall hold a public hearing, with the appropriate notice, in the counties or the appropriate subdivisions of the state in which lands acquired pursuant to this section are located. The hearings shall be held at a time which shall afford local citizens and governments the maximum opportunity to participate in the decision concerning the use or disposition of the lands after restoration, reclamation, abatement, control or prevention of the adverse effects of past mining practices.

9. N.M. Stat. Ann. § 72-12-26. Underground Wells. Drilling of underground wells requires application to state engineer and public notice in the county where well will be drilled.

10. N.M. Stat. Ann. § 72-18-25. Flood Control Districts. Notice of change in flood control district to county.

11. N.M. Stat. Ann. § 73-8-1. Drainage Districts Within Federal Reclamation Projects. Authorizes creation and administration of special districts, including drainage districts which are attached to federal reclamation projects.

12. N.M. Stat. Ann. §§ 73-10-1, et seq. Irrigation Districts in Cooperation with Federal Reclamation Projects, authorizes creation and administration of irrigation districts in association with federal reclamation projects and coordination with county; provides for election of board members, authority to issue bonds, and to construct projects.

13. N.M. Stat. Ann. 73-18-1 et seq., Conservancy Districts in Cooperation with Federal Reclamation Projects, authorizes creation and administration of water conservancy districts. 14.

N.M. Stat. Ann. §§ 74-2-1, et seq., Air Quality Control Act.

a. N.M. Stat. Ann. §§ 74-2-4, 74-2-5, 74-2-5.1, authorizes creation of local air quality regulatory authority to enforce air quality standards.

b. N.M. Stat. Ann. § 74-2-6 requires notice and public hearing for all regulations.

c. N.M. Stat. Ann. §74-2-7, Air Quality Permits, requires public hearings of air quality permits.

d. N.M. Stat. Ann. §74-2-8 permits local board or state agency to issue variance.

15. N.M. Stat. Ann. §§ 74-6-4 et seq., New Mexico Water Quality Control Act.

a. N.M. Stat. Ann. § 74-6-64 requires Commission to adopt regulations or water quality variances with public hearing.

- b. N.M. Stat. Ann. § 74-6-5 requires Commission to notify local government of any application for or modification of a discharge permit.
- c. N.M. Stat. Ann. § 74-6-6 requires public hearings for all regulations, standards, and permit applications.

16. N.M. Stat. Ann. §§ 76-7-5 Noxious Weed Control Districts authorizes a county to form district and provide for control of noxious weeds on land within the county.

LINCOLN COUNTY WATER PLAN

PREFACE

The primary purpose of this water plan is to identify and evaluate the options available for meeting water needs and uses over the next forty years.

Obviously, in a water scarce area, water issues have always been and will continue to be of primary concern to area residents. Limited surface supplies, declining ground water levels, Court decrees, interstate compacts, and declared underground water basins limit and regulate the use of this most essential resource. Further restrictions to the use of available water are existing and potential deterioration of water quality by upstream or adjacent uses.

Lincoln County Commissioners initiated this Plan to ensure the rational use of long term water supplies, to coordinate the timely construction of appropriate water projects, and to encourage water conservation throughout the County.

The Plan is premised upon the following assumptions:

1. Each area of the county is intrinsically valuable.
2. The citizens of the county are interested in controlling their water future rather than being controlled by it.
3. The citizens of the county are aware of the

need for water conservation to insure that we have enough water in the future.

4. Our traditional and fundamental prior appropriation system of water law shall be maintained.

OBJECTIVE

The origin of all natural water supplies is rainfall or snowfall which runs off as surface water or infiltrates to form ground water. In Lincoln County, extensive ground water pumping could reduce surface water supplies. This reduction of surface flows can impact existing and future interstate and international water compacts and existing and future inter-regional and interbasin agreements within New Mexico. In order to reduce these consequences, local water rights should be protected and developed to the fullest extent employing a strong conservation ethic. Future water development should not be overly restricted, and if interstate or inter-basin restrictions become a limiting factor, alternative solutions should be developed. This is one goal of the Water Plan.

Local competition for water among agricultural, industrial and municipal interests should not restrict growth potential of any area. Therefore, this Water Plan gives equal priority to all local uses and only considers the reduction of one use to benefit another when all other options are exhausted. Consequently, another goal of this plan is to increase public awareness of the importance and need for local planning of long term water resources. Based on the existing surface and

ground water supplies in Lincoln County, this plan evaluates existing and future water uses and needs on a sub-area (local) basis and recommends actions to address the water problems of each sub-area. Using these results, local communities should develop greater understanding of their individual problems and potential solutions so that local water plans may be developed in accordance with this plan.

Precipitation, surface water and recharged groundwater are the only renewable components of the water resource system. Groundwater in a topographically closed basin (with no stream flowing in or out) is a finite resource; in a tributary (with a stream flowing in or out) aquifer, groundwater use will eventually affect the surface flow system. Therefore, this Plan has evaluated a number of potential surface water storage and development projects.

This Plan is intended to expand upon water planning efforts of others by providing some insight into localized water issues and needs, and to reinforce the need for such projects using local criteria and concerns.

Therefore, this Water Plan is expected to guide water management in the county by identifying critical water deficiency conditions and potential supplies to meet these deficiencies. Proper water resource management will only be possible if the magnitude and location of water needs are well understood.

Current levels of water use and projected future require-

ments are based on available data. The results of previous planning efforts as included in this plan may not be sufficiently reliable because of a lack of specific data or inadequate computer modeling. Only detailed localized modeling and analysis, which should be a natural follow-up to this effort, will answer the difficult localized questions.

Water is the most important resource next to air. Therefore, there is concern in Lincoln County about both the quantity and quality of available water. Any future economic development or population growth will require securing enough water for those purposes.

The County has several drainage basins and has varied land forms, geology, soils, vegetation, climates, land uses and demographics. This mosaic presents a major problem to establishing a rigid water plan for the entire County. It is not the desire of the County Commission nor the vast majority of County residents for the County to establish a "zoning" document that dictates how private water right owners are to manage water. The long term goal of this plan is to: 1) Provide the information necessary for individuals and county government to make wise decisions on water use; 2) protect existing water right holders from the restrictions on the use or loss of their rights; and 3) Provide for the future water needs of Lincoln County.

Part I of the Lincoln County Water Plan addresses the needs and concerns of the citizens. The primary goal is to insure

that the citizens of Lincoln County are given the best opportunity for individual and local control of their water resources.

There are two underlying legal principles that are the foundation of Part I. They are: 1) Lincoln County recognizes the principle of prior appropriation and the New Mexico State Water Laws as they exist at the time this plan is adopted; and 2) The citizens of Lincoln County deny any Federal claim to water or reserved water other than what is allowed under guidelines established in U.S. vs. New Mexico.

The recognition of water rights as a basic property right is a key element in understanding the Lincoln County Water Plan. No attempt has been made to dictate how or where water is beneficially used. The jurisdiction over the transfer and use of water is constitutionally vested in the State Engineer and Interstate Stream Commission.

Once a water right is recognized as a basic property right, the protection of its quality and quantity becomes the responsibility of the owner, neighboring property owners, and government. The owner has an immediate interest in not contaminating or diminishing the quantity of water available for their own use. Neighboring property owners become responsible for contaminating or damaging the availability of the common water source. Strict liability is the desired governing force and every effort should be made to keep "Government" as a third party enforcer out of the process or regulation. This does not

mean that government has no role. The value of water, if left to market forces, will insure that its quality, availability and application to best use will be protected. Federal, State and County governments should be equally involved in insuring that no individual's rights are violated.

Conservation of water is one of the major items covered in Part II. Being more efficient with the water we use has no rewards under the law of prior appropriation. The discontinuance of use, by conserving, subjects the water right owner to forfeiture of their right. This is one reason for proposing the development of Water Banks. This feature will allow county residents to "invest" water rights not being used into a water marketing entity. The creation of a water bank will require State legislation and therefore is a future project.

Because the cost in time and money in acquiring information is often the reason bad resource use decisions are made, the Water Plan aims to establish a central information source. A primary duty will be to gather and distribute information to the public.

LEGAL FRAMEWORK FOR THE LINCOLN COUNTY
WATER PLAN

A. Water Law

A.1 State Law

Water Law in New Mexico is administered at a number of different levels. Local government control dates back to the 16th Century, when community irrigation ditches provided the only sanctioned public means for organizing and distributing surface water. State Law continues to recognize these ditch associations ("Acequias") as political subdivisions of the state, along with more recent entities such as irrigation districts, conservancy districts, soil and water conservation districts, water and sanitary districts, and drainage districts. The statutory powers of these organizations range from the acequias, which are the least powerful, to conservancy districts, which can levy taxes, acquire water rights, determine water uses, and arrange exchange agreements.

New Mexico municipalities and counties have each been delegated land use planning authority by the state for lands within their jurisdiction; an authority which extends specifically to the reasonable planning and regulation of

water within that jurisdiction. Therefore, within the county there exists the possibility of creation of local entities who could regulate water use.

State water rights are themselves always subject to overriding apportionments of water by interstate compact or Supreme Court decree. In addition, direct federal claims to water can supersede state-created rights under certain circumstances.

Two new terms have entered New Mexico water law phraseology in recent years. "Public Welfare" and "Conservation" were found by the U. S. Supreme Court to be legitimate criteria in a state's efforts to control interstate water. Although no one has specifically defined the terms or the factors which go into their determination, they have been widely accepted and incorporated into state water legislation. Depending upon the particular interpretation adopted by New Mexico, the addition of the "public welfare" criteria could offer vast new possibilities for regulation, acquisition, and transfer of water rights by public bodies.

On the other hand, the addition of the term "conservation" to New Mexico water law owed more to the Supreme Court's language than to any concern for local issues. Conservation is a concept primarily aimed at protecting a limited resource for future use. Without specifically using that term, much of New Mexico's existing water law is already directed toward this end. By refusing to recognize "waste" of

water as a beneficial use, and by focusing on "consumptive use" of water through "return flow" credits, state law tries to leave no room in its water rights allotments for savings through "conservation". It is unclear how far local regulation could intrude on the balances already struck by existing water law. For example, recent amendments to state law allow municipalities, associations and conservancy districts to appropriate water for legitimate anticipated needs up to 40 years into the future without fear of losing the right because of failure to put the water to beneficial use. The statute allows these entities to "conserve" sufficient water to cover projected needs for a reasonable time.

The New Mexico Constitution, as interpreted by the Courts and administered by the State Engineer, commits the state to the fundamental law of "prior Appropriation". Thus, under purely New Mexico law, a water right may be granted for a beneficial use, provided that the new appropriation does not impair any previously existing right. However, that single state law is constrained by superior federal and/or international law. In addition, New Mexico water law differs in important particulars from one local area to another, as well as from one use to another, even within the boundaries of the County.

B. OPPORTUNITIES AND CONSTRAINTS

B.1 Declared Water Basins (underground)

Hondo Basin

Tularosa Basin

Roswell Basin

In addition to these primary constraints, areas which are "mining" their groundwater may soon be faced with additional obstacles. As water levels decline and pumping depths increase, more and more holders of existing rights will find the cost of pumping to be greater than the economic return from the beneficial use of that water. In some areas of the state, the State Engineer has set a depth to which all rights in the basin will be protected and below which, presumably, only public entities can afford to pump. However, no such formal policy has been set within the County.

B.2 Undeclared Basin

Outside of the declared basins, no permit is required from the State Engineer in order to appropriate groundwater, unless the water is to be exported out of the state. However, water in these undeclared regions is still public water and subject to the general doctrine of prior appropriation. Private parties may obtain right to it only by applying the

water to beneficial use. Public entities, on the other hand, might acquire rights to the water now, yet postpone the application of it to beneficial use by up to the 40-year planning period authorized by the state, provided that a projected need can be demonstrated.

CHAPTER II

WATER DEVELOPMENT ALTERNATIVES

A. *Future Water Supplies*

A.1 *Groundwater*

At greater depths, all of the basins have additional water. However, in the typical situation, water quality is diminished with depth in an aquifer and extensive treatment, similar to that required for surface water reuse, may be necessary.

Underground water basins may be administratively considered to be fully appropriated, even though they contain extensive groundwater supplies. In order to verify the potential for additional water, new exploration holes, wells and pump tests will have to be performed. With time, as new drilling takes place and the aquifers are better defined, the veracity of this assumption can be determined.

Therefore, the groundwater supply available for the future may be well beyond the expected demands. The only restriction to water use would be the location of demand as compared to convenient and highly productive surface reservoir or well locations.

A2 *Surface Water*

The only restriction to appropriation, development and beneficial use of any additional surface water will be avoidance of impairment of existing rights, observance of interstate

compact conditions, and protection of historic water quality and environmental values.

B. EXISTING WATER PROJECTS

B.1 SURFACE WATER IRRIGATION

B.2 EXISTING SURFACE WATER STORAGE SITES

B.3 USE OF WELLS & LOCATIONS

C. NEW PROJECTS

C.1 PROJECT DEVELOPMENT

C.2 DAM SITES

C.3 GROUNDWATER PROJECTS

C.4 COST ESTIMATES

C.5 ADMINISTRATIVE & FINANCING ISSUES

C.6 ALTERNATIVE FINANCING METHODS

By their very nature, water projects are essential to development and operation of residential, municipal, agricultural and industrial activities. Because large amounts of capitan are required to construct water projects, various alternate methods of financing are required. Some of the methods are as follows:

1. Debt financing using either general obligation (good credit, low interest rate) or revenue (more risk, higher interest rate) bonds.
2. Economic Development Fund grants and loans available from the state as general obligation bonds or revenue bonds using the loan payment as the revenue source. Or the legislature could appropriate the money from

the general fund; tax surpluses; sales, gross receipts or user taxes; or severance taxes. Alternatively, the State could use these funds to buy local government bonds for a specific project. Another alternative is for the state to use these funds to construct the project and then sell or lease it to the local government over a period long enough to make it affordable to the local government.

3. The State can establish bond banks to buy local bond issues which would otherwise be economically inefficient because of their size.
4. The State legislature can provide for a state or local authority to issue its own bonds, make loans or grants or even build projects. Also, local agencies would join together to form a limited power quasi-government agency which can also issue its own debt instruments.
5. Yet another option for funding water projects is a state bond guarantee fund which would approve all local bond issues and guarantee their repayment.

Obviously, many of these organizational and funding sources are already available to the area. When a specific project is selected for development, the appropriate organization should then be identified.

Multi-source funding of water projects is a very popular means of project financing. Innovative methods of combining

federal, state and local funds within the fiscal capability of each agency should always be investigated when individual projects are being planned.

D. ENVIRONMENTAL CONCERNS

D.1 RIPARIAN & WILDLIFE

Although not strictly regulated by the State Engineer's Office, fish, wildlife and riparian requirements are a major concern of federal agencies, including the U.S. Bureau of Reclamation. If instream flow requirements are specified by the U.S. Fish and Wildlife Service to protect Threatened and Endangered Species, which appear to be greater than the historic flow, the existing uses may have to be curtailed.

D.2 RESERVOIR MITIGATION

Obviously, an upstream reservoir which stores flood flows and augments low flows to meet downstream flow requirements is a desirable objective. These reservoir storages dedicated to low flow augmentation should be financed by all parties who will benefit. Allocating costs for a multi-purpose reservoir will be extremely complex and will require much negotiation.

In spite of all these problems, the environmental concerns are important and federally mandated. Therefore, they cannot and should not be minimized to any extent. The benefits derived, not only to individual fish species, but to the fluvial and riparian ecosystems, will far exceed the cost. In this context, it is important to recognize that periodic flooding of riparian areas is part of the natural order, and the respective

ecosystems have adapted to and rely on these inundations, e.g. cottonwood regeneration. Therefore, any reservoir project should not eliminate all downstream flooding because, under these conditions, the riparian ecosystem may suffer. Also, periodic scour of benthic deposits may be necessary for the well-being of the fluvial ecosystem.

SENATE-JOINT MEMORIAL 62
43rd Legislature - STATE OF NEW MEXICO - first session, 1997

INTRODUCED BY
PHIL A. GRIEGO

A JOINT MEMORIAL

REQUESTING THE UNITED STATES FOREST SERVICE TO IMPLEMENT BEST
MANAGEMENT PRACTICES TO RESTORE THE WATERSHEDS UNDER ITS
JURISDICTION.

WHEREAS, water is a vital resource of the state of New Mexico; and

WHEREAS, historically those watersheds managed by the United States forest service once produced the most pristine and highest quality water; and

WHEREAS, the organic legislation that created the forest service mandates it to protect watersheds for the purpose of water production and delivery; and

WHEREAS, lands managed by forest service are producing only seventy percent of historic amounts of water due to past management practices; and

WHEREAS, a thirty percent increase of water from forest service lands would benefit the entire water system in the state; and

WHEREAS, the state of New Mexico has liability for the delivery of water to other entities for which it has incurred present and will incur future expenses; and

WHEREAS, numerous state agencies and departments are struggling with present and future shortages of water; and

WHEREAS, past management practices by the forest service have resulted in a dramatic loss of wildlife habitat leading to historic levels of depredation of private property; and

WHEREAS, the people and wildlife of the state of New Mexico would benefit from additional water gained through a change in the management of the watersheds by the forest service; and

WHEREAS, the forest service has incurred some measure of liability for the water problems of New Mexico because of past watershed management practices;

NOW, THEREFORE BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that the United States forest service be requested to immediately implement best management practices to effect restoration of the watersheds; and

BE IT FURTHER RESOLVED that a copy of this memorial be transmitted to the New Mexico congressional delegation.

APPENDIX G: GLOSSARY OF TERMS

ADJUDICATION. A formal court proceeding which results in the determination of the validity and extent of a right.

AFFECTED ENVIRONMENT. The natural and physical environment and the relationship of people to that environment that will or may be changed by proposed actions.

ALLOTMENT MANAGEMENT PLAN (AMP). A livestock grazing activity plan for specific allotment based on multiple-use resource management objectives.

ANIMAL UNIT MONTH (AUM). The amount of forage necessary for the sustenance of one cow with a nursing calf or its equivalent (1,000 lbs.) for a period of one month.

AREAS OF CRITICAL ENVIRONMENTAL CONCERN (ACEC). Areas within the public land where special management attention is needed to prevent damage to historical, cultural, or scenic values, fish and wildlife resources, or other natural systems or processes, or to protect life and provide safety from natural hazards.

BEST MANAGEMENT PRACTICE (BMP). Methods, measures, or practices selected on the basis of site-specific conditions to ensure that water quality will be maintained to its highest practical level.

CARRYING CAPACITY. the optimum density of an animal species which a given environment or range is capable of sustaining, without deteriorating that range or environment.

CONSTRUCTIVE NOTICE. Such notice as is implied or imputed by law, usually on the basis that the information is a part of a public record (source: Blacks Law Dictionary). It is a mechanism to communicate to federal and state agencies matters for public record, and as sufficient and important to give notice.

CRUCIAL HABITAT. Portions of the habitat of a wildlife population that, if destroyed or adversely modified, would result in a reduction of the population to a greater extent than destruction of other portions of the habitat.

CULTURE. The National Environmental Policy Act (42 USC §433 (b) defines culture as the body of: customary beliefs, social norms and marital traits of a group...of racial, religious or social group integrated pattern of human behavior passed to succeeding generation and...that complex whole that includes knowledge, belief, morals, law, customs, opinions, religion, superstition and art.

CUSTOM. Custom is defined as a usage or practice of the people, which, by common adoption and acquiescence, and by long and unvarying habit - matter to which it relates...An habitual or customary practice, more or less widespread, which prevails within a geographic or sociological area. (source: *Black's Law Dictionary*, 5th ed.)

CUSTOM AND CULTURE. Custom and culture have grown to mean a sense of *place*, spiritually, socially, economically and environmentally for the land based cultures of New Mexico. The customary uses of the lands continue to be for croplands, grazing, timber and mining that support rural communities and are significant contributors to the overall state's economy.

DE-FORPLAN. A specific linear programming computer model designed for use in Forest Service planning.

DESIRED PLANT COMMUNITY (DPC). The plant community which provides the vegetation attributes required for meeting or exceeding RMP vegetation objectives.

ECOSYSTEM. A complex self-sustaining natural system which includes living and non living components of the environment and the circulation of matter and energy between organisms and their environment.

ENDANGERED SPECIES. Any species or subspecies whose prospects of survival or recruitment are in jeopardy.

ENVIRONMENTAL IMPACT STATEMENT (EIS). The procedure for analyzing the impacts (both beneficial and adverse) of a proposed action on a given environment, and the documentation of analysis.

EPHEMERAL. A stream or portion of a stream that flows in direct response to precipitation, lasts for a short period of time and is not influenced by ground water sources.

EROSION. The wearing away of the land surface by running water, wind, ice, or other glacial agents.

EXTENSIVE GRAZING. Season-long use of range lands with distribution of livestock occurring through riding, salting, etc.

FEE SIMPLE PROPERTY * In American Law, fee simple property, or, estate, is one in which the owner is entitled to the entire property.

FRAGILE SOIL. A soil that is easily damaged by use or disturbance.

GRAZING CAPACITY. The maximum livestock rate possible without inducing damage to vegetation or related resources such as watershed.

HABITAT MANAGEMENT PLAN (HMP). A written and officially approved plan for a specific geographical area of public land which identifies wildlife habitat and related objectives.

HUMAN RESOURCE UNIT (HRU). A human geographic area characterized by particular patterns of cultural lifeways, economic conditions, institutional arrangements, and topography.

LOCAL DEPENDENT INDUSTRIES. Industries relying on public land outputs for economic activity.

MANAGEMENT ACTION. Any activity undertaken as part of the administration of public land.

MANAGEMENT FRAMEWORK PLAN (MFP). A planning decision document now replaced by RMP's that establishes for a given planning area land use allocations.

NON POINT SOURCE POLLUTION (NPS). The alteration of waters by activities not regulated as point sources, which degrade the quality or adversely affect the biological community inhabiting the waters.

OVERSTORY. That portion of the trees, in a forest of more than one story, forming the upper or uppermost canopy.

PAYMENT IN LIEU OF TAXES (PILT). Payments to local or state governments based on ownership of federal land and not directly dependent on production of outputs or receipt sharing.

POINT SOURCE POLLUTION. Pollution discharged from any discernible, confined and discrete conveyance into a body; e.g., effluent from a pipe. Point source pollution does not include return flow from irrigated agricultural land.

PRESCRIBED FIRE OR BURN. The skillful application of fire to natural fuels under conditions of weather, fuel moisture, soil moisture, etc., that would allow confinement of the fire to a predetermined area and at the same time produce the intensity of heat and rate of spread required to accomplish certain planned benefits to one or more objectives of wildlife management, livestock management, hazard reduction, etc. Its objective is to employ fire scientifically to realize maximum damage and acceptable cost.

PROPERTY. * That which belongs exclusively to one; in the strict legal sense, an aggregate of rights which are guaranteed and protected by the government...**Private property** - as protected from being taken for public uses, is such property as belongs absolutely to an individual, and of which he/she has the exclusive right of disposition. **Public use** - in constitutional provisions restricting the exercise of the right to take private property in virtue of eminent domain.

RANGE CONDITION. The state of health of the range based on what it is naturally capable of producing.

RANGE IMPROVEMENT. A authorized activity or program on or relating to range lands which is designed to improve production of forage; change vegetative composition; control patterns of use; provide water; stabilize soil and water; conditions; and provide habitat for livestock and wildlife.

RESOURCE MANAGEMENT PLAN (RMP). A written land use plan that outlines decisions and strategies (action plans) for management of the resources in a particular area.

RIGHTS OF PROPERTY The mere right of property in land; the abstract right which remains to the owner after he/she has lost the right of possession, and to recover which the writ of right was given. United with possession, and the right of possession, this right constitutes a complete title to lands, tenements, and hereditaments.

STATE TRUST LANDS (OF NEW MEXICO) State Trust Land of New Mexico is the estate held in trust for designated beneficiaries: primarily schools, as well as hospitals and medical facilities in New Mexico. These Trust Lands are administered by the New Mexico State Land Department for the highest revenue return to the beneficiaries of the Trust. While State Trust Lands are government lands, the Trust Lands are not public lands; Trust lands are exclusively administered for the beneficiaries of the Trust.

SUSTAINED YIELD. The achievement and maintenance in perpetuity of a high level annual or regular periodic output of the renewable resources of public land without impairment of the productivity of the land.

THREATENED SPECIES. Any species or subspecies that is likely to become endangered within the foreseeable future throughout a significant portion of its range.

TURBIDITY. A condition in water caused by the presence of suspended matter which results in the scattering and absorption of light. Generally, a measure of fine suspended matter in water.

UNDERSTORY. The trees or other species growing under a more or less continuous cover of branches and foliage formed collectively by the upper portion of adjacent trees and other woody species.

VEGETATION TREATMENT. Any activities undertaken to modify the existing condition of the vegetation.

WATERSHED. The land area which collects and discharges excess surface water through a single outlet.

WETLAND. Land where water is the dominant factor determining the nature of soil development and the type of plant and animal communities living in the soil and on its surface.

WILDERNESS. The definition contained in Section 2(c) of the Wilderness Act of 1964 is as follows: "A wilderness, in contrast with those areas where man and his works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain."

WILDLIFE. Includes all species of mammals, birds, mollusks, crustaceans, amphibians, reptiles, or their progeny or eggs which, whether raised in captivity or not, are normally found in a wild state. Feral horses and burrows are excluded.

* Refers to citations from *Black's Law Dictionary*, (4th ed.), West Publishing Co.