APPENDIX B
ACTS OF AUTHORITY AND MANDATES FOR THE
FOREST SERVICE AND BUREAU OF LAND MANAGEMENT

The authority of the Authorized Officer to make these leasing decisions is conferred by the Leasing Reform Act of 1987 and the Mineral Leasing Acts (1920, 1947). The implementing regulations gave the authority to make these decisions to Regional Foresters. The Regional Forester has delegated that authority to the Supervisors of the Ashley and Uinta National Forests. Other acts are mandates to the Forest Supervisor's that must be carried while implementing any activities on the ground.

BACKGROUND ACTS

A series of statutes prior to the Leasing Reform Act further establish and define the authority of the Supervisor to make these decisions. These are:

General Mining Law of 1872 (later amended by the Mineral Leasing Act of 1920)

Public lands, including National Forest System lands, valuable for oil deposits were open to entry and placer mining claims under the General Mining Law. (See Act of February 11, 1872, 29 Stat. 526.) The General Mining Law of 1872 (30 USC 22-54) preceded the Organic Act and the establishment of the Forest Reserves and National Forests. The General Mining Law governs mining activity on public lands and National Forest System lands.

So many claims were filed under the General Mining Law that the President issued a Proclamation in 1909 withdrawing public lands from such entry, pending the enactment of legislation to protect such lands. (See U.S. v. Midwest Oil Co., 59 L.Ed. 673 (1915), and Udall v. Tallman, 13 L.Ed. 2d 616, 628 (1965)). However, protective legislation was not enacted until the Mineral Leasing Act of 1920. (See Boesche v. Udall, 373 US 472, 10 L.Ed. 2d 491, 497 (1963).) This Act authorizes the Secretary of the Interior to issue leases for disposal of certain minerals (currently applies to coal, phosphate, sodium, potassium, oil, oil shale, gilsonite, and gas). The Act applies to National Forest System lands reserved from the public domain.

Mineral Resources on Weeks Law Lands

The Act of March 4, 1917 (39 Stat. 1150, as supplemented; 16 U.S.C. 520); this act authorizes the Secretary of the Interior to prescribe general regulations to permit prospecting, development, and use of the mineral resources of the lands acquired under the Act of March 1, 1911, known as the Weeks Law, for the best interests of the United States.

Reorganization Plan No. 3 of 1946

Part IV, Section 402 (60 Stat. 1097, 1099; 5 USC Appendix). This Plan provides that development of mineral deposits in certain lands pursuant to provisions of the Mineral Resources on Weeks Law Lands Act of March 4, 1917 (Ch. 179, 39 Stat. 1134, 1150, 16 USC 520) shall be authorized by the Secretary of the Interior only when he is advised by the Secretary of Agriculture that such development will not interfere with the primary purposes for which the land was acquired and only in accordance with such conditions as may be specified by the Secretary of Agriculture in order to protect such purposes.

Energy Security Act of June 30, 1980

The Energy Security Act (P.L. 96-294, 94 Stat. 611; 42 USC 8801 (note), 8854, 8855) directs the Secretary of Agriculture to process applications for leases and permits to explore, drill, and develop resources on National Forest System lands, notwithstanding the current status of the land and resource management

ACTS OF AUTHORITY

Mineral Leasing Act for Acquired Lands of August 7, 1947

The Mineral Leasing Act (Ch. 513, 61 Stat. 913; 30 USC 351, 352, 354, 359) provides that all deposits of coal, phosphate, oil, oil shale, gas, sodium, potassium, and sulphur that are owned or may be acquired by the United States and that are within the lands acquired by the United States may be leased by the Secretary of the Interior under the same conditions as contained in the leasing provisions of the mineral leasing laws. No mineral deposit covered by this section shall be leased except with the consent of the head of the executive department, independent establishment, or instrumentality having jurisdiction over the lands containing such deposit, or holding a mortgage or deed of trust secured by such lands that is unsatisfied of record, and subject to such conditions as that official may prescribe to ensure the adequate use of the lands for the primary purposes for which they have been acquired or are being administered.

The Federal Onshore Oil and Gas Leasing Reform Act of December 22, 1987

The 1987 Leasing Reform Act (30 USC 181, et seq.; P.L. 100-203) expanded the authority of the Secretary of Agriculture in the management of oil and gas resources on National Forest System lands and directed the Secretary to issue rules on bonding and reclamation standards. Under the Act, leases for oil and gas on National Forest System lands cannot be issued by the BLM without the approval of the Forest Service. All surface-disturbing activities on National Forest System lands must be approved by the Forest Service before operations commence. The Act also provides for inspections and enforcement of operations once commenced. Regulations implementing this statute were published in the Federal Register by the Forest Service on March 21, 1990 (55 FR 10423, et. seq.). The regulations were codified in 36 CFR 228.100 et. seq.

Mineral Leasing Act of February 25, 1920

The Bureau of Land Management, Department of the Interior, is responsible for leasing under this Act. Technical administration of leases and permits is the responsibility of the U.S. Geological Survey. By interdepartmental agreement all applications to lease lands under Forest

Service Jurisdiction are referred to the Forest Service for review, recommendation, and special stipulations to protect the surface and surface functions.

MANDATES

Organic Act

The Organic Act of June 4, 1897 (16 USC 475) established the system of Forest Reserves, which later became the National Forest System. This act defines and describes the basic purposes for which National Forests (and later, National Grasslands) are to be managed.

The Act provides in part that "... it is not the purpose or intent of these provisions, or of said section, to authorize the inclusion therein of lands more valuable for the mineral therein, or for agricultural purposes, than for forest purposes" (Chpt. 2, Sec. 1, (30 Stat. 34)). Provision is made for regulations allowing free use of timber and stone for bona fide miners and prospectors in 16 USC 477. Authority for regulations providing access for prospecting, locating, and developing mineral resources is found in 16 USC 478.

The General Mining Law of 1872 (30 USC 22-54) preceded the Organic Act and the establishment of the Forest Reserves and National Forests.

Multiple-Use Sustained-Yield Act of 1960

The Multiple-Use Sustained-Yield Acto f 1960 (16 USC 528) extended the purposes for which lands of the National Forest System could be managed. It also declared that these lands be managed for multiple uses, rather than for individual uses in individual places. Management of the individual natural resources of the lands is declared to be according to the principle of sustained yield in perpetuity.

This Act provides, in part, that "Nothing herein shall be construed so as to affect the use or administration of the mineral resources of national forest lands ..."

National Forest Management Act of 1976

This statute (16 USC 1600, et. seq.) and its implementing regulations (36 CFR Part 219) define additional principles for management of the lands and resources of the National Forest System. This Act also directs the Forest Service to create Land and Resource Management Plans for each administrative unit of the National Forest System. The Plans are "to provide for multiple use and sustained yield of goods and services from the National Forest System in a way that maximizes net public benefits in an environmentally sound manner" (36 CFR 219.1(a)). The Act describes required management of renewable resources, but indicates that mineral exploration and development must be considered in the planning and management relating to the renewable resources (36 CFR 219.22).

These authorities, and the discretion of the Forest Supervisor in making these decisions, are conditioned by several other statutes. The basic laws that limit the discretion of the Supervisor to make these decisions are described below.

National Environmental Policy Act of 1969

This statute (40 USC 4331 et. seq.) and its implementing regulations (40 Part 1500) apply to Federal actions relating to oil and gas leasing. This statute requires the Federal Authorized Officers in the Forest Service and other Federal Agencies to perform an environmental analysis and disclose the effects of their decisions on the quality of the human environment. The law further requires the Federal Officers to identify and describe the significant environmental issues associated with his/her decision and to develop alternatives to his proposed action (including the alterative of no action). Federal Officers must disclose the direct, indirect, and cumulative effects of the decisions, and adverse environmental effects that cannot be avoided, the relationship between short-term uses of man's environment and the maintenance of long-term productivity, and any irreversible or irretrievable commitments of resources made by the decision.

The Clean Air Act of 1970

The Clean Air Act (91 Stat. 685; 42 U.S.C. 7401 et seq.) provides that each State is responsible for ensuring achievement and maintenance of air quality standards within its borders so long as

such standards are at least as stringent as Federal Standards established by the U.S. Environmental Protection Agency (EPA).

The Endangered Species Act of 1973

The Endangered Species Act (Public Law 93-204; 16 USC 15311, et. seq.), as amended, requires a special protection and management on Federal lands for threatened or endangered species. The U.S. Fish and Wildlife Service (FWS) is responsible for administration of this act. Federal agencies proposing an action or processing an action proposed by a third party which "may affect", in any way, the existence of an identified species must consult with the FWS to determine if, and how, the proposed action will affect those species. Mitigation measures will be developed through the consultation process and are put forth as suggested conservation measures included a formal "FWS Biological Opinion" as to whether or not the proposed action would jeopardize the continuous existence of any officially listed endangered or threatened species.

Clean Water Act

Clean Water Amendments ("Federal Water Pollution Control Act Amendments of 1972"); Act of October 18, 1972 (P.L. 92-500, 86 Stat 816, as amended; 33 USC 1251, et seq.)-the act puts forth national standards to restore and maintain chemical, physical and biological integrity of the Nation's waters. Upon passage of Environmental Quality Acts and adoption of water quality standards, stage agencies were empowered to enforce water quality standards as long as they are at least as stringent as Federal standards established by the EPA.

Historic Preservation Act

The National Historic Preservation Act is Public Law 89-665, 80 Stat. 915 (16 USC 470) as amended. Section 106 of the Act requires a Federal agency planning an undertaking to consider the effects of the action on cultural resources eligible to, or listed on, the National Register of Historic Places. Prior to the approval of the undertaking the agency must afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking.

Energy Policy Act of 1992

Changed the primary term of competitive leases from five years to ten years.

Federal Land Policy and Management Act of 1976

This statute (43 USC 1700; el. seq.) and its implementing regulations define principals for management of public lands and their resources. This act directs the Secretary of the Interior to develop, maintain, and, when appropriate, revise Land Use Plans which provide for the use of public lands and guide management on the basis of multiple use and sustained yield unless otherwise specified by law.